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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA

9 QUIRINO GUERRERO LEPE,

10 Petitioner,

11 v.

12 TONYA ANDREWS, in official capacity,  
Facility Administrator of Golden State Annex;  
13 ORESTES CRUZ, in official capacity, Field  
Office Director of ICE's San Francisco Field  
14 Office; TODD M. LYONS, in official capacity,  
Acting Director of ICE, KRISTI NOEM, in  
15 official capacity, Secretary of the U.S.  
Department of Homeland Security; PAM  
16 BONDI, in official capacity, Attorney General  
of the United States,

17 Respondents.  
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Case No.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

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4 **INTRODUCTION**

5 1. Petitioner Quirino Guerrero Lepe is in the physical custody of Respondents at the  
6 Golden State Annex immigration detention facility. He is unlawfully detained because the  
7 Department of Homeland Security (DHS) and the Executive Office of Immigration Review  
8 (EOIR) have illegally concluded that he is subject to mandatory detention under 8 U.S.C. §  
9 1225(b).

10 2. For the last 32 years, Petitioner has resided continuously in California, the state  
11 where he met and married his wife, served as a “father figure” to half a dozen U.S. citizen nieces  
12 and nephews, became “Employee of the Year” at his painting company, and nearly died from a  
13 stroke. In immigration detention since July 1, separated from his medical team and denied access  
14 to his prescribed medication, Petitioner has experienced numbness all along the right side of his  
15 body as well as pain that he describes as frequently “intolerable.”

16 3. Petitioner is detained and his medical condition worsening despite the fact that he  
17 has never been convicted of, charged with, or otherwise accused of a crime.

18 4. On the morning of July 1, 2025, Petitioner took his small dog, Tadeo, out for a  
19 walk near his home in Contra Costa County, California. Out of nowhere, eight federal agents  
20 from ICE, the FBI, CBP, and HSI surrounded him. Without reasonable suspicion that Petitioner  
21 had committed an immigration or criminal violation, these agents seized him and interrogated  
22 him. Several agents then went to his home and demanded that his niece retrieve his identification  
23 card from his room, all while concealing the fact that they worked for ICE.

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1           5.       As it turns out, the only reason the agents apprehended Petitioner in the first place  
2 is that they were looking to arrest his brother-in-law, Facundo, a convicted felon who is  
3 homeless and does not live with Petitioner. Petitioner and his brother-in-law do not resemble  
4 each other and the agents' interest in the brother-in-law does not appear to have been significant.  
5 In the months since this illegal arrest, the agents have never come back to look for the brother-in-  
6 law.

7           6.       Petitioner is accused of a single ground of inadmissibility under the immigration  
8 laws: having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i). DHS  
9 denied release from immigration custody, consistent with a new DHS policy issued on July 8,  
10 2025, instructing all ICE employees to treat anyone alleged to be inadmissible under 8 U.S.C. §  
11 1182(a)(6)(A)(i) as an "applicant for admission" subject to mandatory detention under 8 U.S.C. §  
12 1225(b)(2)(A). The announcement of the new DHS policy conceded that it was created "in  
13 coordination with the Department of Justice (DOJ)." This incorrect and indefensible  
14 interpretation of the Immigration and Nationality Act ("INA") was endorsed by the Board of  
15 Immigration Appeals in its recent decision, issued September 5, 2025, *Matter Yajure Hurtado*, 29  
16 I&N Dec. 216, 220 (BIA 2025).

17           7.       Petitioner sought a bond redetermination hearing before an immigration judge.  
18 But on August 27, 2025, Immigration Judge Katie G. Mullins denied bond, adopting the DHS  
19 argument about ineligibility under Section 1225(b)(2)(A). The judge did not ask any questions  
20 about Petitioner's argument for bond eligibility, nor did she provide an explanation at the hearing  
21 for her ruling. In a written order, issued later that day, the judge checked a box entitled, "Denied,  
22 because," and wrote a single sentence: "Respondent has not met his burden to show that the  
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1 Court has jurisdiction over his request for custody redetermination, and the Court denies the  
2 bond request on jurisdictional grounds.”

3 8. The immigration judge reached the conclusion that Petitioner was subject to  
4 mandatory detention under 8 U.S.C. § 1225(b)(2)(A), notwithstanding Petitioner’s decades of  
5 continuous residence in California, notwithstanding the statutory arguments raised by  
6 Petitioner’s counsel in the hearing and in a motion, entitled “Motion to Find Respondent  
7 Detained Under INA § 236(a),” and notwithstanding the fact that, until the policy change in July  
8 2025, people similarly situated to Petitioner were always treated as bond-eligible under 8 U.S.C.  
9 § 1226(a)—unless their criminal histories made them ineligible for bond under 8 U.S.C. §  
10 1226(c).

11 9. Petitioner’s detention on the bases of 8 U.S.C. § 1225(b)(2)(A) violates the plain  
12 language of the Immigration and Nationality Act and flatly contradicts half a dozen basic  
13 precepts of statutory construction and legal analysis.

14 10. A correct reading of the INA would conclude that Section 1225(b)(2)(A) applies  
15 to recent arrivals who are apprehended near the border. It does not apply to individuals, like  
16 Petitioner, who are accused of entering the country decades ago and are arrested hundreds of  
17 miles north of the border.

18 11. The correct reading of the statute can be discerned from text, case law, decades of  
19 agency practice and, frankly, common sense. Petitioner should not be deemed detained under  
20 Section 1225(b)(2); rather, he should be deemed detained under Section 1226(a) and, thus,  
21 eligible for bond. Respondents’ interpretation to the contrary is a dangerous transgression of the  
22 INA, the Administrative Procedure Act, and due process.

1 12. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released  
2 unless Respondents provide a bond hearing under Section 1226(a) within seven days.

### 3 **JURISDICTION**

4 13. Petitioner is in the physical custody of Respondents. He is detained at the Golden  
5 State Annex in McFarland, California, which lies in the Eastern District of California.

6 14. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. §  
7 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the  
8 Suspension Clause).

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

### 11 **VENUE**

12 16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-  
13 500 (1973), venue lies in the United States District Court for the Eastern District of California,  
14 the judicial district in which Petitioner currently is detained. He is detained in McFarland,  
15 California, which is in Kern County.

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

### 20 **REQUIREMENTS OF 28 U.S.C. § 2243**

21 18. The Court must grant the petition for writ of habeas corpus or order Respondents  
22 to show cause forthwith, unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an  
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1 order to show cause is issued, the Respondents must file a return “within three days unless for  
2 good cause additional time, not exceeding twenty days, is allowed.” *Id.*

3 19. Habeas corpus is “perhaps the most important writ known to the constitutional  
4 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or  
5 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the  
6 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and  
7 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208  
8 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

9 **PARTIES**

10 20. Petitioner Quirino Guerrero Lepe, alleged by DHS to be a citizen of Mexico, has  
11 continuously resided in California for 32 years. Since July 1, 2025, he has been in immigration  
12 detention. After arresting Petitioner in San Pablo, California—a city in Contra Costa County—  
13 ICE did not set bond for Petitioner. On August 18, Petitioner requested review of his custody by  
14 an Immigration Judge. On August 27, 2025, Petitioner was denied bond by the Hon. Katie G.  
15 Mullins, an immigration judge sitting in the Adelanto Immigration Court. The judge denied bond  
16 because she deemed Petitioner to be an “applicant for admission,” as defined by 8 U.S.C. §  
17 1225(a)(1), and determined that a person who is an applicant for admission is subject to  
18 mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

19 21. Respondent Orestes Cruz is the Director of the San Francisco Field Office of  
20 ICE’s Enforcement and Removal Operations division. As such, Mr. Cruz is Petitioner’s  
21 immediate custodian and is responsible for Petitioner’s detention and removal. He is named in  
22 his official capacity.

23 22. Respondent Kristi Noem is the Secretary of the Department of Homeland  
24 Security. She is responsible for the implementation and enforcement of the Immigration and

1 Nationality Act, and oversees ICE, which is responsible for Petitioner’s detention. Ms. Noem has  
2 ultimate custodial authority over Petitioner and is sued in her official capacity.

3 23. Respondent Department of Homeland Security (DHS) is the federal agency  
4 responsible for implementing and enforcing the INA, including the detention and removal of  
5 noncitizens.

6 24. Respondent Pamela Bondi is the Attorney General of the United States. She is  
7 responsible for the Department of Justice, of which the Executive Office for Immigration Review  
8 and the immigration court system it operates is a component agency. She is sued in her official  
9 capacity.

10 25. Respondent Executive Office for Immigration Review (EOIR) is the federal  
11 agency responsible for implementing and enforcing the INA in removal proceedings, including  
12 for custody redeterminations in bond hearings.

13 26. Respondent Tonya Andrews is employed by The Geo Group as Warden of the  
14 Golden State Annex, where Petitioner is detained. She has immediate physical custody of  
15 Petitioner. She is sued in her official capacity.

16 **LEGAL FRAMEWORK**

17 27. The Immigration and Nationality Act (“INA”) prescribes three basic forms of  
18 detention for the vast majority of noncitizens in removal proceedings.

19 28. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal  
20 proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals detained under  
21 Section 1226(a) are generally entitled to a bond hearing at the outset of their detention. *See* 8  
22 C.F.R. §§ 1003.19(a), 1236.1(d). However, noncitizens who have been arrested, charged with, or  
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1 convicted of certain crimes are subject to mandatory detention under Section 1226(c). *See* 8  
2 U.S.C. § 1226(c).

3 29. Second, the INA provides for mandatory detention of two groups of noncitizens:  
4 The first group consists of those who are subject to expedited removal for being apprehended  
5 upon arrival near the border or for being unable to show that they have been physically present in  
6 the United States for more than two years until a determination has been made as to whether they  
7 have a credible fear of persecution. 8 U.S.C. § 1225(b)(1). The second group subject to  
8 mandatory detention consists of anyone alleged to be an “applicant for admission” who is  
9 “seeking admission” and whom an “examining immigration officer determines . . . is not clearly  
10 and beyond a doubt entitled to be admitted.” *See* 8 U.S.C. § 1225(b)(2)(A).

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

13 31. Petitioner’s case concerns the detention provisions describes in Section 1226(a)  
14 and Section 1225(b)(2).

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

20 33. Following the enactment of the IIRIRA, EOIR drafted regulations explaining that,  
21 in general, people who entered the country without inspection were considered detained under  
22 Section 1226(a), not under Section 1225. *See* *Inspection and Expedited Removal of Aliens*;

1 Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62  
2 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

3 34. In the decades that followed the creation of this statutory and regulatory language,  
4 people who entered without inspection were placed in standard removal proceedings and  
5 received bond hearings, unless their criminal histories triggered the requirements for mandatory  
6 detention outlined in 8 U.S.C. § 1226(c) (concerning mandatory detention of “criminal aliens”).  
7 *See also* 8 C.F.R. 236.1(c)(8) (describing criteria for release). That practice was consistent with  
8 many decades of prior practice, in which noncitizens who were not deemed “arriving” were  
9 entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8 U.S.C. §  
10 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)  
11 simply “restates” the detention authority previously found at § 1252(a)).

12 35. On July 8, 2025, ICE, announced a new policy “in coordination with” DOJ. This  
13 new policy rejected the well-established understanding of the statutory framework and reversed  
14 decades of practice.

15 36. The new policy, entitled “Interim Guidance Regarding Detention Authority for  
16 Applicants for Admission,”<sup>1</sup> asserts that all persons who entered the United States without  
17 inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225(a)(1), and  
18 therefore subject to mandatory detention provision under Section 1225(b)(2)(A). The policy  
19 applies regardless of when or where a person was apprehended, and it affects those who have  
20 resided in the United States for months, years, and even decades.

21 37. On September 5, 2025, more than a week after Petitioner’s August 27 appearance  
22 in immigration court, the Board of Immigration Appeals (BIA) issued an opinion adopting this

23 \_\_\_\_\_  
24 <sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applicants-for-admission>.

1 interpretation of the detention statutes. *Matter Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA  
2 2025). This BIA decision holds that “aliens who are present in the United States without  
3 admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8  
4 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Id.*

5 38. ICE, certain immigration courts and, now, the Board of Immigration Appeals,  
6 have adopted this position even though federal courts have rejected this very argument. Even  
7 before the announcement of this new DHS policy, in the immigration court in Tacoma,  
8 Washington, immigration judges stopped providing bond hearings for persons who entered the  
9 United States without inspection and who have since resided here. The U.S. District Court in the  
10 Western District of Washington found that such a reading of the INA is likely unlawful and that  
11 Section 1226(a), not Section 1225(b), applies to noncitizens who are neither apprehended upon  
12 arrival to the United States nor within the first two years of presence. *Rodriguez v. Bostock*, 779  
13 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025).

14 39. In the Central District of California, detainees sought a nationwide class action  
15 challenging this policy. See *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM,  
16 Class Action Compl. & Am. Pet. for Habeas Corpus, Dkt. 15 (C.D. Cal. July 28, 2025). The  
17 district court granted a temporary restraining order for the named class members. *Maldonado*  
18 *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, Order Granting Pet’rs’ Ex Parte Appl. for  
19 TRO & Order to Show Cause, Dkt. 5 (C.D. Cal. July 28, 2025). The court scheduled for October  
20 17 a hearing on class certification and on a motion for summary judgment.

21 40. After exhaustive research on this question, Petitioner’s counsel was unable to find  
22 any federal court to have considered and accepted this DHS-DOJ interpretation. By contrast,  
23 every federal court to have considered the question has rejected the DHS-DOJ interpretation of  
24

1 the statutes. *See Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (granting  
2 habeas relief); *Lopez-Campos v. Raycraft*, --- F. Supp. 3d ----, 2025 WL 2496379 (E.D. Mich.  
3 Aug. 29, 2025) (granting habeas relief); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D.  
4 La. Aug. 27, 2025) (granting preliminary relief); *Benitez v. Noem*, No. 5:25-cv-02190, Doc. 11  
5 (C.D. Cal. Aug. 26, 2025) (granting preliminary relief); *Leal-Hernandez v. Noem*, No. 1:25-cv-  
6 02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (granting habeas relief); *Romero v.*  
7 *Hyde*, --- F. Supp. 3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (granting habeas relief);  
8 *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15,  
9 2025) (granting habeas relief); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411  
10 (D. Minn. Aug. 15, 2025) (granting habeas relief); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK,  
11 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (granting habeas relief); *Rocha Rosado v.*  
12 *Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (report and  
13 recommendation to grant habeas relief), adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025)  
14 (granting habeas relief); *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803  
15 (S.D.N.Y. Aug. 8, 2025) (granting individual habeas relief); *Maldonado Bautista v. Santacruz*,  
16 No. 5:25-cv-01874-SSS-BFM, \*13 (C.D. Cal. July 28, 2025) (granting preliminary relief); *Diaz*  
17 *Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238, at \*9 (D.  
18 Mass. July 24, 2025) (denying reconsideration of individual habeas relief); *Romero v. Hyde*, ---  
19 F. Supp. 3d ----, 2025 WL 2403827 (D. Mass. July 19, 2025) (granting habeas relief); *Gomes v.*  
20 *Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025) (granting  
21 individual habeas relief).

22 41. The joint DHS-DOJ interpretation of Section 1225(b)(2) defies the INA's text, the  
23 INA's logic, and the well-established case law and practice interpreting this provision. Indeed,  
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1 there are five separate grounds on which the DHS-DOJ interpretation of this law fails basic  
2 methods of statutory construction.

3 42. First, the DHS-DOJ reading of the statute is wrong because it is incompatible with  
4 the title of Section 1225, “Inspection by Immigration Officers; *Expedited Removal of*  
5 *Inadmissible Arriving Aliens; Referral for Hearing.*” 8 U.S.C. § 1225 (emphasis added). As the  
6 Supreme Court has explained, “the title of a statute and the heading of a section are tools  
7 available for the resolution of a doubt” about the meaning of a statute. *Almendarez-Torres v.*  
8 *United States*, 523 U.S. 224, 234 (1998). Section 1225’s title refers to “arriving” noncitizens who  
9 are put in “expedited removal proceedings.” *Id.* These are the people to whom Section  
10 1225(a)(1)’s definition of “applicant for admission” and Section 1225(b)(2)(A)’s mandatory  
11 detention provisions apply. The government gravely errs by applying the definition of “applicant  
12 for admission” to people who are not “arriving” and not in “expedited removal proceedings.” In  
13 this case, Petitioner was not “arriving” or “seeking admission” when he was detained 500 miles  
14 north of the border, decades after he allegedly crossed it. Nor was he put in expedited removal  
15 proceedings. Section 1225(b)(2)(A) cannot apply to him.

16 43. Second, and relatedly, the DHS-DOJ reading violates the INA because it ignores  
17 the subject-matter of Section 1225. Section 1225 describes the procedures for the inspection and  
18 expedited removal of people detained at the border who are “seeking admission” to the United  
19 States. 8 U.S.C. § 1225(b)(2)(A). The Supreme Court itself noted that the mandatory detention  
20 scheme in Section 1225(b)(2)(A) applies “at the Nation’s borders and ports of entry, where the  
21 Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.”  
22 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Throughout, Section 1225’s text makes clear  
23 that it concerns apprehensions and “expedited” procedures carried out at the border—not actions  
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1 taken far from the border, as in Petitioner’s case. That the DHS-DOJ reading of the statute  
2 ignores this context is a sure sign that it is wrong. “It is a fundamental canon of statutory  
3 construction,” the Supreme Court explained, “that the words of a statute must be read in their  
4 context and with a view to their place in the overall statutory scheme.” *Davis v. Michigan Dep’t*  
5 *of Treasury*, 489 U.S. 803, 809 (1989). The context of Section 1225 demonstrates that  
6 subsections 1225(a)(1) and 1225(b)(2)(A) apply to those apprehended at or near the border upon  
7 arrival or shortly thereafter. They do not apply to those who are arrested in the interior of the  
8 United States months or years or decades later. Quite simply, the DHS-DOJ reading of the  
9 statute is an act of cherry-picking a definitional phrase from one context and applying it to  
10 another context where it does not belong.

11 44. Third, the DHS-DOJ reading of Section 1225(b)(2)(A) is wrong because it  
12 requires courts to ignore numerous words in the text of that very subsection. As Justice Antonin  
13 Scalia and his co-author, Bryan A. Garner, explain: “If possible, every word and every provision  
14 is to be given effect.” SCALIA AND GARNER, *READING LAW: THE INTERPRETATION OF LEGAL*  
15 *TEXTS* AT 174 (2012). A good interpretation of a statute will not result in “extra” words. Yet that  
16 is exactly what occurs if one tries to apply Section 1225(b)(2)(A) to Petitioner’s case. Here is the  
17 full text of Section 1225(b)(2)(A), the mandatory-detention provision:

18 [I]n the case of an alien who is an applicant for admission, if the [1] *examining*  
19 *immigration officer* determines that an alien [2] *seeking* admission is [3] *not*  
20 *clearly and beyond a doubt entitled to be admitted*, the alien shall be detained for  
21 a proceeding under section 240.

22 8 U.S.C. § 1225(b)(2)(A) (emphasis and bracketed numbers added). Petitioner was never seen by  
23 an “examining immigration officer.” There was never a “determin[ation] that . . .” he was “not  
24 clearly and beyond a doubt entitled to be admitted.” Nor was Petitioner “seeking” anything at the  
time of his apprehension, other than to take his dog for a walk. The reason the DHS-DOJ

1 application of the statute has all of these “extra” words is that the statute applies only to those  
2 who are “arriving” at the border and are candidates for “expedited removal.” In *that* context,  
3 those “extra” words make sense, as there will be an “examining immigration officer” and there  
4 will be a determination of potential eligibility for immigration relief. These procedures are  
5 uniquely tethered to the border and they are described in exquisite detail in the subsections of  
6 Section 1225. But Section 1225’s procedures have no purchase in the entirely different context  
7 of someone, in Petitioner’s position, who is detained far from the border and decades after he has  
8 allegedly entered. Only by ignoring all of these “extra” words can DHS-DOJ claim to make its  
9 reading of the statute fit Petitioner. That is another strong indication that their reading is wrong.

10 45. Fourth, the DHS-DOJ reading of Section 1225(b)(2)(A) violates the INA because  
11 it renders a neighboring subsection superfluous. In Section 1226(c), the INA describes people  
12 who would otherwise be eligible for bond under Section 1226(a), but are rendered ineligible for  
13 bond because of their criminal histories. *See* 8 U.S.C. § 1226(c). Of particular interest,  
14 subsections 1226(c)(1)(E)(i)-(ii) address people who are alleged to be inadmissible under 8 §  
15 U.S.C. 1182(a)(6)(A) as aliens present without inspection. According to these subsections, such  
16 people are ineligible for bond *only* if they are also “charged with, . . . arrested for, . . . convicted  
17 of . . .” certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E)(i)-(ii). In short, Section 1226(c) requires  
18 mandatory detention for people who have entered without inspection *and* have criminal histories.  
19 But if the DHS-DOJ reading were correct, then all people who entered without inspection would  
20 be mandatorily detained, regardless of whether they had criminal histories or not. Subsections  
21 1226(c)(1)(E)(i) and (ii) would be superfluous, if the DHS-DOJ position were correct, because  
22 Section 1225(b)(2)(A) would govern all cases where someone was alleged to have entered  
23 without inspection. But we know that cannot be right, as these subsections of 1226(c)(1) were  
24

1 the most recent subsections added by Congress to the INA just this year in the Laken Riley Act,  
2 Pub. L. No. 119-1, 139 Stat. \_\_\_ (2025) (adding (E)(i) and (E)(ii) to Section 1226(c)(1)).  
3 Congress would not have added the subsections only to see these additions rendered completely  
4 superfluous. That is another sign that the government’s reading of Section 1225(b)(2)(A) is  
5 wrong.<sup>2</sup>

6 46. Fifth, the DHS-DOJ reading violates the INA because it ignores the textual  
7 references to “warrant” in Section 1226(a). After Petitioner was detained and brought back to the  
8 ICE offices, a warrant was issued for his immigration arrest. The warrant, Form I-200, is dated  
9 July 1, 2025, and is signed by “Benito Sandoval – SDDO.” It is clearly labeled: “Warrant for  
10 Arrest of Alien.” Its heading specifically identifies “Section[] 236 of the Immigration and  
11 Nationality Act.” The text of the INA makes clear that a person arrested by warrant is detained  
12 under 1226(a), not 1225(b)(2)(A). For example, the opening sentence of 1226(a) states: “Arrest,  
13 detention, and release.—On a *warrant* issued by the Attorney General, an alien may be arrested  
14 and detained pending a decision on whether the alien is to be removed from the United States.” 8  
15 U.S.C. § 1226(a) (emphasis). By contrast, the word “warrant” does not appear anywhere in  
16 Section 1225. This is a sure sign that Congress intended those arrested by warrant to be  
17 evaluated under Section 1226(a) and, thus, eligible for bond. Likewise, the Supreme Court noted  
18 that Section 1226(a)—INA 236(a)—“ authorizes detention only ‘[o]n a warrant issued’ by the  
19 Attorney General leading to the alien’s arrest.” *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018).  
20 Other federal courts to consider this issue have agreed that an immigration arrest by warrant  
21 subjects a person to detention under 1226(a), thus making them bond eligible. *See, e.g., Lopez*

22 \_\_\_\_\_  
23 <sup>2</sup> As the Supreme Court has explained, “It is our duty to give effect, if possible, to every clause and word of a  
24 statute.” *Duncan v. Walker*, 533 U.S. 167, 174 (2001); *see Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1259 (W.D.  
Wash. 2025); *see also* SCALIA AND GARNER, *READING LAW*, AT 174 (“If possible, every word and every provision is  
to be given effect. . . . None should needlessly be given an interpretation that cause it to . . . have no consequence.”).

1 *Benitez v. Francis*, 2025 WL 2371588, at \*4 (S.D.N.Y. Aug. 13, 2025) (pointing to warrant of  
2 arrest for noncitizen as evidence that “unequivocally establish[es]” he is “detained pursuant  
3 to . . . § 1226(a) [236(a)]”).<sup>3</sup> But the DHS-DOJ reading of the statute ignores the warrant  
4 altogether, choosing to apply Section 1225(b)(2)(A) even though Section 1225 never mentions  
5 arrests by warrant and, frankly, contemplates only border arrests, where no warrant would be  
6 required. This is another indication that the government badly misreads Sections 1225 and 1226.

7 47. Sixth, the DHS-DOJ application of Section 1225(b)(2)(A) violates the INA  
8 because it deems Petitioner an “applicant for admission” without providing any evidence that he  
9 fits this definition. According to DHS, Petitioner is an applicant for admission because he is  
10 “[a]n alien present in the United States who has not been admitted.” 8 U.S.C. § 1225(a). But the  
11 record of the bond proceedings does not contain any evidence that Petitioner is “an alien,” much  
12 less that he “has not been admitted.” As a fundamental point of due process, the government  
13 must present some evidence that Petitioner is an “alien” before it can deem him subject to  
14 mandatory detention or to the INA at all. The only evidence DHS submitted of Petitioner’s  
15 alienage or his manner of entry into the country was Form I-213, titled “Record of  
16 Deportable/Inadmissible Alien (I-213).” However, Petitioner objected to the inclusion of this  
17 document in the bond record because it was obtained as the result of several Fourth Amendment  
18 violations *and* because it was, on its face, “unreliable.” The immigration judge ruled that this  
19 document could *not* be admitted into evidence. With this I-213 excluded from evidence, there  
20 was no evidence in the record that Petitioner was an “alien” or a person who entered without  
21 inspection. (None of Petitioner’s evidence suggests that he is an alien or entered without  
22

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23 <sup>3</sup> See *id.* (stating that facts of the case “can support only one conclusion—that [the noncitizen] was not mandatorily  
24 detained as a noncitizen ‘seeking admission’ under § 1225(b) [235(b)], but rather . . . under §1226(a) [236(a)]”)  
(bracketed INA sections added).

1 inspection.) In this absence of evidence, it is all the more inappropriate to subject Petitioner to  
2 1225(b)(2)(A)'s mandatory detention provision. The government must, at the very least, produce  
3 *some* evidence before it can deem a person to be an "applicant for admission."

4 48. For the six distinct reasons outlined above, the mandatory detention provision of  
5 Section 1225(b)(2)(A) does not apply to people like Petitioner.

### 6 **FACTS**

7 49. Petitioner has lived continuously in California for more than three decades.

8 50. On July 1, Petitioner was walking his dog, Tadeo, roughly 200 yards from his  
9 house. Without reasonable suspicion, eight federal agents surrounded him, seized him,  
10 interrogated him, and then obtained his identification from his home by compelling his niece to  
11 retrieve the identification from his room.

12 51. The agents who illegally arrested Petitioner claimed to be searching for  
13 Petitioner's brother-in-law, a convicted felon who is homeless and does not live with Petitioner.  
14 Instead of arresting his brother-in-law, the agents took Petitioner into custody. In the two months  
15 since the arrest, the agents have not returned to look for the brother-in-law.

16 52. At the time of his immigration arrest, Petitioner was living in San Pablo, a small  
17 city in Contra Costa County, in the same house where he has lived for decades.

18 53. Petitioner is now detained at the Golden State Annex facility.

19 54. DHS placed Petitioner in removal proceedings before the Adelanto Immigration  
20 Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with being inadmissible under 8  
21 U.S.C. § 1182(a)(6)(A)(i), accusing him of entering the United States without inspection.

22 55. Following Petitioner's arrest and transfer to Golden State Annex, ICE issued a  
23 custody determination to continue Petitioner's detention without an opportunity to post bond or  
24

1 be released on other conditions. On August 18, through counsel, Petitioner moved for a bond  
2 redetermination hearing where an immigration judge could consider his suitability for bond.

3 56. Petitioner is not a danger to the community or national security. He has never  
4 been arrested for, charged with, or otherwise accused of a crime.

5 57. Petitioner is not a flight risk. He and his wife have been together for 25 years,  
6 lived at this San Pablo address for more than 20 years, and been legally married since 2012.  
7 Petitioner is deeply connected to his family in the Bay Area. Although he and his wife were  
8 unable to conceive children of their own, Petitioner has been a “father figure” to half a dozen  
9 U.S. citizen nieces and nephews who live in Northern California. Their letters of support were  
10 included in his bond motion—letters that praised Petitioner as a kind and caring presence, a man  
11 who would drop anything to help his family, and a role model for his ability to find the good in  
12 life, even while recovering from his own personal tragedy: a nearly-fatal stroke in 2022.

13 58. Petitioner’s connections to the community make it even clearer that he is not a  
14 flight risk. Letters of support attached to his bond motion show that he is a valued colleague. He  
15 earned the “Employee of the Year” award at the painting company where he has worked for ten  
16 years and was placed in charge of quality assurance and safety on his work crew. Petitioner is  
17 also a dependable friend who paints neighbors’ houses in his spare time, cleans up community  
18 parks, and offers mentorship to younger co-workers.

19 59. Further eliminating any concerns about flight risk, Petitioner is connected to  
20 Contra Costa County by his significant medical needs. In August 2022, Petitioner nearly died  
21 from a stroke. He spent two months in the hospital and then began on a long road to recovery. He  
22 had to re-learn how to walk, talk, and bathe again. In his bond proceedings, Petitioner’s doctors  
23 submitted a letter of support detailing his medical problems—including the fact that the source of  
24

1 his stroke has yet to be identified. The doctors noted that Petitioner is a dependable patient who  
2 comes to all his appointments.

3 60. On August 27, 2025, the Hon. Judge Katie G. Mullins, sitting in the Adelanto  
4 Immigration Court, held a hearing and denied bond on eligibility grounds. The judge issued a  
5 decision that the court lacked jurisdiction to conduct a bond redetermination hearing because  
6 Petitioner was an applicant for admission under Section 1225(b)(2)(A).

7 61. Petitioner's doctors were named on the Witness List for the bond hearing and  
8 were present in court to testify, but the immigration judge refused to allow their testimony—  
9 despite repeated requests from counsel to allow them to testify. Among the points they would  
10 have stated was their view that Petitioner needs to be released so that he can follow up on his  
11 referrals to oncology and hematology—referrals that would help them identify the source of his  
12 first stroke and prevent further, more catastrophic health events.

13 62. The doctors also would have testified to the treatment of the numbness on the  
14 right side of Petitioner's body, which he has been experiencing since he was detained. His  
15 doctors prescribed Gabapentin to treat this pain and numbness, but he has not been provided  
16 access to this medication in immigration detention. Instead, the jail medical staff prescribed  
17 Cymbalta, a different drug. Petitioner's doctors would have shared their concerns about possible  
18 side effects of that drug, including bleeding.

19 63. As a result of the immigration judge's decision, Petitioner remains in detention.  
20 Without relief from this court, he faces the prospect of months, or even years, in immigration  
21 custody, separated from his wife, his close family, his community, and his medical providers.

22 64. Any appeal to the BIA is futile. DHS's new policy was issued "in coordination  
23 with DOJ," which oversees the immigration courts. Further, on September 5, the BIA issued a  
24

1 published decision adopting this interpretation of the detention statutes. *Matter Yajure Hurtado*,  
2 29 I&N Dec. 216, 220 (BIA 2025). That decision holds that “aliens who are present in the United  
3 States without admission are applicants for admission as defined under section 235(b)(2)(A) of  
4 the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal  
5 proceedings.” *Id.* Further, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney  
6 General are defendants, DOJ has affirmed its position that individuals like Petitioner are  
7 applicants for admission and subject to detention under Section 1225(b)(2)(A). *See* Mot. to  
8 Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025),  
9 Dkt. 49 at 27–31.

## 10 CLAIMS FOR RELIEF

### 11 COUNT I: VIOLATIONS OF THE INA

12 65. Petitioner incorporates by reference the factual allegations and legal arguments set  
13 forth in the preceding paragraphs.

14 66. For the reasons described above, the mandatory detention provision of 8 U.S.C. §  
15 1225(b)(2) cannot not apply to all noncitizens in the United States who are subject to the  
16 specified grounds of inadmissibility, entry without inspection. As relevant here, this mandatory  
17 detention statute cannot be read to apply to those who are accused of residing in the United  
18 States for decades prior to apprehension and removal proceedings. A person with long-term  
19 residence in the United States who is alleged to be removable should be deemed detained under  
20 Section 1226(a), unless they are subject to Section 1226(c) or Section 1231. Indeed, for the  
21 reasons described in all the paragraphs above, the mandatory detention statute cannot be read to  
22 apply to someone in Petitioner’s circumstances.

23 67. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his  
24 continued detention and violates the INA.

1                   **COUNT II: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

2           68.     Petitioner incorporates by reference the factual allegations and legal arguments set  
3 forth in the preceding paragraphs.

4           69.     Under the Administrative Procedure Act, a court must “hold unlawful and set  
5 aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in  
6 accordance with the law,” that is “contrary to constitutional right [or] power,” or that is “in  
7 excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. §  
8 706(2)(A)-(C).

9           70.     Respondents’ detention of Petitioner pursuant to Section 1225(b)(2) is arbitrary  
10 and capricious. Respondents’ detention of Petitioner violates the INA and the Fifth Amendment.  
11 Respondents do not have statutory authority under Section 1225(b)(2) to detain Petitioner.

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

14                   **COUNT III: VIOLATION OF DUE PROCESS**

15           72.     Petitioner incorporates by reference the factual allegations and legal arguments set  
16 forth in the preceding paragraphs.

17           73.     The government may not deprive a person of life, liberty, or property without due  
18 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government  
19 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the  
20 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

21           74.     Petitioner has a fundamental interest in liberty and being free from official  
22 restraint.

1 75. The government's detention of Petitioner without a bond redetermination hearing  
2 to determine whether he is a flight risk or danger violates his right to due process.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 5 a. Assume jurisdiction over this matter;
- 6 b. Issue a writ of habeas corpus requiring that Respondents release Petitioner or  
7 provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 7  
8 days;
- 9 c. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act  
10 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under  
11 law;
- 12 d. Prohibit Respondents from relocating Petitioner outside of the Eastern District of  
13 California pending final resolution of this litigation; and
- 14 e. Grant any other and further relief that this Court deems just and proper.

15 DATED this 8th day of September, 2025.

16 */s/Jonathan Abel*

17 *Attorney for Petitioner*

18 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

19 I, Jonathan Abel, am submitting this verification on behalf of the Petitioner because I am one of  
20 Petitioner's attorneys and Petitioner is in custody with limited ability to sign documents. I have  
21 discussed with the Petitioner the events described in the Petition. Based on those discussions, I  
22 hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus  
23 are true and correct to the best of my knowledge.  
24

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4 Executed on September 8th, at San Francisco, California.

5

*/s/Jonathan Abel*

6

Jonathan Abel

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Attorney for Petitioner

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