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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 EDUARDO GARCIA SILVA,

12 Petitioner,

13 v.

14 CHRISTOPHER J. LAROSE, Senior
15 Warden, Otay Mesa Detention Center, San
16 Diego, California;
17 PATRICK DIVVER, Field Office Director,
18 San Diego Office of Detention and
19 Removal, U.S. Immigrations and Customs
20 Enforcement; U.S. Department of
21 Homeland Security;
22 TODD M. LYONS, Acting Director,
23 Immigration and Customs Enforcement,
24 U.S. Department of Homeland Security;
SIRCE OWEN, Acting Director for
Executive Office for Immigration Review;
KRISTI NOEM, Secretary, U.S.
Department of Homeland Security;
PAM BONDI, Attorney General of the
United States;

Respondents.

Case No.: '25CV2329 H KSC

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW CAUSE
WITHIN THREE DAYS; COMPLAINT
FOR DECLARATORY AND INJUNCTIVE
RELIEF**

Challenge to Unlawful Incarceration
Under Color of Immigration Detention
Statutes; Request for Declaratory and
Injunctive Relief

PETITIONER'S DHS NO.:

A 

1 Petitioner EDUARDO GARCIA SILVA petitions this Court for a writ of habeas
2 corpus under 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully,
3 and states as follows:
4

5 **INTRODUCTION**

6 1. Petitioner, EDUARDO GARCIA SILVA ("Mr. Hernandez Colis" or "Petitioner"),
7 by and through his undersigned counsel, hereby files this petition for writ of habeas
8 corpus and complaint for declaratory and injunctive relief to compel his immediate
9 release from immigration detention where he has been held by the U.S. Department
10 of Homeland Security (DHS) since being detained on June 11, 2025. Petitioner is in
11 the physical custody of Respondents at the Otay Mesa Detention Center in Otay
12 Mesa, California.
13

14 2. Petitioner is unlawfully detained. The Department of Homeland Security
15 (DHS) and the Executive Office for Immigration Review (EOIR) have improperly
16 concluded that Petitioners, despite being physically present within the interior of
17 and residing in the United States and being arrested in San Diego County, California,
18 should be deemed to be seeking admission to the United States and therefore
19 subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).
20

21 3. DHS has placed Petitioner in removal proceedings pursuant to 8 U.S.C. §
22 1229a and has charged Petitioner with being present in the United States without
23 admission and therefore removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i).
24

1 4. Based on the charge of removability, DHS has denied Petitioner's release from
2 immigration custody, pursuant to a new DHS policy issued on July 8, 2025,¹
3 instructing all Immigration and Customs Enforcement (ICE) employees to consider
4 anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) - i.e., present without
5 admission - to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and
6 therefore subject to mandatory detention during the removal hearing process.
7

8 5. Petitioner sought bond hearings before an immigration judge (IJ), and the IJ
9 accepted jurisdiction and granted bond over DHS' objection. The IJ rejected DHS'
10 legal analysis as set forth in the new DHS policy. Indeed, the DHS policy states it was
11 issued "in coordination with the Department of Justice (DOJ)." IJs function within
12 EOIR which is a component of the Department of Justice. DHS reserved appeal and
13 filed Form EOIR-43, Notice of Service of Intent to Appeal Custody Redetermination.
14 This notice not only appeals any IJ decision granting bond but also triggers and
15 automatic stay of the bond decision during the appeal, resulting in the continued
16 unlawful detention of Petitioner to date. *See* § 1003.19(i)(2). The "auto-stay"
17 provision of 8 C.F.R. § 1003.19(i)(2) prevents noncitizens from posting bond and
18 being released even though the IJ has rejected DHS' unlawful reinterpretation of §
19 1225(b)(2) and has granted bond. DHS subsequently filed an appeal with the Board
20 of Immigration Appeals (BIA), which is presently pending adjudication. Other IJs in
21
22

23 ¹ "Interim Guidance Regarding Detention Authority for Applicants for Admission",
24 ICE, July 8, 2025. Available at: <https://immpolicytracking.org/policies/ice-issuesmemo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policydocuments>.

1 this district and other districts nationwide have recently concluded that
2 notwithstanding individuals similarly situated to Petitioner, present and residing
3 within the United States, should be deemed “applicants for admission” who are
4 “seeking admission” and subject to mandatory detention under § 1225(b)(2)(A).

5 6. Petitioner’s detention on this basis violates the plain language of the
6 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq. Section
7 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered
8 and are now present and residing in the United States. Instead, such individuals are
9 subject to a different statute, § 1226(a), that allows for release on conditional parole
10 or bond. That statute expressly applies to people who, like Petitioner, are charged as
11 removable for having entered the United States without inspection and being
12 present without admission.
13

14 7. Respondents’ new legal interpretation of the INA is plainly contrary to the
15 statutory framework and contrary to decades of agency practice applying § 1226(a)
16 to people like Petitioner who are present within the United States.
17

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

23 9. Accordingly, Petitioners seek a writ of habeas corpus requiring that
24 they be released unless Respondents provide a bond hearing under § 1226(a).

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.

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 Central District of California, the judicial district in which Petitioners are 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 Southern District of California.

PARTIES

14. Petitioner EDUARDO GARCIA SILVA was arrested by Border Patrol agents on June 11, 2025 in close to the San Diego and Orange County line, in California while driving north on Interstate 5 Freeway. He has been in immigration

1 detention since that date. After arresting Petitioner, ICE did not set bond and
2 Petitioner requested review of his custody by an IJ. On July 18, 2025, after
3 considering all the information, evidence, and arguments presented by the parties,
4 the Immigration Judge found that the Petitioner demonstrated that he neither poses
5 a danger to the community nor such a significant flight risk that he could not be
6 released after payment of a bond and with the imposition of other mitigating
7 conditions. Accordingly, the Court granted the Petitioner's request for a change in
8 his custody status, allowing his release upon payment of a \$2,000 bond.
9

10 15. Respondent Patrick DIVVER is the Field Office Director of ICE in San
11 Diego, California and is named in his official capacity. ICE is the component of the
12 DHS that is responsible for detaining and removing noncitizens according to
13 immigration law and oversees custody determinations. In his official capacity, he is
14 the legal custodian of Petitioner.

15 16. Respondent Todd M. LYONS is the Acting Director of ICE and is named
16 in his official capacity. Among other things, ICE is responsible for the administration
17 and enforcement of the immigration laws, including the removal of noncitizens. In
18 his official capacity as head of ICE, he is the legal custodian of Petitioner.
19

20 17. Defendant Sirce OWEN is the Acting Director of EOIR and has ultimate
21 responsibility for overseeing the operation of the immigration courts and the Board
22 of Immigration Appeals, including bond hearings. Executive Office for Immigration
23 Review (EOIR) is the federal agency responsible for implementing and enforcing the
24

1 INA in removal proceedings, including for custody redeterminations in bond
2 hearings. She is sued in her official capacity.

3 18. Respondent Kristi NOEM is the Secretary of the DHS and is named in
4 her official capacity. DHS is the federal agency encompassing ICE, which is
5 responsible for the administration and enforcement of the INA and all other laws
6 relating to the immigration of noncitizens. In her capacity as Secretary, Respondent
7 Noem has responsibility for the administration and enforcement of the immigration
8 and naturalization laws pursuant to section 402 of the Homeland Security Act of
9 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. §
10 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner.
11

12 19. Respondent Pam BONDI is the Attorney General of the United States
13 and the most senior official in the U.S. Department of Justice (DOJ) and is named in
14 her official capacity. She has the authority to interpret the immigration laws and
15 adjudicate removal cases. The Attorney General delegates this responsibility to the
16 Executive Office for Immigration Review (EOIR), which administers the immigration
17 courts and the BIA.
18

19 20. Respondent Christopher LAROSE is the Warden of the Otay Mesa
20 Detention Center where Petitioner is being held. Respondent Christopher LaRose
21 oversees the day-to-day operations of the Otay Mesa Detention Center and acts at
22 the Direction of Respondents Divver, Lyons and Noem. Respondent Christopher
23 LaRose is a custodian of Petitioner and is named in their official capacity.
24

LEGAL FRAMEWORK

21. 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.

22. 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).

23. 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).

24. 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).

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

26. 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

1 3009–583, 3009–585. Section 1226(a) was most recently amended in early 2025 by
2 the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

3 27. Following the enactment of the IIRIRA, EOIR drafted new regulations
4 applicable to proceedings before immigration judges explaining that, in general,
5 people who entered the country without inspection – also referred to as being
6 “present without admission” - were not considered detained under § 1225 and that
7 they were instead detained under § 1226(a). See Inspection and Expedited Removal
8 of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
9 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

10 28. Thus, in the decades that followed, most people who entered without
11 inspection and were placed in standard § 1229a removal proceedings received bond
12 hearings before IJs, unless their criminal history rendered them ineligible. That
13 practice was consistent with many more decades of prior practice, in which
14 noncitizens who were not deemed “arriving” were entitled to a custody hearing
15 before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep.
16 No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the
17 detention authority previously found at § 1252(a)).
18

19 29. This practice both pre- and post-enactment of IIRIRA is consistent with
20 the fact that noncitizens present within the United States – as opposed to
21 noncitizens present at a border and seeking admission - have constitutional rights.
22 “[T]he Due Process Clause applies to all ‘persons’ within the United States, including
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24

1 aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”
2 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

3 30. On July 8, 2025, ICE, “in coordination with” the Department of Justice,
4 announced a new policy that rejected the well-established understanding of the
5 statutory framework and reversed decades of practice.

6 31. The new policy, entitled “Interim Guidance Regarding Detention
7 Authority for Applicants for Admission,”² claims that all noncitizens present within
8 the United States who entered without inspection shall now be deemed “applicants
9 for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory
10 detention under § 1225(b)(2)(A). The policy applies regardless of when a person is
11 apprehended and affects those who have resided in the United States for months,
12 years, and even decades.

13 32. In a May 22, 2025 unpublished decision by the Board of Immigration
14 Appeals (BIA), EOIR adopted this same position.³ That decision holds that all
15 noncitizens who entered the United States without admission or parole and who are
16 present within the United States are considered applicants for admission and
17 ineligible for IJ bond hearings.

18 33. ICE and EOIR have adopted this position even though federal courts
19 have rejected this exact conclusion. For example, after IJs in the Tacoma,
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23 ² Available at: [https://immpolicytracking.org/policies/ice-issues-memoeliminating-](https://immpolicytracking.org/policies/ice-issues-memoeliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents)
24 [bond-hearings-for-undocumented-immigrants/#/tab-policy-documents](https://immpolicytracking.org/policies/ice-issues-memoeliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents).

³ Available at [https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-](https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf)
[1%20ex%20A%20decision.pdf](https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf).

1 Washington, immigration court stopped providing bond hearings for persons who
2 entered the United States without inspection and who have since resided here, the
3 U.S. District Court for the Western District of Washington found that such a reading
4 of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to
5 noncitizens who are not apprehended upon arrival to the United States. *Rodriguez*
6 *Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24,
7 2025); see also *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at * (D.
8 Mass. July 7, 2025) (granting habeas petition based on same conclusion). This Court
9 has reached the same conclusion. See *Maldonado Bautista et al. v. Santacruz, et al.*,
10 No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Order Granting Temporary
11 Restraining Order, Dkt. 14 at 9 (TRO issued after DHS adopted “Interim Guidance
12 Regarding Detention Authority for Applicants for Admission.”); *Ceja Gonzalez, et al.*
13 *v. Noem, et al.*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August 13, 2025), Order
14 Granting Ex Parte Application for TRO and OSC, Dkt. 12 (Same).
15

16 34. Finally, two days prior to the filing of this petition, on September 5,
17 2025, the BIA issued a published decision in *Matter of Jonathan Javier YAJURE*
18 *HURTADO, Respondent*, 29 I&N Dec. 216 (BIA 2025), doubling down on its prior
19 unpublished decisions finding that all persons who entered without inspection (all
20 those who are present without having been admitted), are subject to mandatory
21 detention under INA 235(b)(2), specifically holding, “Based on the plain language of
22 section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. §
23
24

1 *1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or*
2 *to grant bond to aliens who are present in the United States without admission.”*

3 35. DHS’s and EOIR’s interpretation defy the INA. As the *Rodriguez Vazquez*
4 court explained, the plain text of the statutory provisions demonstrates that §
5 1226(a), not § 1225(b), applies to people like Petitioners. Section 1226(a) applies
6 by default to all persons “pending a decision on whether the [noncitizen] is to be
7 removed from the United States.” *Rodriguez Vazquez*, 2025 WL 1193850 at *12. See
8 also *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif July 28, 2025)
9 Order Granting Temporary Restraining Order, Dkt. 14 at 9 (“[T]he Court finds that
10 the potential for Petitioners’ continued detention without an initial bond hearing
11 would cause immediate and irreparable injury, as this violates statutory rights
12 afforded under § 1226(a).”); *Ceja Gonzalez*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal.
13 August 13, 2025), Order Granting Ex Parte Application for TRO and OSC, Dkt. 12 at 7
14 (§ 1226 applies to aliens present in the United States.)

15
16 36. Other portions of the text of § 1226 also explicitly apply to people
17 charged as being inadmissible, including those who entered without inspection. See
18 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to inadmissible individuals
19 makes clear that, by default, inadmissible individuals not subject to subparagraph
20 (E)(ii) are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez*
21 court explained, “[w]hen Congress creates “specific exceptions” to a statute’s
22 applicability, it “proves” that absent those exceptions, the statute generally applies.
23
24

1 *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic*
2 *Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

3 37. Section 1226 therefore leaves no doubt that it applies to noncitizens
4 who are present without admission and who face charges in removal proceedings of
5 being inadmissible to the United States.

6 38. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or
7 who recently entered the United States and are encountered at or near the border.
8 The statute's entire framework is premised on inspections at the border of people
9 who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed,
10 the Supreme Court has explained that this mandatory detention scheme applies "at
11 the Nation's borders and ports of entry, where the Government must determine
12 whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v.*
13 *Rodriguez*, 583 U.S. 281, 287 (2018).

14 39. Accordingly, the mandatory detention provision of § 1225(b)(2) does
15 not apply to people like Petitioner who have already entered and were residing in
16 the United States at the time they were apprehended.

19 **FACTS**

20 40. Petitioner EDUARDO GARCIA SILVA resides in San Diego, California. He
21 has no criminal record and no previous contact with immigration authorities.
22 Petitioner is a 31-year-old native and citizen of Mexico who was brought to the
23 United States when he was a 7-year-old child. Petitioner arrived in the United States
24

1 on September 17, 1999. Petitioner, along with his two siblings last entered the
2 United States by riding in the back seat of a vehicle from Sonora, Mexico, driven by a
3 U.S. citizen (with his spouse in the front passenger seat), who presented at the port
4 of entry, presented some documents, and they were then waived through.
5

6 41. Petitioner and his family members fled Mexico after Petitioner's father
7 was killed in that country. Petitioner has never departed the United States after his
8 aforementioned initial arrival and he has not been part of any previous immigration
9 proceedings. Petitioner, who has a high school GED diploma, has previously
10 attempted to apply for DACA, but due to intervening court orders prohibiting DHS
11 from accepting new applications, he was prevented from doing so.
12

13 42. Petitioner was arrested and placed in removal proceedings on or about
14 June 11, 2025, after being pulled over by DHS agents when he was driving on the
15 freeway. This was Peittioner's first ever arrest by any law enforcement agency as he
16 has no criminal record.
17

18 43. On July 18, 2025, after considering all the information, evidence, and
19 arguments presented by the parties, the Immigration Judge Court found that the
20 respondent demonstrated that he neither poses a danger to the community nor such
21 a significant flight risk that he could not be released after payment of a bond and with
22 the imposition of other mitigating conditions. Accordingly, the Court granted the
23 respondent's request for a change in his custody status, allowing his release upon
24

1 payment of a \$2,000 bond. The IJ accepted jurisdiction and granted bond over DHS'
2 objection. The IJ rejected DHS' legal analysis as set forth in the new DHS policy.
3 Indeed, the DHS policy states it was issued "in coordination with the Department of
4 Justice (DOJ)." IJs function within EOIR which is a component of the Department of
5 Justice. DHS reserved appeal and filed Form EOIR-43, Notice of Service of Intent to
6 Appeal Custody Redetermination. This notice not only appeals any IJ decision
7 granting bond but also triggers an automatic stay of the bond decision during the
8 appeal, resulting in the continued unlawful detention of Petitioner to date. *See* §
9 1003.19(i)(2). The "auto-stay" provision of 8 C.F.R. § 1003.19(i)(2) prevents
10 noncitizens from posting bond and being released even though the IJ has rejected
11 DHS' unlawful reinterpretation of § 1225(b)(2) and has granted bond. DHS
12 subsequently filed an appeal with the Board of Immigration Appeals (BIA), which is
13 presently pending adjudication.

14
15
16 44. Any appeal to the BIA by the Petitioner is futile. ICE's new policy was
17 issued "in coordination with DOJ," which oversees the immigration courts. Further,
18 as noted, the most recent published BIA decision on this issue held that persons like
19 Petitioner are subject to mandatory detention as applicants for admission. In the
20 *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants,
21 DOJ has affirmed its position that individuals like Petitioners are applicants for
22 admission and subject to detention under § 1225(b)(2)(A). *See* Mot. to Dismiss,
23
24

1 *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025),
2 Dkt. 49 at 27–31. DOJ has taken the same position in the *Maldonado Bautista*
3 litigation, see Opp. to Ex Parte TRO Application, *Maldonado Bautista*, No. 5:25-cv-
4 01873-SSS-BFM, (C.D. Cal. July 24, 2025), Dkt. 8, and in the *Ceja Gonzalez* litigation.
5 See Opp. to Ex Parte TRO Application and OSC, *Ceja Gonzalez*, No. 5:25-cv-02054-
6 ODW-BFM (C.D. Cal. August 8, 2025), Dkt. 7 at 17-21.

8 FIRST CLAIM FOR RELIEF

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

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

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

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

SECOND CLAIM FOR RELIEF

Petitioners' Detention Violates the Administrative Procedure Act,

5 U.S.C. § 706(2)

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

49. 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).

50. 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.

51. 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).

THIRD CLAIM FOR RELIEF

Petitioners' Detention Violates Their Fifth Amendment Right to Due Process

1 52. Petitioner incorporates by reference the allegations of fact set forth in the
2 preceding paragraphs.

3
4 53. The Government may not deprive a person of life, liberty, or property
5 without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—
6 from government custody, detention, or other forms of physical restraint—lies at the
7 heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690
8 (2001).

9
10 54. Petitioners have a fundamental interest in liberty and being free from
11 official restraint.

12 55. The Respondents' detention of Petitioner without providing Petitioner a
13 bond redetermination hearing to determine whether he is a flight risk or a danger to
14 others violates their right to Due Process.

15
16 **PRAYER FOR RELIEF**

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

19 a. Issue a Writ of Habeas Corpus requiring Respondents to release
20 Petitioner or provide Petitioner as an IJ has already held a bond hearing pursuant to
21 8
22 U.S.C. § 1226(a) and granted Petitioner bond;

23
24 b. Award Petitioners' 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 just and proper.

Dated: September 7, 2025

Respectfully submitted,

By: /s/ Bashir Ghazialam
Bashir Ghazialam

Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this September 7, 2025, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner