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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX, ARIZONA

Adan Resendiz-Resendiz;

Plaintiff,

v.

Kristi Noem, Secretary, U.S. Department of Homeland Security; Pamela Bondi, Attorney General of the United States, Executive Office for Immigration Review (EOIR); Corina Almeida, Chief Counsel, Immigration and Customs Enforcement (ICE), Office of Principal Legal Advisor, Eloy; John Cantu, Field Office Director, ICE Enforcement and Removal Operations, Phoenix; Fred Figueroa, Warden, Eloy Detention Center,

Defendants.

Case No._____
Immigration Number: A[redacted]

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

I. INTRODUCTION

1. Plaintiff Adan Resendiz Resendiz (A[redacted]), by and through undersigned counsel, respectfully requests this Honorable Court order Defendants to accept payment of a $1500 bond and release Plaintiff from the ICE Eloy Detention Center, in Eloy, Arizona. Defendants deny Plaintiff's release by asserting he is subject to mandatory detention under

8 U.S.C. § 1225(b)(2), a new policy argument contrary to decades of EOIR and ICE practice of releasing similarly situated non-citizens pursuant to 8 U.S.C. § 1226(a). Defendants' action during the pendency of Plaintiff's civil immigration proceedings subjects Plaintiff to prolonged detention in violation of law. By the plain language of the statute, 8 U.S.C. § 1225(b)(2)(A) only applies to persons being inspected by immigration officers at the time of seeking admission. Admission being defined by the lawful entry into the United States. 8 U.S.C. § 1101(a)(13)(A). Without directly interpreting the statutory definition of "admission", Defendants issued *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), holding that all non-citizens present without inspection, regardless of how many years they have been in the country, are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Pursuant to *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024), this Court is not bound by the Agency's interpretation of the INA. Indeed, one Federal District Court already interpreted the statute, making contrary findings to *Yajure Hurtado. See* Rodriguez v. Bostock, et al., Case No. 3:25-cv-05240-TMC Preliminary Injunction (W.D. Wash., April 24, 2025). Plaintiff's detention is unlawful.

2. Plaintiff is a 42-year-old single male, citizen of Mexico, who has lived in the United States since approximately June of 2010. On June 26, 2025, ICE took Plaintiff into custody and placed him into removal proceedings by filing a Notice to Appear with the Eloy Immigration Court and detaining him at the Eloy Detention Center located at 1705 E. Hanna Rd., Eloy, Arizona 85131. Plaintiff requested a bond redetermination and on August 18, 2025, the Immigration Judge ordered his release upon payment of a $1,500 bond. Defendants rejected payment of the bond and continue to detain the Plaintiff in violation of law.

3. Defendants violated Plaintiff's right to be released upon payment of a bond under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226(a), and agency regulations, 8 C.F.R. §§ 1003.19(a), 1236.1(d). Defendants' coordinated action to hold Plaintiff under mandatory detention is not in accordance with law and violates Plaintiff's right to due process.

4. Plaintiff will suffer irreparable and immediate injury from continued unlawful

detention unless the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 is granted.

II. JURISDICTION

5. This Court has jurisdiction over petitions for Habeas Corpus pursuant to 28 U.S.C. § 2241. The Plaintiff is in the custody of the United States.

6. This Court has jurisdiction over civil actions brought under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States. This Court has jurisdiction pursuant to 28 U.S.C. § 1361 which authorizes actions in district court, "to compel an officer or employee of the United States or agency thereof to perform a duty owed to the plaintiff."

7. The aid of the Court is invoked under 28 U.S.C. § 2201 and 2202, authorizing a declaratory judgement.

8. This Court has jurisdiction pursuant to the Administrative Procedures Act (APA) to set aside agency action not in accordance with law and order the agency to perform a duty owed to Plaintiff under 5 U.S.C. § 706.

9. Plaintiff concurrently files a motion for a temporary restraining order and/or preliminary injunction to protect his right to be protected from deprivation of liberty without due process of law.

III. VENUE

10. Venue is asserted pursuant to 28 U.S.C. § 1391(e) because the Plaintiff is being detained in Eloy, Arizona, Defendants are the U.S. Government, and no real property is involved in the action.

IV. Exhaustion

11. Exhaustion is a prudential rather than a jurisdictional requirement. *Singh v. Holder*, 638 F.3d 1196, 1203 n. 3 (9th Cir. 2011). Waiver of exhaustion is appropriate "where administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted).

12. In the instant case, the Immigration Judge ordered Plaintiff released on bond and the Defendants filed an E-43 stay of IJ's decision. Defendants may appeal the custody redetermination to the Board of Immigration Appeals ("BIA"), the appellate division of EOIR. Plaintiff has no other means of challenging his ongoing prolonged detention in violation of law.

V. PARTIES

13. Plaintiff, Adan Resendiz Resendiz is a native and citizen of Mexico, and is currently detained by ICE in Eloy, Arizona. He is not subject to expedited removal under 8 U.S.C. § 1225(b)(1).

14. Defendant Kristi Noem is the Secretary of the Department of Homeland Security (DHS), responsible for overseeing and directing Immigration and Customs Enforcement. DHS directed the policy to argue Plaintiff is subject to mandatory detention.

15. Defendant Pamela Bondi is the Attorney General of the United States. Defendant is the head of the United States Department of Justice and responsible for the entire department, which includes the Executive Office for Immigration Review ("EOIR"), including the BIA.

16. Defendant Corina Almeida, Chief Cousel of the ICE Office of Principal Legal Advisor oversees the ICE attorneys in Eloy, Arizona who filed the E-43 administrative stay.

17. Defendant John Cantu, Field Office Director of ICE Enforcement and Removal Operations in Phoenix, Arizona is responsible for Plaintiff's custody in Eloy, Arizona. Defendant Cantu is also responsible for the acceptance and processing of the payment of bond and release of ICE detainees in Eloy, Arizona.

18. Defendant Fred Figueroa is the Warden at the ICE contract facility Eloy Detention Center, operated by CoreCivic. Defendant Fred Figueroa is responsible for Plaintiff's physical custody.

VI. FACTUAL ALLEGATIONS

19. Plaintiff is a citizen of Mexico who last entered the United States without inspection on or about June of 2010. He has resided in the United States since that date and

has two U.S. citizen children.

20. On June 26, 2025, DHS took Plaintiff into custody and placed him into removal proceedings before Eloy EOIR by issuing a Notice to Appear charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). The Notice to Appear does not allege Plaintiff is an arriving alien. DHS detained Plaintiff at the Eloy Detention Center, in Eloy, Arizona.

21. On July 8, 2025, DHS issued new policy instructing ICE to argue and hold anyone they alleged to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

22. On July 21, 2025, ICE issued a form I-261 charging an additional ground of inadmissibility under 8 U.S.C. 1182(a)(7)(A)(i)(I) alleging Plaintiff did not have a valid entry document at the time he entered the United States.

23. On July 22, 2025, the Eloy EOIR, conducted a custody redetermination hearing, where Plaintiff contested the ICE argument that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

24. On July 23, 2025, the IJ issued a summary decision denying bond on the basis of no jurisdiction. The bond order further notes: "Assuming, arguendo, that the Court did have jurisdiction to adjudicate a bond redetermination in this matter, the Court would set bond at $1500."

25. On August 4, 2025, the BIA issued a precedent decision in *Matter of Akhmedov,* 29 I&N Dec. 166 (BIA 2025) finding a non-citizen's custody, who "unlawfully" entered the United States in 2022, was subject to the provisions of 8 U.S.C. § 1226(a).

26. On the basis of *Matter of Akhmedov*, Plaintiff argued changed circumstances and requested a second custody redetermination.

27. On August 18, 2025, the IJ granted the custody redetermination ordering Plaintiff's released upon posting a $1,500 bond. To order the bond, the IJ necessarily reviewed the evidence and determined Plaintiff is neither a danger nor a flight risk. That same day, Plaintiff's sponsor submitted the $1,500 payment through the ICE CeBONDS online payment system.

28. On August 19, 2025, the CeBONDS system showed a status change that Plaintiff is "Not Releasable." On August 19, 2025, ICE filed a form E-43, employing an automatic administrative stay of the bond order under 8 C.F.R. § 1003.19(i)(2). The E-43 is signed by Assistant Chief Counsel Ryan Elbert. Neither the Plaintiff nor his counsel has received or been served a Notice of Appeal of the bond order to the BIA. Mr. Elbert is not a senior legal official.

29. On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), implementing the Defendants' concerted policy goal of holding that all persons who entered without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

VII. LEGAL FRAMEWORK

30. 8 U.S.C. § 1226(a) governs the general detention and release of non-citizens in removal proceedings: "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States . . . and (2) may release the alien on- (A) bond of at least $1500 . . . or (B) conditional parole."

31. 8 U.S.C. § 1226(c), amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), provides for the mandatory detention of inadmissible non-citizens with certain criminal convictions and conduct. The statute and the amendments made by the Laken Riley Act intentionally precludes some, but not all, aliens inadmissible under 8 U.S.C. 1182(a)(6)(A)(i) from being granted bond. 8 C.F.R. §§ 1003.19(a), 1236.1(d), provide the parameters for EOIR to provide bond hearings to non-citizens pending removal proceedings.

32. The INA provides for mandatory detention of certain non-citizens with final orders of removal under 8 U.S.C. § 1231, suspected terrorists under 8 U.S.C. § 1226a, non-citizens subject to expedited removal under 8 U.S.C. § 1225(b)(1), and those "seeking admission" and being reviewed for admissibility at the time of arrival under 8 U.S.C. § 1225(b)(2).

33. Plaintiff seeks release under 8 U.S.C. § 1226(a) as a non-citizen domiciled in the United States subject to removal proceedings under 8 U.S.C. § 1229a. Defendants purport

to deny Plaintiff's release under 8 U.S.C. § 1225(b)(2)(A).

34. 8 U.S.C. § 1225 governs the processing of arriving aliens and recent entrants, and is not a detention statute. The only mention of "mandatory detention" comes under 8 U.S.C. § 1225(b)(1)(B)(IV) stating that applicants for admission pending asylum interviews "subject to the procedures under this clause shall be detained pending final determination of credible fear of persecution . . . ." 8 U.S.C. § 1225(b)(1)(A)(iii)(II) explicitly excludes from expedited removal non-citizens who can show they have been "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility."

35. 8 U.S.C. § 1225(b)(2)(A) applies to a non-citizen "who is an applicant for admission, if the examining officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under 1229a of this title."

36. Although Plaintiff is considered an "applicant for admission," he never sought or requested admission at the time of entry. Plaintiff's 15 years of physical presence and not having sought admission, excludes him from § 1225. The entire thrust and language of § 1225 concerns only persons being inspected at the time of arrival, or within two years of unlawful entry. 8 U.S.C. §§ 1229a, 1226 govern custody and removal proceedings of all other non-citizens.

37. Defendants' application of § 1225(b) to Plaintiff renders all references to inadmissible non-citizens under § 1226 superfluous.

38. There is no Ninth Circuit precedent to support the Defendants' holding Plaintiff subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

39. Pursuant to *Loper Bright Enterprises v. Raimondo,* 44 S. Ct. 2244(2024), this Court is not bound to the Agency's interpretation of INA. The term "applicant for admission," as defined under 8 U.S.C. § 1225(a)(1), concerns both the non-citizen who is "present in the United States who has not been admitted" and the non-citizen "who arrives" at the port of entry, otherwise known as an "arriving alien." 8 U.S.C. § 1225(b)(2)(A)

explicitly applies to "applicants for admission" "seeking admission." 8 U.S.C. § 1101(a)(13)(A) defines "admission" to mean "the lawful entry of the alien *into* the United States after inspection and authorization by an immigration officer." (Emphasis added). The literal and plain meaning of "seeking admission" means the non-citizen is contemporaneously attempting to enter the United States. If inspected by the officer after entry, a non-citizen who established 2 years of continuous physical presence is protected by 8 U.S.C. § 1225(b)(1)(A)(iii)(II), excluding them from § 1225.

40. Recently, in *Matter of Q. Li,* 29 I&N Dec. 66 (BIA 2025), Defendants applied mandatory detention under 8 U.S.C. § 1225(b)(2) to applicants for admission who are "arrested and detained without a warrant *while arriving* in the United States" acknowledging the temporal limit of the phrase. (Emphasis Added).

41. The Ninth Circuit has previously interpreted the statutes in question. In *Torres v. Barr,* 976 F.3d 918, 923-926 (9th Cir. 2020)(en banc), the Ninth Circuit provides a thorough analysis, finding that applying for admission means doing so from outside the United States or at a port of entry, seeking physical entry into the country. The *Torres* decision holds that the idea of seeking admission is limited in time, and cannot continue without limit once the non-citizen is already in the United States. *Id.* at 926. "Accordingly, inadmissibility must be measured at the point in time that an immigrant actually submits an application for entry into the United States." *Id; See also; Negrete-Ramirez v. Holder,* 741 F.3d 1047, 1051 (9th Cir. 2014) ("The definition refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry.") Based on the Ninth Circuit's statutory analysis, the term "seeking admission" cannot apply to a person already inside the United States for over 15 years.

42. In *Matter of Yajure Hurtado,* 29 I&N Dec. at 221, the BIA asks who does 1225(b)(2)(A) apply to if not to persons living in the United States without admission. 8 C.F.R. § 235.3(b)(3) clearly answers the question:

> In the expedited removal process, the Service may not charge an alien with any additional grounds of inadmissibility other than section 212(a)(6)(C) or 212(a)(7) of the Act. If an alien appears

> to be inadmissible under other grounds contained in section 212(a) of the Act, and if the Service wishes to pursue such additional grounds of inadmissibility, the alien shall be detained and referred for a removal hearing before an immigration judge pursuant to sections 235(b)(2) and 240 of the Act for inquiry into all charges.

8 U.S.C. 1101(a)(13)(C) specifies that certain returning LPRs can also be considered applicants for admission and referred for removal proceedings under 240 if determined to be inadmissible at the time of entry. 8 U.S.C. § 1225(b)(2) would apply to inadmissible non-citizens seeking admission using visas and green cards, and not subject to § 1225(b)(1). Defendants fail to read 8 U.S.C. § 1225 as a whole. Subsections (b)(1) and (b)(2) work in tandem, not separately. None of the legislative history cited in *Matter of Yajure Hurtado* indicates an intention to subject all persons who entered without inspection to mandatory detention, and indeed, there is no express provision of the law stating such.

43. 8 U.S.C. § 1225(a)(1) provides that non-citizens who have not been admitted are applicants for admission for purposes of the section, but the statue limits and modifies its application. The BIA in *Yajure Hurtado* argues congress had no intent to provide any benefit to persons who entered without admission and established prolonged physical presence. The statutory language directly belies this claim. Under 8 U.S.C. § 1225(b)(1)(A)(iii)(II), Congress expressly excluded from the expedited removal provision non-citizens present without admission with at least 2 years of physical presence. Congress expressly provides other benefits to unlawful entrants who establish domicile in the United States. *See* 8 U.S.C. § 1229a(b)(1) (10 years continuous physical presence); 8 U.S.C. § 1229a(b)(2) (3 years physical presence for VAWA relief).

44. It must be restated, § 1225(b)(2)(A) expressly applies only to the "applicant for admission" "seeking admission." The BIA's interpretation of the law specifically holds that applicants for admission are always "seeking admission," but if this were true, there would be no need for § 1225(b)(2)(A) to limit its application to those "seeking admission." It renders the language superfluous. Seeking admission explicitly indicates an affirmative request or action on the part of the applicant for admission. *Yajure Hurtado* repeatedly

accuses non-citizens present without admission as evading inspection, but then turns around to say they are seeking admission. It cannot be both ways, a person who evades inspection, cannot be considered seeking admission. *Yajure Hurtado* lacks any validity or persuasiveness due to its outright failure to interpret the statutory definition of "admission" under 8 U.S.C. § 1101(a)(4), (a)(13)(A). The BIA's decision in *Yajure Hurtado* is written with the outcome in mind, rather than with a sincere intent to explore and understand the law. The BIA, as a part of the Executive Branch, is a political creature, and the Courts must subject them to the law. Releasing non-citizens present without admission on a bond is not about "rewarding" the evasion of apprehension for more than two years, but rather about protecting the interests accrued in establishing domicile: property, children, family, friends, community, career, and economic interests. There is logic to mandatory detention of persons just arriving to the United States. They have not established any kind of record in the country, making it difficult to determine whether they pose a danger or flight risk while they face removal proceedings. However, people who have been in the United States for over two years should be given an opportunity to demonstrate they not a danger or flight risk, pending removal proceedings. There is a record of their behavior in the United States. Defendants' desired implementation of the law leads to absurd results very likely never intended by congress. Indeed, in the 28 years since the implementation of IIRIRA, congress never stepped in to correct the ongoing practice and interpretation of the Immigration Courts, BIA, and Federal Courts allowing release under § 1226(a) of those present without admission.

45. Pursuant to 8 C.F.R. § 1003.19(i)(2) ICE may file for an automatic stay of the bond decision if filed within one day of that decision. 8 C.F.R. § 1003.6 governs the application of the automatic stay and requires a "certification by a senior legal official" approving the notice of appeal and stating the "contentions justifying the continued detention of the alien have evidentiary support, and the legal arguments are warranted by existing law or by a non-frivolous argument. . . ." The effect of the automatic stay "shall lapse if DHS fails to file a notice of appeal with the Board within ten business days." *Id.* at § 1003.6(c)(1).

46. Defendants filed a defective E-43 that does not conform to 8 C.F.R. §§

1003.19(i), 1003.6. The Assistant Chief Counsel signed the E-43, and is not a senior legal official. No appeal has been filed and no "certification by a senior legal official" has been provided. Pursuant to 8 C.F.R. § 1003.6(c)(1), the effect of the automatic stay lapsed when DHS failed to file an appeal within 10 business days. The stay is without any legal force because it does not comply with the regulatory requirements. There is no legal justification to continue to detain Plaintiff after the IJ ordered release on bond.

VIII. CLAIMS FOR RELIEF

47. Plaintiff realleges paragraphs 1 through 46 herein as fully set forth, and Plaintiff's continued detention is a violation of Due Process rights under Amendment V, U.S. Constitution and not in accordance with the INA.

48. Pursuant to the APA, the Defendants refusal to release Plaintiff on bond is arbitrary, capricious, and not in accordance with the law.

49. This Court has jurisdiction to review the Defendants' action and order Plaintiff's release on bond.

50. The Immigration Judge already found Plaintiff to not be a danger or flight risk, and the automatic stay is defective and unenforceable;

51. Plaintiff is eligible for payment of attorney's fees, related expenses, and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grant the following relief:

(1) Assume jurisdiction over this cause pursuant to 28 U.S.C. § 2241;

(2) Restrain Defendants from moving Plaintiff out of the judicial district;

(3) That the Court grant the petition for habeas corpus and order Defendants to accept payment of the $1500 bond and release Plaintiff;

(4) Declare Plaintiff's continued detention to be in violation of the Immigration and Nationality Act;

(5) Declare the E-43 stay not in accordance with law and unenforceable;

(6) That the Court order payment of Plaintiff's attorney's fees and costs pursuant to EAJA;

(7) That the Court grant further relief as this Court deems proper under the circumstances.

RESPECTFULLY SUBMITTED, this 17th day of September, 2025,

Zava Law Group PLLC

s/Jessica Anleu, Esq.

Jessica Anleu
Attorneys for Plaintiff

CROSSROADS LAW GROUP PLLC

s/ Gabriel G. Leyba, Esq.

Gabriel G. Leyba

LIST OF ATTACHMENTS

Exhibit	Description
A	July 23, 2025, Immigration Judge Bond Order
B	August 18, 2025, Immigration Judge Bond Order
C	June 26, 2025, Form I-862 Notice to Appear
D	CeBONDS Status Updates on Bond Payment
E	August 19, 2025, Form EOIR-43, Administrative Stay
F	ECAS Printout in Bond Proceedings, Showing No Appeal Filed

CERTIFICATE OF SERVICE

On the 17th day of September, 2025, I, Jessica Anleu, the undersigned, served via certified U.S. Mail, the attached **Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241**, on each person/entity listed below addressed as follows:

Civil Clerk
United States Attorney's Office
District of Arizona
Two Renaissance Square
40 N. Central Avenue, Suite 1200
Phoenix, AZ 85004-4408

Fred Figueroa
Warden, Eloy Detention Center
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U.S. Department of Homeland Security
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Washington, DC 20528

s/ Jessica Anleu, Esq.