U.S. DISTRICT COURT – N.D. OF N.Y.
FILED
Oct 09 - 2026
John M. Domurad, Clerk

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
SYRACUSE DIVISION

Edson Pereira Souza Junior,

Petitioner,

v.

The Patrol Agent of the Wellesley Island Border Patrol Station, in his/her official capacity;
Peter Sukmanowski, Acting Field Office Director of the Buffalo Field Office U.S. Immigration and Customs Enforcement, in his official capacity;
David J. Venturella, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;
Markwayne Mullin, Secretary of the Department of Homeland Security in his official capacity; and
Todd Blanche, Acting Attorney General of the United States, in his official capacity

Respondent.

Civil Action No.: 9:26-cv-2093 (AMN)

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

[redacted]

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Pursuant to 28 U.S.C. § 2241, Edson Pereira Souza Junior, ("Petitioner") seeks a Writ of Habeas Corpus ordering Respondent to release him from custody or, in the alternative, to provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a).

The Department of Homeland Security ("DHS") has recently reversed their decades-long practice of providing bond hearings to people in Petitioner's situation. To justify that reversal, the Department has adopted an indefensible interpretation of immigration statutes and the Executive Office of Immigration Review ("EOIR" or "Immigration Court") under the Department of Justice ("DOJ") has promoted this interpretation. Implementing their new interpretation, DHS has unlawfully seized Petitioner and is detaining him without the possibility of release on bond, even

though he has resided in the United States for over 4 years. Petitioner asks that this Court declare that he has been detained unlawfully, that the DHS's interpretation of the governing statute is wrong, and that it orders either his release or that he receive a bond hearing before the Immigration Court.

INTRODUCTION

1. Petitioner is in the physical custody of Respondents at the Wellesley Island Station, 45764 Landon Road, Wellesley Island, New York 13640, within the Northern District of New York, and has been continuously detained by U.S. Customs and Border Protection ("CBP") since October 4, 2026.

2. He is unlawfully detained because the Department of Homeland Security ("DHS"), with the concurrence of the Executive Office of Immigration Review ("EOIR") under the Department of Justice ("DOJ"), has determined that Petitioner is subject to mandatory detention. As a result, Petitioner's continued detention violates 8 U.S.C. § 1226(a) and the Due Process Clause of the Fifth Amendment to the United States Constitution. *See* the ICE Detainee Locator Website Screenshot, accessed on October 9, 2026.

EDSON PEREIRA SOUZA JUNIOR
Country of Birth : Brazil
A-Number: [redacted]
Status : In CBP Custody

** CBP continues to expeditiously process and remove individuals who arrive at the U.S. border unlawfully and do not have a legal basis to stay. When an individual is in CBP custody, every effort will be made to promptly transfer, transport, process, release, or repatriate the individual as appropriate according to CBP policies and procedures.*

3. Petitioner has resided in the United States for over four years and was not detained during that period. He is now subject to immigration detention without the opportunity for release on bond.

4. Petitioner's immigration records are not presently available to counsel. Petitioner presumes that DHS is treating Petitioner as subject to mandatory detention and therefore ineligible for release on bond.

5. That action by DHS is also mandated by recent precedent of the Board of Immigration Appeals (BIA). The BIA, on September 5, 2025, issued a precedential decision, which binds all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission or inspection. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board, deviating from decades of established precedent, decided that such individuals are now subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

6. Despite a nation-wide class action declaratory judgment issued by the U.S. District Court for the Central District of California that confirmed that all class members (of which Petitioner would be one) are subject to detention under § 1226(a) and therefore entitled to a bond hearing, Immigration Judges ("IJs") have been instructed by Chief Immigration Judge Teresa L. Riley to ignore this case law that clearly indicated that *Matter of Yajure Hurtado* is no longer controlling. See *Bautista v. Santacruz, 2025 U.S. Dist. LEXIS 262265; see also* AILA Practice Alert 01/14/2026: *https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista*.

7. Petitioner's immigration records are not presently available to counsel. Petitioner presumes, however, that DHS initially processed Petitioner under 8 U.S.C. § 1226(a), consistent with its longstanding practice for noncitizens apprehended in the interior. Section 1226(a) authorizes release on bond or conditions during the pendency of removal proceedings.

Accordingly, Petitioner's continued detention without an individualized bond hearing violates 8 U.S.C. § 1226(a).

8. Respondent's new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner and violates his procedural due process right to be heard concerning whether the government should continue to deprive him of his liberty.

9. More importantly, the Second Circuit has since directly rejected the Government's position. In *Barbosa da Cunha v. Freden,* 175 F.4th 61, 69 (2d Cir. 2026), the Second Circuit held that § 1226(a), rather than § 1225(b)(2)(A), governs the detention of noncitizens who entered the United States without inspection or admission but were not apprehended at or near the time of entry. Accordingly, such individuals are subject to discretionary detention under § 1226(a) and are entitled to an individualized bond hearing.

10. The government's continued deprivation of Petitioner's liberty interest is significant because Petitioner has resided in the United States since 2022 without being held in immigration detention. After living in the community for many years, Petitioner's sudden detention without an individualized hearing under 8 U.S.C. § 1226(a) constitutes a patent violation of the Due Process Clause of the Fifth Amendment.

11. Accordingly, Petitioner respectfully requests that this Court grant him a Writ of Habeas Corpus and order his immediate release from unlawful detention, or in the alternative, order a bond hearing before an Immigration Judge ("IJ") where DHS bears the burden of justifying his continued detention.

CUSTODY

12. Petitioner is in the immediate physical custody of Respondents. He is detained at Wellesley Island Station, 45764 Landon Road, Wellesley Island. Petitioner is detained within this District and under the direct control of Respondents.

JURISDICTION

13. This case arises under the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101 *et seq.*, and the Fifth Amendment of the United States Constitution. The Second Circuit has repeatedly exercised habeas jurisdiction over constitutional challenges to the adequacy of § 1226(a) bond procedures. *See Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020); *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024).

14. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, Cl. 2 of the United States Constitution (the Suspension Clause).

15. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

16. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(a)(5), 1252(b)(9), 1225(g), or 1226(e). District courts have jurisdiction under 28 U.S.C. § 2241 to decide habeas claims by individuals challenging the lawfulness or constitutionality of their civil immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

VENUE

17. Venue is proper in this District under 28 U.S.C. §§1391(e)(1) and (2) because the Respondents are officers, employees, or agency of the United States and detain Petitioner at Wellesley Island Station, 45764 Landon Road, Wellesley Island, New York 13640 which is in this District. Venue is also proper in this District because a substantial part of the events or omissions giving rise to the claims occurred in the Northern District of New York.

REQUIREMENTS OF 28 U.S.C. § 2243

18. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

19. Pursuant to 28 U.S.C. § 2243, the Court must grant the Petition for a writ of habeas corpus or order Respondent to show cause "forthwith," unless the petitioner is not entitled to relief. *Id.* After issuance of an order to show cause, Respondent must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* Upon filing of the return, the Court sets a hearing "not more than five days after the return unless for good cause additional time is allowed." *Id.* Finally, "[t]he court shall summarily hear and determine the facts and dispose of the matter as law and justice require." *Id.*

EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. There is no statutory exhaustion requirement for habeas challenges under 28 U.S.C § 2241. In the absence of a statutory exhaustion requirement, "sound judicial discretion governs." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). For example, there is no need to seek an administrative remedy when doing so would be "futile," *e.g.*, "where the administrative body" has "predetermined the issue before it." *Id.* at 144, 148; see also *Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 U.S. Dist. LEXIS 226877, at *8 (E.D. Pa. Nov. 18, 2025). Similarly, exhaustion is

excused "when the issue presented involves only statutory construction." *Vasquez v. Strada*, 684 F.3d 431, 434 (3d Cir. 2012).

21. Both exceptions apply here. The BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—which binds immigration judges, 8 C.F.R. § 1003.1(g)(1)—plainly denies Petitioner a bond hearing. Due to that binding BIA precedent, Petitioner's legal issue has been predetermined within the agency, and exhaustion would be futile just as it was in *Demirel*, a fact that clears the way for judicial review. Second, Because the central issue here is whether Petitioner may be detained under Section 1225 or Section 1226 of the INA—a purely legal question of statutory interpretation—any exhaustion requirements should therefore be excused.

PARTIES

22. Petitioner Edson Pereira Souza Junior is currently in the custody of U.S. Customs and Border Protection ("CBP") and is detained at the Wellesley Island Station, 45764 Landon Road, Wellesley Island, New York 13640. Upon information and belief, he was stopped by U.S. Border Patrol agents on the morning of October 4, 2026, in Calcium, New York.

23. Respondent the Patrol Agent of the Wellesley Island Border Patrol Station is sued in his/her official capacity as the individual in charge of the Border Patrol Station where Petitioner is currently detained. He/She is the immediate custodian of Petitioner and, in conjunction with DHS and ICE, has the authority to release him.

24. Respondent Peter Sukmanowski the Acting Field Office Director of the Buffalo Field Office of U.S. Immigration and Customs Enforcement is sued in his official capacity. The Buffalo Field Office exercises ICE authority over immigration enforcement, detention, and removal operations within its area of responsibility, including Petitioner's detention at the

Wellesley Island Station. Respondent is therefore named as the ICE official responsible for Petitioner's legal custody and detention-related decisions.

25. Respondent David J. Venturella is the Acting Director of U.S. Immigration and Customs Enforcement. As the official performing the duties of ICE Director, he has supervisory responsibility over ICE, including ICE's detention and removal operations. He is sued in his official capacity.

26. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. The Department of Homeland Security is responsible for the administration and enforcement of the immigration laws, and U.S. Immigration and Customs Enforcement, a component of DHS, is the agency responsible for Petitioner's civil immigration detention. He is sued in his official capacity.

27. Respondent Todd Blanche is the Acting Attorney General of the United States. The Attorney General oversees the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system are component parts. He is sued in his official capacity.

FACTUAL ALLEGATIONS

28. Petitioner is a 28-year-old Brazilian citizen who has resided in the United States since 2022. He currently resides in [redacted]. Upon information and belief, Petitioner has no criminal convictions and no history of offenses rendering him a danger to the community.

29. Upon information and belief, petitioner was stopped by U.S. Border Patrol agents on October 4, 2026, in Calcium, New York. Petitioner is currently in the custody of U.S. Customs and Border Protection ("CBP") and is detained at the Wellesley Island Station, located at 45764 Landon Road, Wellesley Island, New York 13640.

30. Petitioner has lived in the United States for many years prior to his current immigration detention.

31. Upon information and belief, Petitioner entered the United States on or about April 6, 2022, near Phoenix, Arizona, without inspection.

32. Petitioner has lived in the United States for over 4 years, during which time has established strong ties to his local community.

33. Throughout his over 4 years in the United States, Petitioner has resided in the community and has not been subject to any immigration detention. He is now detained without an opportunity for release on bond despite his long-standing ties to the United States.

34. Upon information and belief, Petitioner does not have any criminal records.

35. Petitioner has resided in the United States for more than four years, during which he has established substantial and meaningful ties to his local community. Throughout his residence, Petitioner has developed close personal relationships, maintained stable residential ties, and built strong connections within his community through social and religious activities. Petitioner has regularly attended Assembly of God Church in Newark, New Jersey, where he has developed meaningful ties and continues to receive support from the church community. *See* **Exhibit 1**, Support Letter from Assembly of God Church Pastor. Petitioner's strong community ties are further demonstrated by numerous letters of support from individuals who know him personally, who attest to his good character, reliability, and meaningful relationships within the community. *See* **Exhibits 2**, Letters of Support from Community Members.

36. Given that Petitioner remains in mandatory detention without an individualized assessment, the immediate and ongoing deprivation of his liberty underscores the constitutional

significance of providing a bond hearing to determine whether his continued confinement is justified.

LEGAL FRAMEWORK

37. There are three statutes that govern civil immigration detention. See 8 U.S.C. §§ 1225, 1226, 1231.

38. First, Section 1225 provides for mandatory detention of two groups of noncitizens regardless of any criminal record. The first group consists of those who are subject to expedited removal (a) for being apprehended upon arrival at or near the border lacking any valid entry document or (b) for being apprehended at any location and unable to show that they have been physically present in the United States for more than two years. 8 U.S.C. §§ 1225(b)(1)(A)(i), (ii). The second group consists of anyone alleged to be an "applicant for admission" who is "seeking admission" and whom an "examining officer determines . . . is not clearly and beyond a doubt entitled to be admitted," *e.g.,* someone who presents valid entry documents at a port of entry but is inadmissible for some reason. 8 U.S.C. § 1225(b)(2). This section mandates detention and is "applied primarily to aliens seeking entry into the United States" who claim fear of return to their home country at a United States border. *Jennings*, 583 U.S. at 297.

39. Second, Section 1226(a) authorizes discretionary detention of noncitizens in standard removal proceedings under 8 U.S.C. § 1229a. This section governs detention of noncitizens in removal proceedings not apprehended at the border has traditionally been governed and grants the Attorney General discretion to determine whether a noncitizen, except those with certain criminal histories, may be released on bond. 8 U.S.C. § 1226(a). Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§

1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

40. Third, under 8 U.S.C. § 1231(a)(1)(A), ICE must detain a noncitizen for the first ninety days after a removal order becomes final. *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018). This statute is not at issue in this case.

41. This case presents a pure legal question regarding whether Petitioner's detention is governed by 8 U.S.C. §§ 1225 or 1226.

Statutory Framework for §§ 1226 and 1225

42. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended in 2025 by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

43. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

44. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also*

H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

45. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. *Martinez v. Hyde*, 792 F. Supp. 3d 211, 223 n.10 (D. Mass. 2025).

46. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades."

47. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. The Second Circuit has since expressly rejected that statutory interpretation, holding that § 1226(a), rather than § 1225(b)(2)(A), governs the detention of noncitizens who entered without inspection and were not apprehended at the time of entry or shortly thereafter. *Barbosa da Cunha v. Freden*, 175 F.4th 61, 69 (2d Cir. 2026).

48. "At least 282 decisions from district courts. . . find that the application of Section 1225(b)(2)(A) to noncitizens residing in the United States is unlawful." *Patel v. McShane*, No. 25-5975, 2025 U.S. Dist. LEXIS 228258, at *2 (E.D. Pa. Nov. 20, 2025); *see also Del Cid v. Bondi*, No. 3:25-cv-00304, 2025 U.S. Dist. LEXIS 209136, at *40 (W.D. Pa. Oct. 23, 2025) (determining that petitioners were likely to succeed on their claim that § 1226(a) governed their detention based on years of U.S. residence, but declining to adopt a bright-line rule). Many courts have likewise

concluded that individuals residing in the United States at the time of their apprehension are not subject to mandatory detention under § 1225(b)(2)(A), but instead fall within the discretionary detention framework of § 1226(a). *See, e.g.*, *Martinez*, 792 F. Supp. 3d at 232.

49. Section 1226(a) applies by default to all persons "pending a decision on whether the noncitizen is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

50. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). *Id.* As one court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

51. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States without admission or parole. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287; *see Del Cid*, 2025 U.S. Dist. LEXIS 209136, at *40 (recognizing that § 1225 is tethered to the nation's borders, whereas § 1226 is tethered to individuals within the country).

52. Thus, the mandatory detention provision of § 1225(b)(2) does not apply to individuals like Petitioner who have long resided in the United States. Instead, such individuals

are subject to discretionary detention under § 1226(a), which permits release on bond. *See, e.g., Patel, 2025 U.S. Dist. LEXIS 228258, at *4.*

Detention without Due Process

53. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225. Even if Respondent were correct that § 1225 applied, Petitioner's continued detention without notice, a meaningful opportunity to be heard, or an individualized determination of the necessity of detention violates the Due Process Clause of the Fifth Amendment. *See, e.g., Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025).

54. Petitioner has a protected liberty interest under the Due Process Clause because he has resided in the United States for many years and is entitled to constitutional protections afforded to all "persons" within the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The Supreme Court has repeatedly reaffirmed that noncitizens, regardless of immigration status, are entitled to due process of law before the government may deprive them of their liberty.

55. *Dep't of Homeland Sec. v. Thuraissigiam* 591 U.S. 103 (2020), underscores the distinction between noncitizens apprehended shortly after unlawful entry and those who have established substantial connections to the United States. Unlike individuals apprehended at or near the border and placed in expedited removal proceedings, Petitioner has resided in the United States for many years and is therefore entitled to the full protections of the Due Process Clause.

56. Petitioner retains a significant liberty interest under the Due Process Clause of the Fifth Amendment in avoiding immigration detention. *See Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972). Having lived in the United States for many years and established substantial ties to his community, Petitioner possesses a protected liberty interest that cannot be extinguished without due process of law.

57. Courts evaluate the procedural protections required using the *Mathews v. Eldridge* factors which consider: (1) the private interest affected; (2) the risk of erroneous deprivation and probable value of additional safeguards; and (3) the government's interest, including fiscal and administrative burdens. 424 U.S. 319, 335 (1976).

58. Being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Individuals possess a significant liberty interest in avoiding physical confinement, a principle repeatedly recognized by the Supreme Court and the lower courts. *See, e.g., Young v. Harper*, 520 U.S. 143, 152 (1997); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019).

59. The risk of erroneous deprivation of Petitioner's liberty interest is high. DHS has adopted an impermissibly broad interpretation of 8 U.S.C. § 1225 that categorically forecloses any opportunity for an individualized bond hearing. Civil immigration detention must be "nonpunitive in purpose and effect" and is constitutionally justified only where the government demonstrates that detention is necessary to prevent flight or danger to the community. *Zadvydas* at 678, 690. By denying Petitioner any individualized assessment of whether continued detention is warranted, DHS's interpretation creates a substantial risk of erroneous deprivation of liberty.

60. While the government has an interest in ensuring that noncitizens appear for removal proceedings and do not pose a danger to the community, that interest is minimal when compared to Petitioner's significant liberty interest. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). Petitioner has longstanding ties to the United States. He has established a life here and built meaningful ties. Upon information and belief, Petitioner does not have any criminal history. His lack of a criminal record underscores that he poses no danger to the community. Nothing in the record, apart from the government's challenged interpretation of §

1225, supports his continued detention. Providing Petitioner notice and an individualized hearing to assess whether detention is necessary would impose only a minimal administrative burden, as such hearings are routinely conducted in immigration proceedings. *See* 8 C.F.R. § 1236.1(d)(1).

61. On balance, the *Mathews* factors weigh heavily in Petitioner's favor. Because DHS has denied Petitioner any notice or opportunity to be heard before subjecting him to continued detention, due process requires at minimum an individualized bond hearing to determine whether detention is justified. *See, e.g., Patel*, 2025 U.S. Dist. LEXIS 228258, at *4.

CLAIMS FOR RELIEF

COUNT ONE

FIFTH AMENDMENT DUE PROCESS VIOLATION

(Procedural Due Process)

62. Petitioner alleges and incorporates by reference the paragraphs above.

63. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. The Supreme Court has long-established that noncitizens are afforded due process rights. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Demore*, 538 U.S. at 523.

64. Procedural due process requires a custody hearing before an independent and impartial adjudicator. *See Marcello v. Bonds*, 39 U.S. 302, 307 (1955).

65. To determine whether civil detention violates an individual's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*.

66. Petitioner has a significant liberty interest in being free from detention.

67. The government's assertion of the wrong detention authority and its continued detention of Petitioner without notice or an individualized hearing presents a significant risk of erroneous deprivation of Petitioner's liberty interest. The government's position lacks support in

the plain text of the INA and contravenes longstanding statutory interpretation and prevailing case law. By detaining Petitioner without affording him any procedural safeguards, the government has violated Petitioner's due process rights.

68. Any motion for bond before the Immigration Court, and any subsequent appeal to the Board of Immigration Appeals, would be futile because the agency has adopted the same erroneous interpretation of the governing detention statutes that DHS advances here. As a result, Petitioner has no meaningful opportunity, outside of this Petition, to challenge the legality of his detention based on an incorrect reading of the law.

69. The government's interest and any administrative burden associated with providing Petitioner an individualized bond hearing are minimal. Immigration Judges routinely conduct such hearings, and providing basic procedural protections would impose little burden while substantially reducing the risk of erroneous detention.

70. Petitioner's continued detention without notice, a hearing, or any individualized procedural safeguards constitutes a serious deprivation of liberty and violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

VIOLATION OF 8 U.S.C. § 1226(a)

(Misclassification Without Opportunity to Contest)

71. Petitioner alleges and incorporates by reference the paragraphs above.

72. Petitioner's detention is governed by 8 U.S.C. § 1226(a), which authorizes discretionary detention and release on bond or conditional release during the pendency of removal proceedings.

73. Section 1226(a) is the default detention statute governing noncitizens already present in the United States and placed in standard removal proceedings, whereas § 1225 applies

to individuals seeking admission at or near the border. *Jennings* at 288–89 (2018). Petitioner has resided in the United States for over 4 years and therefore falls squarely within the category of noncitizens "already in the country" subject to § 1226(a).

74. The Court should reject any argument that Petitioner falls under § 1225(b)(1) or (b)(2) on the basis that he is an "applicant for admission" and that Petitioner has an established liberty interest from his time living freely in the United States.

75. DHS's treatment of Petitioner as subject to mandatory detention under § 1225(b), without affording him notice or an opportunity to contest that classification, constitutes an unlawful misapplication of the detention statutes.

76. Section 1226(a) and implementing regulations provide that noncitizens present in the United States pending removal decisions are eligible for release on bond unless subject to mandatory detention under § 1226(c). 8 U.S.C. § 1226(a); 8 C.F.R. §§ 1236.1(d), 1003.19(a)-(f).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a) Assume jurisdiction over this matter;

b) Issue an Order to Show Cause ordering Respondent to show cause within three days why this Petition should not be granted;

c) Enjoin Respondent from transferring Petitioner outside the jurisdiction of this District pending the resolution of this case;

d) Issue a Writ of Habeas Corpus ordering Petitioner's immediate release from detention because his continued detention under an erroneous application of 8 U.S.C. § 1225, without an opportunity to contest that classification, is unlawful;

e) In the alternative, order that Petitioner must receive an immediate bond hearing before an Immigration Judge where DHS shall bear the burden of proving, by clear and convincing evidence of dangerousness or flight risk, that Petitioner's continued detention is justified;

f) Award reasonable attorneys' fees and costs under the Equal Access to Justice Act and on any other basis justified under law; and

g) Grant any further relief this Court deems just and proper.

Date: October 9, 2026.

Respectfully submitted,

/s/Arif Gozel
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Edson Pereira Souza Junior as his attorney. I have not personally met with Petitioner, and Petitioner's immigration records are not presently available to me. The factual statements herein are based on information provided to me by Petitioner's cousin, Vitoria Motta, and on information and belief. On that basis, I hereby verify that the factual statements made in the foregoing Verified Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 are true and correct to the best of my knowledge, information, and belief.

Date: October 9, 2026.

/s/Arif Gozel
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EXHIBITS

Exhibit 1, Support Letter from Assembly of God Church Pastor.

Exhibit 2, Letters of Support from Community Members.