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Counsel for Petitioner
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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

FRANCISCO CERRITOS ECHEVARRIA,
Alien # [redacted]

Petitioner,

v.

PAM BONDI, in her official capacity as Attorney General

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security,

FRED FIGUEROA, in his official capacity as Warden of Eloy Detention Center,

JOHN E. CANTU, in his official capacity as ICE Field Office Director of the Phoenix Field Office,

Respondents

Case No.

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

IMMIGRATION HABEAS CASE

I. INTRODUCTION

1. Francisco Cerritos Echevarria (Petitioner) by and through his undersigned counsel, hereby files this petition for a writ of habeas corpus challenging his unlawful detention without a bond hearing. Petitioner is in the physical custody of Respondents at the Eloy Detention Center in Eloy, Arizona.

2. Petitioner is being unlawfully detained without a bond hearing. The Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have improperly concluded that Petitioner, despite being physically present within the interior of and residing in the United States and being arrested in Los Angeles, California, should be deemed to be seeking admission to the United States and therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

3. DHS has placed Petitioner in removal proceedings pursuant to 8 U.S.C. § 1229a and has charged Petitioner as being present in the United States without admission and therefore removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i).

4. Based on the charge of removability, DHS has denied Petitioner release from immigration custody, pursuant to a new DHS policy issued on July 8, 2025,[1]

[1] "Interim Guidance Regarding Detention Authority for Applicants for Admission", ICE, July 8, 2025. Available at: https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond hearings-for-undocumented-immigrants/#/tab-policy-documents.

instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) - i.e., present without admission - to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention during the removal hearing process.

5. Petitioner sought a bond hearing before an immigration judge (IJ), and the IJ denied bond. The IJ based this decision on the Board of Immigration Appeals' (BIA or Board) decision in *Matter of Q. Li*, 29 I&N Dec, 66 (BIA 2025), and the same legal analysis as set forth in the new DHS policy. Indeed, the DHS policy states it was issued "in coordination with the Department of Justice (DOJ)." Immigration Judges function within EOIR which is a component of the Department of Justice. The IJ determined that he did not have jurisdiction to consider Petitioner's release on bond. In effect, the IJ concluded that notwithstanding Petitioner's presence and residence within the United States, Petitioner should be deemed an applicant for admission who is "seeking admission" and subject to mandatory detention under § 1225(b)(2)(A).

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on parole or bond. That statute

expressly applies to people who, like Petitioner, are charged as removable for having entered the United States without inspection and being present without admission.

7. Respondents' new legal interpretation of the INA is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner who are present within the United States.

8. In addition to Petitioner's statutory rights to a bond hearing under § 1226(a), individuals within the United States have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

9. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a).

II. JURISDICTION

10. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of sovereign immunity), 28 U.S.C. § 2241 (habeas corpus jurisdiction), and Article I, Section 9, clause 2 of the United States Constitution (the Suspension Clause).

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

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III. VENUE

12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the District of Arizona, the judicial district in which Petitioner is currently detained.

13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Arizona.

IV. PARTIES

14. Petitioner Francisco Cerritos Echevarria is 49-year-old native and citizen of El Salvador. He was arrested by Immigration and Customs Enforcement (ICE) agents on July 2, 2025 outside of his home in Los Angeles, California. He has been in immigration detention since that date. After arresting Petitioner, ICE did not consider his release, and Petitioner requested review of his custody by an IJ. On July 14, 2025, Petitioner was denied bond by an IJ at the Eloy Detention Center. The IJ concluded there was no jurisdiction for the immigration court to grant bond under *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Petitioner has resided in the United States and the Los Angeles area for more approximately twenty-four years.

15. Respondent Pam Bondi, the Attorney General, is the highest-ranking official within the Department of Justice (DOJ). Respondent Bondi is responsible for the

administration and enforcement of the immigration laws pursuant to 8 U.S.C. § 1103. Respondent Bondi is sued in her official capacity to the extent that 8 U.S.C. § 1102 gives her authority to interpret immigration law and adjudicate removal cases.

16. Respondent Kristi Noem, the Secretary of the Department of Homeland Security (DHS), is the highest-ranking official within the DHS. Respondent Noem, by and through her agency for the DHS, is responsible for the implementation of the INA, and for ensuring compliance with applicable federal law. Respondent Noem is sued in her official capacity as an agent of the government of the United States.

17. Respondent Fred Figueroa is the warden at Eloy Detention Center. He is in charge of Petitioner's place of custody. He is a legal custodian of Petitioner and is sued in his official capacity.

18. Respondent John E. Cantu is the Field Office Director of Immigration and Customs Enforcement for Phoenix, Arizona. He oversees the custody of all Immigration and Customs Enforcement detainees at the Eloy Detention Center. Respondent Cantu is a legal custodian of Petitioner and is sued in his official capacity as an agent of the government of the United States.

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V. LEGAL BACKGROUND

19. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a.

20. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in § 1229a removal proceedings before an IJ. Individuals covered by § 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 certain noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

21. Second, the INA provides for mandatory detention of noncitizens subject to an Expedited Removal order imposed pursuant to 8 U.S.C. § 1225(b)(1) and for other noncitizen applicants for admission to the U.S. who are deemed not clearly entitled to be admitted. *See* 8 U.S.C. § 1225(b)(2).

22. Last, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

23. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a) and 1225(b)(2).

24. 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 early 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

25. Following the enactment of the IIRIRA, EOIR drafted new regulations applicable to proceedings before immigration judges explaining that, in general, people who entered the country without inspection – also referred to as being "present without admission" - 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).

26. Thus, in the decades that followed, most people who entered without inspection and were placed in standard § 1229a removal proceedings received bond hearings before IJs, unless their criminal history rendered them ineligible. 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)).

27. This practice both pre- and post-enactment of IIRIRA is consistent with the fact that noncitizens present within the United States – as opposed to noncitizens

present at an international border and seeking admission – have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

28. On July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice.

29. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[2] claims that all noncitizens present within the United States who entered without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are 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.

30. In a May 22, 2025 unpublished decision by the Board of Immigration Appeals (BIA), EOIR adopted this same position.[3] That decision holds that all noncitizens who entered the United States without admission or parole and who are

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[2] Available at: https://immpolicytracking.org/policies/ice-issues-memo eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents.
[3] Available at https://nwirp.org/our-work/impact-litigation/assets/vazquez/591%20ex%20A%20decision.pdf.

present within the United States are considered applicants for admission and ineligible for IJ bond hearings.

31. ICE and EOIR have adopted this position even though federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court for the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

32. DHS's and EOIR's interpretation defy the INA. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." *Rodriguez Vazquez*, 2025 WL 1193850 at *12.

33. Other portions of the text of § 1226 also explicitly apply 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 inadmissible individuals makes

clear that, by default, inadmissible individuals not subject to subparagraph (E)(ii) are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

34. Section 1226 therefore leaves no doubt that it applies to noncitizens who are present without admission and who face charges of being inadmissible to the United States.

35. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States and are encountered at or near an international border. 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 v. Rodriguez*, 583 U.S. 281, 287 (2018).

36. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner who has already entered and was residing in the United States at the time he was apprehended.

VI. STATEMENT OF FACTS

37. Petitioner has resided in the United States for approximately twenty-four years. He has a criminal history which consists of two convictions for driving under the influence of alcohol – one from 2011 and one from 2019. Petitioner has a prior voluntary return; however, since his entry in 2001, he has had no contact with immigration authorities.

38. On July 2, 2025, Petitioner was arrested outside of his home in Los Angeles, California. Petitioner is now detained at the Eloy Detention Center in Eloy, Arizona.

39. ICE placed Petitioner in removal proceedings before the Eloy Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is present without admission in the United States.

40. Upon information and belief, following Petitioner's arrest and transfer to the Eloy Detention Center, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

41. Petitioner subsequently requested a bond redetermination hearing before an IJ. On July 14, 2025, an IJ denied the request on the basis that the court lacked jurisdiction to conduct a bond redetermination hearing because Petitioner was an applicant for admission.

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VII. FIRST CLAIM FOR RELIEF

Petitioner's Detention is in Violation of 8 U.S.C. § 1226(a)

42. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

43. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Petitioner or other noncitizens present and residing in the United States who are placed under § 1229a removal proceedings and charged with inadmissibility pursuant 8 U.S.C. § 1182(a)(6)(A)(i). As relevant here, § 1225(b)(2) does not apply to those who previously entered the country and have been present and residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens may only be detained pursuant to § 1226(a), unless subject to § 1226(c), or § 1231.

44. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).

VIII. SECOND CLAIM FOR RELIEF

Petitioner's Detention Violates His Fifth Amendment Right to Due Process

45. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

46. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from

government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

47. Petitioner has a fundamental interest in liberty and being free from official restraint.

48. The Government's detention of Petitioner without providing Petitioner a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to Due Process.

IX. THIRD CLAIM FOR RELIEF

Petitioner's Detention Violates the Administrative Procedure Act, U.S.C. § 706(2)

49. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

50. Under the Administrative Procedure Act, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

51. Respondents' detention of Petitioner pursuant to § 1225(b)(2) is arbitrary and capricious. Respondents' detention of Petitioner violates the INA and the Fifth Amendments. Respondents do not have statutory authority under § 1225(b)(2) to

detain Petitioner.

52. Petitioner's detention is arbitrary, capricious, an abuse of discretion, violative of the Constitution, and without statutory authority in violation of 5 U.S.C. § 706(2).

X. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court take jurisdiction over this matter and grant the following relief:

a. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

b. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

c. Grant any other and further relief that this Court deems fit and proper.

RESPECTFULLY SUBMITTED this 4th day of September, 2025

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