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**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF ARIZONA**

Fausto Elias Montijo,

Petitioner,

v.

John E. Cantu, Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement; Kristi Noem, Secretary, U.S. Department of Homeland Security; Pamela Bondi, U.S. Attorney General; Fred Figueroa, Warden of Eloy Detention Center; Todd Lyons, Acting Director, Immigration and Customs Enforcement and Removal Operations.

Respondents.

Case No.

**PETITION FOR WRIT OF HABEAS CORPUS**

## INTRODUCTION

1. This lawsuit seeks the immediate release of Petitioner Fausto ELIAS-MONTIJO ("Petitioner") from unlawful detention in violation of his constitutional and statutory rights.

2. Petitioner was detained after a vehicle in which he was a passenger was stopped by officials with the Department of Homeland Security's ("DHS"), Immigration and Customs Enforcement ("ICE") in Tucson, Arizona on June 19, 2025. He remains in civil detention in ICE custody at the Eloy Detention Center in Eloy, Arizona. Ex. 1, Notice of Custody Determination.

3. Petitioner has never been arrested for or convicted of any crimes and has never failed to appear in any criminal or immigration proceedings.

4. He now faces unlawful detention because the DHS has concluded Petitioner is subject to mandatory detention.

5. Petitioner sought a bond redetermination hearing before an immigration judge (IJ). In bond proceedings, DHS argued that Petitioner was subject to mandatory detention consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone who is inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be subject to detention under 8 U.S.C. § 1225(b), such that they may not be released from ICE custody except by means of parole under 8 U.S.C. § 1182(d)(5). Ex. 2, Interim Guidance Regarding Detention Authority for Application for Admission (July 8, 2025) ("Interim Guidance").

6. Petitioner's detention became unlawful on July 14, 2025, when Petitioner was granted release on bond by IJ, but was not released from custody. Ex. 3, Order of the Immigration Judge (July 14, 2025). His continued detention is a violation of due process.

7. The IJ concluded that Petitioner was eligible for bond because he is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Ex. 4, Memorandum Decision of the Immigration Judge. The IJ also noted that Petitioner had received bond in previous removal proceedings, which were dismissed on a motion by DHS in 2022. *Id.*

8. On July 14, 2025, the same day the IJ granted bond, DHS submitted a Notice of ICE Intent to Appeal Custody Redetermination to the Board of Immigration Appeals ("BIA"). Ex. 5, Notice of ICE Intent to Appeal Custody Redetermination.

9. The DHS submitted its formal notice of appeal of the bond determination to the BIA on July 24, 2025. Ex. 6, Notice of Appeal from a Decision of an Immigration Judge.

10. Petitioner's bond was stayed throughout the duration of the appeal, and cancelled on July 29, 2025, pursuant to DHS's appeal. Ex. 7, Notice – Immigration Bond Cancelled.

11. Petitioner has remained detained despite the IJ's grant of a bond.

12. Detention on the basis of the appeal and underlying Interim Guidance violates the plain language of the Immigration and Nationality Act ("INA"). Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

13. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

14. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released pursuant to the bond redetermination he has already been granted under § 1226(a).

## JURISDICTION

15. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Eloy Detention Center in Eloy, Arizona.

16. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

17. 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.

18. The "zipper clause" at 8 U.S.C. § 1252(b)(9), which channels "[j]udicial review of all questions of law . . . including interpretation and application of constitutional and statutory provisions, arising from any action taken . . . to remove an alien from the United States" to the appropriate federal court of appeals, does not apply because that section applies only to review of removal orders, and Petitioners do not seek review of orders of removal but of custody. *Maldonado Bautista et al. v. Santacruz, et al.,* No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 4-5.

19. The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to hear "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." The Supreme Court previously characterized § 1252(g) as a narrow provision, applying "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). In doing so, the Supreme Court found it "implausible that the mention of *three discrete events* along the road to deportation

was a shorthand way to referring to *all claims arising from* deportation proceedings." *Id.* (emphasis added). Petitioner's challenge to his detention does not fall within these discrete actions. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 5.

20. Subsection 2 of 8 U.S.C. § 1252(a), titled "Judicial Review of Orders of Removal," contains four subsections, which outline categories of claims that are not subject to judicial review. § 1252(a)(2)(A)–(D). None of these subsections precluding judicial review apply to this matter, as the specified statutory provisions do not cite § 1225(b)(2)(A) or § 1226(a), which are the two provisions Petitioner challenges. Thus, no part of § 1252 deprives this Court of jurisdiction. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 6. As such, the Court has jurisdiction over Petitioner's challenge to his detention.

**VENUE**

21. 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 Arizona, the judicial district in which Petitioner currently is detained.

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

**REQUIREMENTS OF 28 U.S.C. § 2243**

23. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an

order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

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

**PARTIES**

25. Petitioner Fausto ELIAS MONTIJO is a citizen of Mexico who has been in immigration detention in Eloy, Arizona since June 19, 2025. After arresting Petitioner in Tucson, Arizona, ICE did not set bond, and Petitioner requested review of his custody by an IJ.

26. On July 14, 2025, Petitioner was granted bond by an IJ at the Eloy Immigration Court under 8 U.S.C. § 1226(a). In concluding that 8 U.S.C. § 1226(a) governed Petitioner's custody status, the IJ rejected DHS' argument that 8 U.S.C. § 1225(b) governed Petitioner's detention. The IJ reasoned that Petitioner was not an applicant for admission who was seeking admission because he entered without inspection and has resided in the United States for the last 14 years.

27. Respondent John CANTU is the Director of the Phoenix Field Office of ICE's Enforcement and Removal Operations division, which oversees operations the Eloy Detention Center. As such, Mr. Cantú is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

28. Respondent Kristi NOEM is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

29. Respondent Pamela BONDI is the United States Attorney General. She is responsible for the Executive Office for Immigration Review ("EOIR"), which is the component of the U.S. Department of Justice that is responsible for implementing and enforcing the INA in removal proceedings, including for custody redetermination in bond hearings.

30. Respondent Fred FIGUEROA is employed by CoreCivic as Warden of the Eloy Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

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

## LEGAL FRAMEWORK

### Immigration and Nationality Act

32. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

33. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),

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

34. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

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

36. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

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

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

39. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-

469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

**DHS and DOJ Policy: Interim Guidance**

40. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice. *See* Exh. 2 (Interim Guidance). Although the Interim Guidance was not released publicly through official channels, it has been widely reported that ICE released the Interim Guidance internally regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond; specifically, pursuant to the Interim Guidance, ICE is now arguing that only those already admitted to the U.S. (for example as lawful permanent residents, asylees, or refugees) are eligible to be released from custody during their removal proceedings, and that all others are treated subject to 8 U.S.C. § 1225, instead of 8 U.S.C. § 1226, and will remain detained with only extremely limited parole options at ICE's discretion. Exh. 2 (Interim Guidance).

41. In other words, inter alia, the new ICE policy claims that *all* persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and that all applicants for admission are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

42. An unpublished decision on point from the Board of Immigration Appeals (BIA) EOIR adopted this same position: that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bond hearings. Ex. 8 Unpublished BIA Decision, Case No. XXX-XXX-269, May 22, 2025.

**DOJ Policy: Published BIA Decision**

43. EOIR formalized its coordination with ICE on September 5, 2025, by publishing *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In *Matter of Yajure Hurtado*, the BIA held that 8 U.S.C. § 1225(b)(2)(A) requires the detention throughout removal proceedings of any "inadmissible alien," including those who entered the United States without inspection and have resided in this country for more than two years. 29 I. & N. Dec. at 219-20. Mr. Yajure Hurtado conceded that he was an "applicant for admission," and the Board concluded that he was also "seeking admission" because it believed that he would have no "legal status" unless he was seeking admission. *Id.* at 220-21. The Board determined, without explaining its reasoning, that a "lawful status" is necessary to be eligible for a bond hearing under 8 U.S.C. § 1226. *Id.* at 221.

44. The Board next addressed Mr. Yajure Hurtado's argument that its interpretation of 8 U.S.C. § 1225(b)(2)(A) would render superfluous the recent amendments to 8 U.S.C. § 1226(c) in the Laken Riley Act, which require detention of individuals who entered the United States without inspection and are arrested for, charged with, or convicted of certain types of crimes. 29 I. & N. Dec. at 221. The Board concluded that the new provisions in 8 U.S.C. § 1226(c) did not "purport[] to alter or undermine" 8 U.S.C. § 1225(b)(2)(A). *Id.* at 221-22. However, the Board explicitly conceded that under its reading of the INA, 8 U.S.C. § 1226(c) is duplicative of 8 U.S.C. § 1225(b)(2)(A) as to the "subset" of individuals who entered the United States without inspection. *Id.* at 222.

45. The Board recited the legislative history of IIRIRA's changes to the detention provisions of the INA, focusing on the transition from a framework focused on entry (prior to IIRIRA) to one focused on admission (after IIRIRA). *Id.* at 222-25. The Board spilled much ink on IIRIRA's expansion of "applicants for admission" as a term of art to include individuals who entered the United States without inspection, but it did not identify a single report or statement that

would suggest that such individuals are also "seeking admission" as required for 8 U.S.C. § 1225(b)(2)(A) to govern their custody status. *See id.*

46. The Board proceeded with the audacious claim that *Loper Bright Enterprises v. Raimundo*, 603 U.S. 369 (2024), did not counsel deference to decades of its own uninterrupted practice of conducting bond hearings under 8 U.S.C. § 1226 for individuals who entered the United States without inspection. 29 I. & N. Dec. at 225-26 & n.6. The Board reasoned that such deference was not required because its own practice (in perhaps millions of cases throughout the years, up to and including a published decision issued on June 30, 2025, *see Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025)), was in violation of "clear and explicit" statutory language allegedly "requiring mandatory detention of all aliens who are applicants for admission." *Id.* at 226.

47. In order to expand the category of individuals subject to mandatory detention, the Board also had to explain away ICE's issuance of an arrest warrant for Mr. Yajure under 8 U.S.C. § 1226. Absent any meaningful basis to justify detaining someone under a statute that did not govern his case, the Board simply dismissed the concern by stating that "mere issuance of an arrest warrant does not endow an Immigration Judge with authority to set bond for an alien who falls under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)." *Id.* at 227.

48. The Board concluded by citing a few other cases interpreting the "applicants for admission" language of 8 U.S.C. § 1225(b)(2)(A), without ever seriously engaging with the distinct "seeking admission" language that is also included in that provision. *Id.* at 228. Finally, the Board showed its hand by acknowledging its preferred policy outcome, that it did not believe "Congress intended that aliens unlawfully entering the United States without inspection, particularly those who successfully evaded apprehension for more than 2 years, be rewarded with

the opportunity for a bond hearing before an Immigration Judge, whereas aliens who present themselves to officers at a port of entry are ineligible for a bond hearing." *Id.*

**Exhaustion and Futility**

49. Exhaustion of administrative remedies is required "[w]here Congress specifically mandates." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). But where, as here "Congress has not clearly required exhaustion, sound judicial discretion governs." *Id.* (citations omitted). Under these principles, prudential exhaustion is not required where a request for relief before the agency would be futile because the agency has "predetermined the issue before it." *Id.* at 148. Furthermore, "a court may waive the prudential exhaustion requirement if '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.'" *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

50. The BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, renders prudential exhaustion futile in bond cases involving individuals who entered the United States without inspection. *Zaragoza Mosqueda, et al. v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025). Although the IJ granted bond to Petitioner and correctly concluded that 8 U.S.C. § 1226 governs his custody status, the BIA's intervening decision in *Matter of Yajure Hurtado* "predetermine[s]" the outcome of DHS's administrative appeal. *McCarthy*, 503 U.S. at 148. Prudential exhaustion is therefore unnecessary, and the Court should take jurisdiction over Petitioner's case.

**Deference Principles Following *Loper Bright***

51. The Supreme Court's decision in *Chevron v. NRDC*, 467 U.S. 837 (1984), instructed courts to defer to administrative agency interpretations of ambiguous statutes. In *Loper Bright Enterprises v. Ramiundo*, 603 U.S. 369 (2024), the Supreme Court overruled *Chevron* and held that the APA requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority. The Supreme Court concluded that statutory ambiguity does not call for deference to the agency's interpretation. *See Loper Bright*, 603 U.S. at 402-03.

52. Where a statute is ambiguous, courts may now apply the framework set forth in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), rather than the *Chevron* framework. *See Loper Bright*, 603 U.S. at 394. Under *Skidmore*, the question is whether the agency's reasoning–although not binding–has the "power to persuade" based on "the thoroughness evident in its consideration, the validity of its reasoning, [and] its consistency with earlier and later pronouncements." 323 U.S. at 140. In other words, *Skidmore* deference is discretionary, and courts retain the authority to adopt or reject the agency's view based on its merits.

53. The BIA's decision in *Matter of Yajure Hurtado* does not satisfy the requirements for deference under *Loper Bright* or *Skidmore*. First, the BIA in *Matter of Yajure Hurtado* analyzed the history of the statutory phrase "applicants for admission" in some detail, despite Mr. Yajure's concession on this issue, but it did not provide any meaningful analysis of the plain language, statutory context, or legislative history of the distinct phrase "seeking admission," which is also required for 8 U.S.C. § 1225(b)(2)(A) to apply. Therefore, the BIA's decision lacks the "thoroughness" required for deference under *Skidmore* and *Loper Bright.* 323 U.S. at 140.

54. The BIA's reasoning in *Matter of Yajure Hurtado* lacks "validity" because it does not contend in any way with the fact that the plain language of the statute imposes not one but two

different requirements to invoke mandatory detention under 8 U.S.C. § 1225(b)(2)(A): the noncitizen must both be an "applicant for admission" and be "seeking admission" in order for the provision to govern his or her custody status. "Applicant for admission" – not "seeking admission" – is the statutory phrase construed by the Supreme Court as expansive in *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018), and *DHS v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Even assuming, arguendo, that individuals like Mr. Yajure and Petitioner fit within the "applicant for admission" term of art, it does not follow that they are also "seeking admission." Indeed, an individual who has not presented at a port of entry and has not filed any affirmative application for immigration benefits is not "seeking" anything under the plain meaning of the word. *See* Merriam Webster's Dictionary (2025) (defining "seek" as, inter alia, "to go in search of" or "to try to acquire or gain").

55. Nor is the BIA entitled to deference in its superficial treatment of the conflict between its unprecedented reading of 8 U.S.C. § 1225(b)(2)(A) and the recent amendments in the Laken Riley Act. As previously explained, the Laken Riley Act amendments clearly prohibit bond under 8 U.S.C. § 1226 for individuals who entered the United States without inspection and were subsequently charged with, arrested for, or convicted of certain listed offenses. The BIA acknowledged that reading 8 U.S.C. § 1225(b)(2)(A) to apply to individuals who entered without inspection would create a redundancy in the statute by rendering such individuals subject to mandatory detention under two separate provisions. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 222. The BIA dismissed such redundancy as permissible and posited that the Laken Riley Act did not purport to "overrule" 8 U.S.C. § 1225(b)(2)(A), but once again, it did not address the requirement of 8 U.S.C. § 1225(b)(2)(A) that an individual must be "seeking admission" in order to be subject to mandatory detention under § 1225(b)(2)(A) in the first place. Reading 8 U.S.C. §

1225(b)(2)(A) to give substance to the phrase "seeking admission" would both ensure fidelity to the plain language of the statute and eliminate concerns about redundancies between § 1226(c) and § 1225(b)(2)(A): individuals who entered without inspection and have been present in the United States for more than two years would not be subject to detention, *unless* they were subject to one of the mandatory detention provisions of the LRA.[1]

56. The Board itself acknowledged that its decision in *Matter of Yajure Hurtado* was fundamentally inconsistent with its own earlier pronouncements, such as *Matter of Akhmedov*, 29 I. & N. Dec. 166, and with decades of agency practice in untold numbers of cases. *See* 29 I. & N. Dec. at 225-26 & n.6. The Board's initial protestation that the issue was not raised in these prior cases, 29 I. & N. Dec. at 225 n.6, stands in sharp contrast to its own contention that the BIA's "authority" to adjudicate cases is strictly "limited to the authority that is delegated to the Immigration Judge by the INA and the Attorney General through regulation." *Id.* at 217. Surely, if the putatively jurisdiction-stripping statutory language were so crystal clear as to be unambiguous, then the BIA would have detected and addressed such a fundamental jurisdictional roadblock, rather than simply adjudicating many thousands of cases outside the scope of its authority over the course of nearly 30 years. In sum, the Board's decision in *Matter of Yajure Hurtado* lacks merit, represents a stark deviation from the agency's own prior practice, and is not worthy of deference under *Loper Bright*.

**Federal Court Decisions Regarding Detention of Individuals Without Lawful Immigration Status**

[1] It is unclear what the BIA meant when it suggested that a statute must contain clear language to "overrule" another statute. *See* 29 I. & N. Dec. at 219. Statutory changes operate by amendments, not by the overruling mechanism that may be used by reviewing courts under Article III.

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

58. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

59. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." *Id.* (quoting *Jennings*, 583 U.S. at 288). These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

60. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

61. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

62. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States, and individuals who entered without inspection and have never affirmatively applied for admission or parole do not fit within that category. 8 U.S.C. § 1225(b)(2)(A); *see Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E..D. Mich. Sept. 9, 2025) (specifically rejecting the Board's analysis of the statute in *Matter of Yajure Hurtado* and concluding that it is "difficult to square a noncitizen's continued presence with "seeking admission" when that noncitizen never attempted to obtain lawful status"); *Vasquez-Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (rejecting DHS' contention that an individual who entered the United States without inspection "is automatically understood to be 'seeking admission' within the meaning of § 1225(b)(2)(A), without need[ing] to affirmatively apply for admission or parole"); *see also Arrazola Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (concluding that habeas petitioner showed likelihood of success on the merits of argument that "[t]o ignore the 'seeking admission' language [in 8 U.S.C. § 1225(b)(2)(A) . . . would render the language purposeless and violate a key rule of statutory construction").

63. Throughout its text, 8 U.S.C. § 1225 defines its scope by reference to "inspections"—a term not defined in the INA but which typically connotes an examination upon or soon after physical entry. *See* 8 U.S.C. § 1225 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing"); §§ 1225(b)(1)–(2)

(referring to "inspections" in their titles); § 1225(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being brought into the United States"). Many statutory provisions, various regulations and agency precedent discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 235 has a limited temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§ 1187(h)(2)(B)(i), 1225A; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010)).

64. Consistent with this focus on the moment of physical entry, § 1225(b)(2) is limited to those in the process of "seeking admission." Similarly, the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are presently "coming or attempting to come into the United States." The statutory and regulatory text's use of the present and present progressive tenses excludes noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States.

65. Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

66. The legislative history of the INA, from IIRIRA to the Laken Riley Act, is consistent with this plain language interpretation. Indeed, a decision from this judicial district notes that "a 1997 interim rule issued 'to implement the provisions of [IIRIRA],' which had passed six months earlier . . . explained that '[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.'" *Rosado v. Figueroa*, 2025 WL

2337099 (D. Ariz. Aug. 11, 2025) (quoting Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)).

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

68. Federal courts have similarly rejected the Board's conclusion that the document ICE uses to detain an individual, and the legal authority cited therein, is of no consequence in determining the statutory basis for that detention. In *Rosado*, the Court held that "[b]ecause [Petitioner] was placed into removal proceedings pursuant to § 1229a, an alternative process to that stated in § 1225, her release in 2018 and her current detention are pursuant to § 1226, not § 1225. This conclusion is supported by the fact that the Deportation Officer ordering [Petitioner] detained on April 30, 2025, cited INA § 236, i.e., 8 U.S.C. § 1226." *Rosado*, 2025 WL 2337099 (addressing circumstance in which habeas petitioner was detained, released, and re-detained six years later with an arrest warrant citing 8 U.S.C. § 1226). Although the petitioner in *Rosado* did not enter without inspection, the Court's reasoning in her case reasoning supports the proposition that where, as here, an individual is in proceedings under § 1229a, and ICE issues a warrant of arrest citing § 1226, the detention authority does not convert to § 1225 merely because the noncitizen does not have lawful immigration status. *Contra Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221 (reasoning that a "lawful status" is required for consideration of bond eligibility under 8 U.S.C. § 1226); *see also Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9,

2025) (same, and collecting cases); *Hernandez-Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025) (same).[2]

**FACTS**

69. Petitioner has resided in the United States since approximately 2010 and lives in Tucson, Arizona.

70. On June 19, 2025, Petitioner was arrested after the Tucson Fugitive Operations team targeted the driver of a vehicle in which Petitioner was a passenger. Petitioner was not the subject of the team's intended enforcement. Petitioner is now detained at the Eloy Detention Center.

71. DHS placed Petitioner in removal proceedings before the Eloy Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as an individual who entered the United States without inspection.

72. Following Petitioner's arrest and transfer to the Eloy Detention Center, ICE declined to assign a bond to Petitioner. Ex. 1, Notice of Custody Determination. Petitioner requested a bond redetermination hearing before a neutral IJ. Ex. 9, Request for Bond Redetermination Hearing.

[2] The Court in *Rosado* also rejected the argument, later adopted in *Matter of Yajure Hurtado*, that "all inadmissible noncitizens present in the United States be detained pending the finality of their removal proceedings," because, as Petitioner argues, that conclusion would "render significant portions of 8 U.S.C. § 1226 meaningless," including portions of the Laken Riley Act amendments. *Rosado*, 2025 WL 2337099. The Court noted that "Congress enacted the LRA against the backdrop of longstanding agency practice applying § 1226(a) to inadmissible noncitizens already residing in the country," and reasoned that the amendments should be read in light of "the principle that '[w]hen Congress adopts a new law against the backdrop of a 'longstanding administrative construction,' the federal courts should "generally presume[] the new provision should be understood to work in harmony with what has come before.'" *Id.* (citing *Monsalvo Velazquez v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025) (internal quotation omitted)).

73. Petitioner has significant family ties in the United States, including a lawful permanent resident wife to whom he has been married for 27 years, a U.S. citizen child, and a child with Deferred Action for Childhood Arrivals (DACA). Other family members include his brother, his uncle, and many cousins, nieces, and nephews. He owns a home in Tucson, pays taxes, and is an active member of the Saint John the Evangelist Church. Twenty-six (26) friends and family members submitted letters of support for his successful bond redetermination hearing. He has no criminal record. Petitioner was granted bond by an IJ, and as such he is neither a flight risk nor a danger to the community.

74. On July 14, 2025, an IJ at the Eloy Immigration Court issued a decision that the Immigration Court has jurisdiction to conduct a bond redetermination hearing, because Petitioner was not an applicant for admission under § 1225(b)(2)(A). The IJ also found that Petitioner did not pose a flight risk and granted bond in the amount of $8,000.00. Ex. 3 Order of the Immigration Judge; Ex. 4 Memorandum Decision of the Immigration Judge.

75. ICE put an immediate stay on the IJ's decision granting bond. Ex. 5 Notice of ICE Intent to Appeal Custody Redetermination. As required under 8 C.F.R. §1003.6(c), ICE then submitted an appeal to the Board of Immigration Appeals on July 24, 2025. Ex. 6, Notice of Appeal from a Decision of an Immigration Judge. Between the time of the stay and the filing of the appeal, payment of bond was temporarily available. Ex. 10, Proof of Temporary Bond Availability. Petitioner's family paid the bond. *Id.* The family was then contacted by ICE to advise that the bond was being cancelled. Ex. 11, Message from DHS ICE Official advising of cancelled bond. Confusingly, the family also received messages that Petitioner had been released, though he had not. Ex. 12, Erroneous Messages regarding detention status. As a result of the cancelled bond, and the BIA's subsequent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, Petitioner

remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

76. As previously explained, any argument in opposition to DHS' appeal to the BIA is futile in light of the BIA's precedent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, which was issued after the IJ granted bond. Furthermore, DOJ has affirmed its position in opposition to bond for individuals like Petitioner in numerous recent cases. *See, e.g., Vasquez-Garcia, et al.*, 2025 WL 2549431; *Arrazola-Gonzalez*, 2025 WL 2379285; *Rodriguez Vazquez*, 2025 WL 1193850;. Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

## CLAIMS FOR RELIEF

### COUNT I

### Violation of the INA

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

78. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States for over a decade prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231. Specifically, again as relevant here, 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals who have entered the United States without inspection because such individuals are not "seeking admission."

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

## COUNT II

### Violation of Due Process

80. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

81. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

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

83. The government's detention of Petitioner, its appeal of the bond granted during his bond redetermination hearing, and its issuance of a precedent decision precluding his release violates his right to due process.

## PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that Respondents release Petitioner pursuant to 8 U.S.C. § 1226(a) within 14 days;

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

d. Grant any other and further relief that this Court deems just and proper.

DATED this 18th day of September, 2025.

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*Attorney for Petitioner*

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

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. 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 18th day of September, 2025 in Tucson, Arizona.

Mika Galilee-Belfer
Attorney for Petitioner