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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

ABREGO ZARATE, JORGE,
Petitioner,

v.

KRISTI NOEM, Secretary of the United States Department of Homeland Security, in her official capacity; **U.S. Department of Homeland Security**; **TODD LYONS**, Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement, in his official capacity; **U.S. Immigration and Customs Enforcement**; **JOHN CANTU**, Field Office Director for ICE’s Enforcement and Removal Operation’s (“ERO”) Phoenix, Arizona Field Office, in his official capacity; **LUIS ROSA, JR.**, Warden of the Central Arizona Florence Correctional Complex, in his official capacity; **SIRCE OWEN**, Acting Director of EOIR, in her official capacity; **Executive Office for Immigration Review**,
Respondents.

Case No.

Agency No





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

INTRODUCTION

The Respondents are unlawfully detaining Petitioner Jorge Abrego Zarate in Florence, Arizona, due to an Immigration Judge’s misinterpretation of the relevant federal statutes.¹ Petitioner

¹ See, Exhibit 1, Order Denying Bond.

1 has been living in the United States for 22 years; has requested asylum due to 
2  has resided with his U.S. citizen cousin since 2012; and has worked for the same company
3 since 2014.² Although he has one misdemeanor conviction for a DUI, 1st offense, he has complied
4 with all conditions of his probation.³

5
6 Respondents, pursuant to a 7/8/2025 change in DHS policy, now argue that *any* noncitizen
7 not previously admitted to the United States is subject to mandatory detention, without the
8 possibility of a bond hearing.⁴

9 The Immigration Judge denied bond on the grounds that:

10 Respondent did not establish that the Immigration Court or an
11 Immigration Judge would have jurisdiction to redetermine the
12 conditions of his custody or release him on bond or parole under INA
13 236(a), and that he is not an "applicant for admission" under INA
14 235(a)(1) and/or that he is not subject to mandatory detention under
INA 235(b)(1) or 235(b)(2).

15 Order Denying Bond, page 1.⁵

16 But such a reading ignores the plain statutory language of both § 1225 and § 1226, violates
17 rules of statutory construction, and is contrary to a number of federal court rulings that have rejected
18 this exact conclusion. *See, Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass.
19 July 24, 2025)⁶ (holding that statutory construction and existing federal caselaw mandate the

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22 ² *See*, Exhibit 2, Petitioner's Request for Bond and EOIR-28.

23 ³ *See*, Exhibit 2, Petitioner's Request for Bond and EOIR-28.

24 ⁴ *See*, Exhibit 4, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for
25 Admission (last visited September 8, 2025).

26 ⁵ *See*, Exhibit 1, Order Denying Bond.

27 ⁶ *See*, Exhibit 5, *Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24,
28 2025) (holding that statutory construction and existing federal caselaw mandate that an "applicant for admission" is different than a noncitizen already in the country).

1 conclusion that an “applicant for admission” is different than a noncitizen already residing in the
2 country); *Lazaro Maldonado Bautista et al. v. Kristi Noem, Secretary, Department of Homeland*
3 *Security, et al.*, U.S. District Court for the Central District of California, Case No. 5:25-cv-01873-
4 SSS-BFM⁷ (Temporary Restraining Order entered 7/28/2025 because “Respondents fail to
5 articulate any valid justification, legal or otherwise, for the application of § 1225 to Petitioners as
6 ‘applicants for admission’”); *Francisco T. v. Bondi, et al.*, U.S. District Court for the District of
7 Minnesota Case No. 0:25-cv-03219-JMB-DTS, [CM/ECF Doc. 17],⁸ (Preliminary Injunction
8 entered 8/29/2025 because “[n]oncitizens who have been residing in the United States but who
9 entered without inspection have not, historically, been considered to still be “arriving” under
10 section 1225(b)”); *Floribertha Mayo Anicasio, Petitioner v. Jerome Kramer, Lincoln County*
11 *Sheriff, in his official capacity, et al.*, Case No. 4:-cv-031580JFB-RCC [CM/ECF Doc. 34 at 1, 3]⁹
12 (August 14, 2025 Memorandum and Order granting the Petitioner’s immediate release and her writ
13 of habeas corpus on the ground “permitting DHS to unilaterally extend the detention of an individual,
14 in contravention of the findings of an agent (the IJ) properly delegated the authority to make such
15 a determination, 8 C.F.R § 1003.19(i)(2) exceeds the statutory authority Congress gave to the
16 Attorney General. ‘Because this back-ended approach effectively transforms a discretionary
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⁷ See Exhibit 6, Temporary Restraining Order entered 7/28/2025 in *Lazaro Maldonado Bautista et al.*
v. Santacruz, Jr., on behalf of themselves and others similarly situated, et al., Plaintiffs-Petitioners, v.
Kristi Noem, Secretary, Department of Homeland Security, et al., Defendants-Respondents, U.S.
District Court for the Central District of California, Eastern Division, Case No. 5:25-cv-01873-SSS-
BFM.

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⁸ See Exhibit 7, Restraining Order entered 8/29/2025 in *Francisco T. v. Bondi, et al.*, Case No. 0:25-
cv-03219-JMB-DTS, [CM/ECF Doc. 17], U.S. District Court for the District of Minnesota.

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⁹ See Exhibit 8, Memorandum and Order entered 8/14/2025 in *Floribertha Mayo Anicasio,*
Petitioner v. Jerome Kramer, Lincoln County Sheriff, in his official capacity, et al., Case No. 4:-cv-
031580JFB-RCC [CM/ECF Doc. 34 at 1, 3].

1 decision by the immigration judge to a mandatory detention imposed by [DHS], it flouts the express
2 intent of Congress and is ultra vires to the statute.’ *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1079
3 (N.D. Cal. 2004).’); *Romero v. Hyde, et al.*, U.S. District Court for the District of Massachusetts
4 Case No. 1:25-cv-11631-BEM¹⁰ (Order entered 8/19/2025 granting petition for writ of habeas
5 corpus “[O]nce an alien enters the country, the legal circumstance changes, for the Due Process
6 Clause applies to all ‘persons’ within the United States, including aliens, whether their presence
7 here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
8 It is therefore reasonable to read these statutes “against [that] backdrop.” *See Hewitt v. United*
9 *States*, 605 U.S. —, 145 S. Ct. 2165, 2173 (2025).”).

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11 The Bureau of Immigration Appeals, perhaps recognizing the increasing swell of adverse
12 decisions, recently issued Interim Decision #4125, affirming an IJ’s determination that he did not
13 have authority to issue a bond because noncitizens present in the United States without admission
14 are “applicants for admission” as defined under section § 1225(b)(2)(A), and must therefore be
15 detained for the duration of their removal proceedings. *Matter of Yajure Hurtado*, 29 I&N Dec.
16 216 (B.I.A. 2025).¹¹

17
18 However, the Supreme Court decision last year in *Loper Bright Enterprises v. Raimondo*,
19 603 U.S. 369 (2024) expressly overruled *Chevron*¹² deference to agency interpretations of statutes.
20 Federal courts are now restored to their traditional Judicial Branch role of “us[ing] every tool at
21 [their] disposal to determine the best reading of the statute.” *See Loper Bright*, 603 U.S. at 412-13.
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26 ¹⁰ *See* Exhibit 9, Order entered 8/19/2025 in *Romero v. Hyde, et al.*, Case No. 1:25-cv-11631-BEM
[CM/ECF Doc. 32], U.S. District Court for the District of Massachusetts.

27 ¹¹ *See*, Exhibit 10, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

28 ¹² *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

1 Thus, this Court is the proper forum to determine whether Petitioner is entitled to release
2 upon a bond redetermination under § 1226 or is an “applicant for admission” under § 1225. The
3 petition for writ of habeas corpus should be granted.

4 **JURISDICTION & CUSTODY**

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6 1. Petitioner Jorge Abrego Zarate is in the physical custody of Respondents and
7 Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland
8 Security.

9 2. Petitioner is currently detained at the Florence Correctional Center in Florence,
10 Arizona and is under the direct control of Respondents and their agents.

11 3. This action arises under the Constitution of the United States and 8 U.S.C. §
12 1101 et seq.

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14 4. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United
15 States Constitution, 28 U.S.C. § 1331, and the common law. This Court may grant relief pursuant
16 to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs
17 Act, 28 U.S.C. § 1651.

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19 5. Congress has preserved judicial review of challenges to immigration detention.
20 *See Jennings v. Rodriguez*, 583 U.S. 122, 130-131 (2018) (holding that 8 U.S.C. §§ 1226(e) and
21 1252(b)(9) do not bar review of challenges to prolonged immigration detention).

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

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1 14. Respondent ICE is a federal law enforcement agency within DHS. Respondent
2 ICE is responsible for the enforcement of immigration laws, including the detention and removal
3 of immigrants. Respondent ICE is a legal custodian of Petitioner.

4 15. Respondent John Cantu is Field Office Director for ICE's Enforcement and
5 Removal Operation's ("ERO") Phoenix, Arizona Field Office. Respondent Cantu is a legal
6 custodian of Petitioner. Respondent Cantu is sued in his official capacity.

7 16. Respondent Luis Rosa Jr. is the Warden of the Central Arizona Florence
8 Correctional Complex. Respondent Rosa is a legal custodian of Petitioner. Respondent Rosa is
9 sued in his official capacity.

10 17. Respondent EOIR is a federal agency within the U.S. Department of Justice.
11 Respondent EOIR is responsible for the administration of immigration courts, and acceptance of
12 forms and petitions related to adjudication of immigration claims, as well as motions for bond.
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15 **STATEMENT OF FACTS**

16 18. Petitioner Jorge Abrego Zarate was born on  in Puebla, Mexico
17 and he crossed into the United States on May 18, 2003.¹³

18 19. Respondents detained Petitioner at the Florence Detention Center in Arizona
19 where he remains in custody.¹⁴

20 20. On August 19, 2025, a custody redetermination hearing was held in Florence,
21 Arizona, where Petitioner submitted evidence, including: (A) a copy of his Mexican Passport(B)
22 his USCIS Form I-589 Application for Asylum; (C) a letter of support from his US citizen cousin,
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27 ¹³ See, Exhibit 2, Petitioner's Request for Bond and EOIR-28.

28 ¹⁴ See, Exhibit 3, 9-22-2025 ICE Locator Page for Jorge Abrego Zarate.

1 Juan Avalos, with whom he has lived since 2012; and (D) a letter of support from his employer,
2 Container Group Employment Letter, whom he has worked for since 2014.¹⁵

3 21. On August 19, 2025, a written order entered denying a bond, stating that:

4 Respondent did not establish that the Immigration Court or an
5 Immigration Judge would have jurisdiction to redetermine the conditions
6 of his custody or release him on bond or parole under INA 236(a), and
7 that he is not an "applicant for admission" under INA 235(a)(1) and/or
8 that he is not subject to mandatory detention under INA 235(b)(1) or
9 235(b)(2).

10 This IJ finds that the applicable statutes state that all "applicants for
11 admission" are subject to DHS detention under INA 235 (whether an
12 "arriving alien" or an "alien present ... or who arrives"), and it appears
13 that only noncitizen aliens who were admitted at a POE/POA or those
14 who were admitted into some legal status after arrival, and then or later
15 arrested, would be subject to the custody redetermination and bond
16 provisions of INA 236(a), and that all other non-admitted persons, non-
17 "arrested aliens," and persons who entered illegally or not paroled after
18 inspection would be subject to detention under INA 235, as "applicants
19 for admission," under INA 235(b) (1)(B)(iii)(IV) and/or 235(b)(2)(A).

20 Exhibit 1, Order Denying Bond.¹⁶

21 **LEGAL FRAMEWORK**

22 22. "It is well established that the Fifth Amendment entitles [noncitizens] to due
23 process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting
24 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government
25 custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due
26 Process Clause protects in immigration cases. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

27 ¹⁵ See, Exhibit 7, Petitioner's Bond Hearing Exhibits.

28 ¹⁶ See, Exhibit 1, Order Denying Bond.

1 23. Due process thus requires “adequate procedural protections” to ensure that the
2 government’s asserted justification for a noncitizen’s physical confinement “outweighs the
3 individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S.
4 at 690 (internal quotation marks omitted).

5 24. In the immigration context, the Supreme Court has recognized only two valid
6 purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight.
7 *Id.*; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other
8 justification.
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10 25. Congress has granted the Attorney General discretion to decide whether to
11 detain or release certain noncitizens pending a removal decision. *See* 8 U.S.C. § 1226(a). The
12 Attorney General has delegated that authority to IJs. 8 C.F.R. §§ 1003.19, 1236.1.
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14 26. On 7/8/2025 DHS adopted a new position on mandatory detention for
15 noncitizens who have been residing in the United States,¹⁷ mandating that all noncitizens be treated
16 as “applicants for admission” and detained, despite several federal courts having rejected this exact
17 conclusion. For example, on July 28, 2025, the U.S. District Court for the Central District of
18 California, Eastern Division, issued a Temporary Restraining Order (TRO) enjoining DHS from
19 categorically denying initial § 236(a) bond hearings to respondents in § 240 proceedings under
20 DHS’s July 8, 2025 7/8/25 DHS Guidance Notice. *See, Lazaro Maldonado Bautista et al. v.*
21 *Santacruz, Jr., et al.*¹⁸
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24 ¹⁷ *See, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*
25 (last visited September 8, 2025).

26 ¹⁸ *See Exhibit 10, Temporary Restraining Order entered 7/28/2025 in Lazaro Maldonado Bautista et*
27 *al. v. Santacruz, Jr., on behalf of themselves and others similarly situated, et al., Plaintiffs-*
28 *Petitioners, v. Kristi Noem, Secretary, Department of Homeland Security, et al., Defendants-*
Respondents, U.S. District Court for the Central District of California, Eastern Division, Case No.
5:25-cv-01873-SSS-BFM.

1 27. On August 29, 2025, the U.S. District Court for the District of Minnesota, issued
2 an Order for Injunctive Relief against four of the same Respondents named in this case, enjoining
3 them from denying that petitioner – who had been present in the U.S. for ten years - a bond hearing.
4 That Court found that he “more clearly falls under a plain text reading of section 1226(a). As other
5 courts have observed, “[t]aken together these two statutes principally govern the detention of non-
6 citizens pending removal proceedings—section 1225 governs detention of noncitizens ‘seeking
7 admission into the country,’ whereas section 1226 governs detention of non-citizens ‘already in the
8 country.’” *Francisco T. v. Bondi, et al.*, Case No. 0:25-cv-03219-JMB-DTS [CM/ECF Doc. 17]
9 Filed 08/29/25, Page 7-8.¹⁹

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11 28. On August 14, 2025, the U.S. District Court for the District of Nebraska issued
12 a Memorandum and Order granting the Petitioner’s immediate release and her writ of habeas corpus
13 on the ground “the government is unlawfully detaining Petitioner in violation of her Due Process
14 rights by invoking a unliteral automatic stay of the bond a duly appointed Immigration Judge
15 determined was appropriate.”²⁰ *See, Floribertha Mayo Anicasio, Petitioner v. Jerome Kramer,*
16 *Lincoln County Sheriff, in his official capacity, et al.*, Case No. 4:-cv-031580JFB-RCC [CM/ECF
17 Doc. 34 at 1, 3].

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19 29. Also, in the Tacoma, Washington, immigration court, IJs previously stopped
20 providing bond hearings for persons who entered the United States without inspection and who
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25 ¹⁹ *See* Exhibit 11, Restraining Order entered 8/29/2025 in *Francisco T. v. Bondi, et al.*, Case No. 0:25-cv-03219-JMB-DTS, [CM/ECF Doc. 17], U.S. District Court for the District of Minnesota.

26 ²⁰ *See* Exhibit 12, Memorandum and Order entered 8/14/2025 in *Floribertha Mayo Anicasio,*
27 *Petitioner v. Jerome Kramer, Lincoln County Sheriff, in his official capacity, et al.*, Case No. 4:-cv-
28 031580JFB-RCC [CM/ECF Doc. 34 at 1, 3].

1 have since resided here, reasoning such people are subject to mandatory detention under §
2 1225(b)(2)(A). There, in granting preliminary injunctive relief, the U.S. District Court for the
3 Western District of Washington found that such a reading of the INA is likely unlawful and that §
4 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United
5 States. *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, --- F. Supp. 3d ---, 2025 WL
6 1193850 (W.D. Wash. Apr. 24, 2025).²¹

8 30. In *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425, at *18-19 (E.D.
9 Mich. Sept. 9, 2025), the Court granted a petition for writ of habeas corpus, rejecting the holding
10 of *In the Matter of Yajure Hurtado*, 29 I&N Dec. 216 (2025), stating that²²

11 31. Indeed, the American Civil Liberties Union of Massachusetts filed a class-action
12 lawsuit in federal court on 9/22/2025 to challenge the widespread denial of bond hearings to persons
13 recently detained by U.S. Immigration and Customs Enforcement (ICE). That complaint²³ argues
14 that DHS is now systematically reclassifying noncitizens from the statutory authority of § 1226,
15 which usually allows for the opportunity to request bond during removal proceedings, to the no-
16 bond detention provisions of § 1225, which doesn't apply to people already present in the interior
17 of the United States.

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23 ²¹ See Exhibit 13, Order entered 8/19/2025 in *Romero v. Hyde, et al.*, Case No. 1:25-cv-11631-BEM
[CM/ECF Doc. 32], U.S. District Court for the District of Massachusetts.

24 ²² Filed herewith as Exhibit 11, Order Granting Petition for Writ of Habeas Corpus, *Pizarro Reyes v.*
25 *Raycraft*, No. 25-12546, (E.D. Mich. Sept. 9, 2025).

26 ²³ Filed herewith as Exhibit 12, First Amended Petition For Writ Of Habeas Corpus And Class
27 Action Complaint, *Jose Arnulfo Guerrero Orellana, on behalf of himself and others similarly*
28 *situated, v. Antone Moniz, Superintendent, Plymouth County Correctional Facility; et. al.*, United
States District Court for the District of Massachusetts Case No. 25-12664-PBS [Document 10 Filed
09/22/25].

1 32. DHS’s interpretation defies the INA. As the *Rodriguez Vazquez* court and other
2 courts explained, the plain text of the statutory provisions demonstrates that § 1226(a), not §
3 1225(b), applies to persons who have resided in the United States for more than 2 years – like
4 Petitioner.

5 33. The text of § 1226 also explicitly applies to people charged as being
6 inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Just
7 this year, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens
8 who entered without inspection from § 1226(a)’s default bond provision. Subparagraph (E)’s
9 reference to persons inadmissible under § 1182(6)(A), i.e., persons inadmissible for entering
10 without inspection, makes clear that, by default, such people are afforded a bond hearing under
11 subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates “specific
12 exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute
13 generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (*citing Shady Grove Orthopedic
14 Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Section 1226 therefore leaves no doubt
15 that it applies to people who face charges of being inadmissible to the United States, including
16 those who are present without admission or parole.

17 34. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
18 very recently entered the United States. The statute’s entire framework is premised on inspections
19 at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A);
20 *see also Diaz Martinez*, 2025 WL 2084238, at *8 (“[O]ur immigration laws have long made a
21 distinction between those [noncitizens] who have come to our shores seeking admission . . . and
22 those who are within the United States after an entry, irrespective of its legality.” (*quoting Leng
23 May Ma v. Barber*, 357 U.S. 185, 187 (1958))). Indeed, the Supreme Court has explained that this
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1 mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the
2 Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.”
3 *Jennings*, 583 at 287.

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

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8 36. Indeed, in 1997, after Congress amended the INA through the Illegal
9 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and the then-
10 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.
11 Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the
12 agencies explained that:
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14 Despite being applicants for admission, [noncitizens] who are present
15 without having been admitted or paroled (formerly referred to as
16 [noncitizens] who entered without inspection) *will be eligible* for bond
 and bond redetermination.

17 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had
18 entered without inspection *were* eligible for consideration for bond and bond hearings before IJs
19 under 8 U.S.C. § 1226 and its implementing regulations.

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21 37. At his bond hearing, Petitioner emphasized his strong ties to the community and
22 submitted multiple letters of support.²⁴

23 38. DHS did not argue that Petitioner is a flight risk nor a danger to the community;
24 rather DHS argued that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A),
25 which governs the inspection process for noncitizen “applicants for admission”—new arrivals to
26 the country pursuant.

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28 ²⁴ See, Exhibit 7, Petitioner’s Bond Hearing Exhibits.

1 39. The Immigration Judge denied bond on the grounds that “Respondent did not
2 establish that the Immigration Court or an Immigration Judge would have jurisdiction to
3 redetermine the conditions of his custody or release him on bond or parole under INA 236(a), and
4 that he is not an "applicant for admission" under INA 235(a)(1) and/or that he is not subject to
5 mandatory detention under INA 235(b)(1) or 235(b)(2).”²⁵
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7 40. Petitioner has determined that an appeal to BIA would be futile. *See, Matter of*
8 *Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).
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10 **CLAIMS FOR RELIEF**
11 **FIRST CLAIM FOR RELIEF**
12 **Violation of Fifth Amendment – Substantive Due Process**

13 41. Petitioner realleges and incorporates herein the allegations contained in the
14 preceding paragraphs of the petition as if fully set forth herein.

15 42. The Due Process Clause of the Fifth Amendment forbids the government from
16 depriving any “person” of liberty “without due process of law,” including noncitizens. U.S. Const.
17 amend. V.
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19 43. Substantive due process asks whether a person’s life, liberty, or property is
20 deprived without sufficient purpose. There is no question that Petitioner has been deprived of his
21 liberty in this case.

22 44. The government’s continued detention of Petitioner is not supported by any
23 special interest or compelling justification that outweighs his liberty interest.
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27 ²⁵ *See*, Exhibit 1, Order Denying Bond.
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1 45. Petitioner's ongoing detention when so many federal courts have held that he is
2 entitled to be considered for release upon posting an appropriate bond under § 1225 constitutes
3 prolonged detention and violates his substantive due process rights.

4 **SECOND CLAIM FOR RELIEF**
5 **Violation of Fifth Amendment Right - Procedural Due Process**

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7 46. Petitioner realleges and incorporates herein the allegations contained in the
8 preceding paragraphs of the petition as if fully set forth herein.

9 47. The Due Process Clause of the Fifth Amendment guarantees Petitioner the right
10 to procedural due process in seeking a bond redetermination and the government may not
11 unreasonably restrict this right.

12 48. The government's knowing misclassification of Petitioner as an "applicant for
13 admission" under § 1225 in order to justify its argument for mandatory detention is not supported
14 by any special interest or compelling justification that outweighs Petitioner's liberty interest.

15 49. The continued detention of Petitioner is not supported by any special interest or
16 compelling justification that outweighs his liberty interest.
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18 **PRAYER FOR RELIEF**

19
20 **WHEREFORE** Petitioner Alejandro Garcia-Rosales respectfully requests that the
21 Court grant the following relief:

- 22 1. Assume jurisdiction over this matter;
23 2. Order the immediate release of Petitioner pending these proceedings, pursuant to the
24 Court's inherent powers;
25 3. If Petitioner is not immediately released, order Respondents not to transfer Petitioner
26 out of this District during the pendency of these proceedings, to preserve jurisdiction;
27 4. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to
28 immediately release Petitioner from custody or, in the alternative, order Respondents to

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show cause why this Petition should not be granted within three days;

- 5. Award Petitioner reasonable attorneys' fees and costs; and
- 6. Grant any further relief the Court deems just and proper.

DATED this 29th Day of September, 2025.

By: */s/ Nera Shefer*
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Jorge Abrego Zarate, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 29th day of September, 2025.

By: */s/ Nera Shefer*
Nera Shefer, Esq.

LIST OF EXHIBITS

Exhibit 1	Order Denyng Bond.
Exhibit 2	Petitioner's Request for Bond and EOIR-28
Exhibit 3	9-22-2025 ICE Locator Page for Jorge Abrego Zarate
Exhibit 4	<u>ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission</u> (last visited September 8, 2025).
Exhibit 5	<i>Diaz Martinez v. Hyde</i>, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025)
Exhibit 6	Temporary Restraining Order entered 7/28/2025 in <i>Lazaro Maldonado Bautista et al. v Kristi Noem, Secretary, Department of Homeland Security, et al.</i>, U.S. District Court for the Central District of California, Eastern Division, Case No. 5:25-cv-01873-SSS-BFM.
Exhibit 7	Restraining Order entered 8/29/2025 in <i>Francisco T. v. Bondi, et al.</i>, Case No. 0:25-cv-03219-JMB-DTS, [CM/ECF Doc. 17], U.S. District Court for the District of Minnesota.
Exhibit 8	Memorandum and Order entered 8/14/2025 in <i>Floribertha Mayo Anicasio, Petitioner v. Jerome Kramer, Lincoln County Sheriff, in his official capacity, et al.</i>, Case No. 4:-cv-031580JFB-RCC [CM/ECF Doc. 34 at 1, 3].
Exhibit 9	Order entered 8/19/2025 in <i>Romero v. Hyde, et al.</i>, Case No. 1:25-cv-11631-BEM [CM/ECF Doc. 32], U.S. District Court for the District of Massachusetts.
Exhibit 10	<i>Matter of Yajure Hurtado</i>, 29 I&N Dec. 216 (B.I.A. 2025).
Exhibit 11	Order Granting Petition for Writ of Habeas Corpus, <i>Pizarro Reyes v. Raycraft</i>, No. 25-12546, (E.D. Mich. Sept. 9, 2025).
Exhibit 12	First Amended Petition For Writ Of Habeas Corpus And Class Action Complaint, <i>Jose Arnulfo Guerrero Orellana, on behalf of himself and others similarly situated, v. Antone Moniz, Superintendent, Plymouth County Correctional Facility; et. al.</i>, United States District Court for the District of Massachusetts Case No. 25-12664-PBS [Document 10 Filed 09/22/25]