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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

**WERCLAIN LOPEZ-CRUZ,**  
**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 Werclain Lopez-Cruz in Florence, Arizona, due to an Immigration Judge's misinterpretation of the relevant federal statutes.<sup>1</sup>

<sup>1</sup> See, Exhibit 1, Order Granting Bond, page 1.

1 Petitioner has been living in the United States for 12 years, is married and has a son who was  
2 born in Tuscon, Arizona.<sup>2</sup> Respondents admit he has no criminal history, no gang affiliations  
3 and no major health issues.<sup>3</sup> Nonetheless, they argued he was subject to “mandatory detention”  
4 under 8 U.S.C. § 1225 (b)(2)(A) by virtue of being an “applicant for admission” under § 1225  
5 (a)(1), pursuant to a 7/8/2025 change in DHS policy.<sup>4</sup> In essence, Respondents now argue that  
6 *any* noncitizen not previously admitted to the United States is subject to mandatory detention,  
7 without the possibility of a bond hearing.  
8

9 But such a reading ignores the plain statutory language of both § 1225 and § 1226,  
10 violates rules of statutory construction, and is contrary to a number of federal court rulings that  
11 have rejected this exact conclusion. *See, Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL  
12 2084238 (D. Mass. July 24, 2025)<sup>5</sup> (holding that statutory construction and existing federal  
13 caselaw mandate the conclusion that an “applicant for admission” is different than a noncitizen  
14 already residing in the country); *Lazaro Maldonado Bautista et al. v. Kristi Noem, Secretary,*  
15 *Department of Homeland Security, et al.*, U.S. District Court for the Central District of California,  
16 Case No. 5:25-cv-01873-SSS-BFM<sup>6</sup> (Temporary Restraining Order entered 7/28/2025 because  
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19  
20 <sup>2</sup> *See*, Exhibit 2, Petitioner’s Bond Hearing Exhibits.

21 <sup>3</sup> *See*, Exhibit 3, Respondent’s Bond Hearing Exhibits.

22 <sup>4</sup> *See*, Exhibit 4, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for  
23 Admission (last visited September 8, 2025).

24 <sup>5</sup> *See*, Exhibit 5, *Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24,  
25 2025) (holding that statutory construction and existing federal caselaw mandate that an “applicant for  
admission” is different than a noncitizen already in the country).

26 <sup>6</sup> *See* Exhibit 6, Temporary Restraining Order entered 7/28/2025 in *Lazaro Maldonado Bautista et al.*  
27 *v. Santacruz, Jr., on behalf of themselves and others similarly situated, et al.*, Plaintiffs-Petitioners, *v.*  
28 *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 “Respondents fail to articulate any valid justification, legal or otherwise, for the application of §  
2 1225 to Petitioners as ‘applicants for admission’”); *Francisco T. v. Bondi, et al.*, U.S. District  
3 Court for the District of Minnesota Case No. 0:25-cv-03219-JMB-DTS, [CM/ECF Doc. 17],<sup>7</sup>  
4 (Preliminary Injunction entered 8/29/2025 because “[n]oncitizens who have been residing in the  
5 United States but who entered without inspection have not, historically, been considered to still  
6 be “arriving” under section 1225(b)”); *Floribertha Mayo Anicasio, Petitioner v. Jerome Kramer,*  
7 *Lincoln County Sheriff, in his official capacity, et al.*, Case No. 4:-cv-031580JFB-RCC [CM/ECF  
8 Doc. 34 at 1, 3]<sup>8</sup> (August 14, 2025 Memorandum and Order granting the Petitioner’s immediate  
9 release and her writ of habeas corpus on the ground “permitting DHS to unilaterally extend the  
10 detention of an individual, in contravention of the findings of an agent (the IJ) properly delegated  
11 the authority to make such a determination, 8 C.F.R § 1003.19(i)(2) exceeds the statutory  
12 authority Congress gave to the Attorney General. ‘Because this back-ended approach effectively  
13 transforms a discretionary decision by the immigration judge to a mandatory detention imposed  
14 by [DHS], it flouts the express intent of Congress and is ultra vires to the statute.’ *Zavala v.*  
15 *Ridge*, 310 F. Supp. 2d 1071, 1079 (N.D. Cal. 2004.)”); *Romero v. Hyde, et al.*, U.S. District  
16 Court for the District of Massachusetts Case No. 1:25-cv-11631-BEM<sup>9</sup> (Order entered 8/19/2025  
17 granting petition for writ of habeas corpus “[O]nce an alien enters the country, the legal  
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23 <sup>7</sup> See Exhibit 7, Restraining Order entered 8/29/2025 in *Francisco T. v. Bondi, et al.*, Case No. 0:25-  
24 cv-03219-JMB-DTS, [CM/ECF Doc. 17], U.S. District Court for the District of Minnesota.

25 <sup>8</sup> See Exhibit 8, Memorandum and Order entered 8/14/2025 in *Floribertha Mayo Anicasio,*  
26 *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].

27 <sup>9</sup> See Exhibit 9, Order entered 8/19/2025 in *Romero v. Hyde, et al.*, Case No. 1:25-cv-11631-BEM  
28 [CM/ECF Doc. 32], U.S. District Court for the District of Massachusetts.

1 circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United  
2 States, including aliens, whether their presence here is lawful, unlawful, temporary, or  
3 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It is therefore reasonable to read these  
4 statutes “against [that] backdrop.” *See Hewitt v. United States*, 605 U.S. —, 145 S. Ct. 2165, 2173  
5 (2025).”  
6

7 The Bureau of Immigration Appeals, perhaps recognizing the increasing swell of adverse  
8 decisions, recently issued Interim Decision #4125, affirming an IJ’s determination that he did not  
9 have authority to issue a bond because noncitizens present in the United States without admission  
10 are “applicants for admission” as defined under section § 1225(b)(2)(A), and must therefore be  
11 detained for the duration of their removal proceedings. *Matter of Yajure Hurtado*, 29 I&N Dec.  
12 216 (B.I.A. 2025).<sup>10</sup>

14 However, the Supreme Court decision last year in *Loper Bright Enterprises v. Raimondo*,  
15 603 U.S. 369 (2024) made clear that federal courts must independently interpret statutes and no  
16 longer defer to an Executive Branch agency's legal interpretations. *See Loper Bright*, 603 U.S. at  
17 412-13. In expressly overruling *Chevron*<sup>11</sup> deference to agency interpretations of statutes, federal  
18 judges are restored to their Judicial Branch role of "us[ing] every tool at [their] disposal to  
19 determine the best reading of the statute." *Loper Bright*, 603 U.S. at 400.

21 This Court is in the best position to determine that Mr. Garcia-Rosales was properly  
22 granted release on bond and that DHS improperly DHS invoked the automatic stay under 8  
23 C.F.R. § 1003.19(i)(2).<sup>12</sup> The petition for writ of habeas corpus should be granted.

26 \_\_\_\_\_  
27 <sup>10</sup> *See*, Exhibit 10, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

28 <sup>11</sup> *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

JURISDICTION & CUSTODY

1  
2 1. Petitioner Werclain Lopez-Cruz is in the physical custody of Respondents and  
3 Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland  
4 Security.

5  
6 2. Petitioner is currently detained at the Florence Correctional Center in Florence,  
7 Arizona and is under the direct control of Respondents and their agents.

8 3. This action arises under the Constitution of the United States and 8 U.S.C. §  
9 1101 et seq.

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

14  
15 5. Congress has preserved judicial review of challenges to immigration detention.  
16 See *Jennings v. Rodriguez*, 583 U.S. 122, 130-131 (2018) (holding that 8 U.S.C. §§ 1226(e) and  
17 1252(b)(9) do not bar review of challenges to prolonged immigration detention).

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

23  
24 7. The Court has inherent power to release the petitioner pending review of his  
25 petition. See *Martin v. Solem*, 801 F.2d 324, 329 (8th Cir. 1986).

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**VENUE**

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2 8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484,  
3 493- 500 (1973), venue lies in this Court, the federal judicial district in which Petitioner is  
4 currently is in custody.

5 9. Venue is also properly in this Court pursuant to 18 U.S.C. § 1391(e) because  
6 Respondents are employees, officers, and agencies of the United States.  
7

**PARTIES**

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9 10. Petitioner was born on  in Huixtla, Chiapas, Mexico and he is  
10 currently detained by ICE at the Florence Correctional Center in Florence, Arizona.

11 11. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland  
12 Security (“DHS”). In this capacity, Respondent Noem is a legal custodian of Petitioner.  
13 Respondent Noem is sued in her official capacity.  
14

15 12. Respondent DHS is a federal executive agency responsible for, among other  
16 things, enforcing federal immigration laws and overseeing lawful immigration to the United  
17 States. Respondent DHS is a legal custodian of Petitioner.  
18

19 13. Respondent Todd M. Lyons is Acting Director and Senior Official Performing  
20 the Duties of the Director of U.S. Immigration and Customs Enforcement (“ICE”). Respondent  
21 Lyons is responsible for ICE’s policies, practices, and procedures, including those relating to the  
22 detention of immigrants during their removal procedures. Respondent Lyons is a legal custodian  
23 of Petitioner. Respondent Lyons is sued in his official capacity.  
24

25 14. Respondent ICE is a federal law enforcement agency within DHS. Respondent  
26 ICE is responsible for the enforcement of immigration laws, including the detention and removal  
27 of immigrants. Respondent ICE is a legal custodian of Petitioner.  
28

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

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

7 17. Respondent EOIR is a federal agency within the U.S. Department of Justice.  
8 Respondent EOIR is responsible for the administration of immigration courts, and acceptance of  
9 forms and petitions related to adjudication of immigration claims, as well as motions for bond.  
10

11 **STATEMENT OF FACTS**

12 18. Petitioner was born on  in Huixtla, Chiapas, Mexico and he is  
13 currently detained by ICE at the Florence Correctional Center in Florence, Arizona.<sup>13</sup>

14 19. Petitioner has no no criminal record, no gang affiliations, and no health  
15 issues.<sup>14</sup>

16 20. Respondents detained Petitioner at the Florence Detention Center in Arizona  
17 after his arrest where he remains in custody.<sup>15</sup>

18 21. On August 26, 2025, a custody redetermination hearing was held in Florence,  
19 Arizona, where Petitioner submitted evidence, including a copy of his Mexican Passport,  
20 Marriage Certificate, his Son's (Werclain Lopez) American Birth Certificate, Son's Medical  
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26 <sup>13</sup> See, Exhibit 7, Petitioner's Bond Hearing Exhibits.

27 <sup>14</sup> See, Exhibit 8, Respondent's Bond Hearing Exhibits.

28 <sup>15</sup> See, Exhibit 8, Respondent's Bond Hearing Exhibits.

1 Certificate, Social Security Card and Work Permit Application, a personal statement, and 8 good  
2 character letters from friends. 16

3 22. DHS submitted its evidence, which included a Form I-213, Record of  
4 Inadmissible/Deportable Alien, which contained the respondent's prior immigration history, and  
5 an Order of the Immigration Judge with Respect to Custody, dated Sept. 10, 2020, which released  
6 Petitioner from custody upon the posting of a \$30,000 bond.<sup>17</sup>

8 23. On August 26, 2025 the IJ issued a written order denying release upon posting  
9 a bond, stating 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  
15 INA 235(b)(1) or 235(b)(2).<sup>18</sup>

16 24. Petitioner filed a Petition for Review of a Decision of the Board of  
17 Immigration Appeals at the United States Court of Appeals for the Ninth Circuit on his Response  
18 Brief on Appeal at the BIA on September 5, 2025.<sup>19</sup>

19 25. Petitioner filed an Emergency Motion for Stay of Removal at the United States  
20 Court of Appeals for the Ninth Circuit on September 5, 2025.<sup>20</sup>

21  
22 <sup>16</sup> See, Exhibit 7, Petitioner's Bond Hearing Exhibits.

23 <sup>17</sup> See, Exhibit 8, Respondent's Bond Hearing Exhibits.

24 <sup>18</sup> See, Exhibit 1, Order Granting Bond, page 1.

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26 <sup>19</sup> See, Exhibit 11, Petitioner's Petition for Review of a Decision of the Board of Immigration  
27 Appeals, 9<sup>th</sup> Circuit Case No. Case No. 25-5628.

28 <sup>20</sup> See, Exhibit 12, Petitioner's Emergency Motion for Stay of Removal, 9<sup>th</sup> Circuit Case No. Case  
No. 25-5628.



1           32.           On 7/8/2025 DHS adopted this new position on mandatory detention for  
2 noncitizens who have been residing in the United States,<sup>22</sup> despite several federal courts having  
3 rejected this exact conclusion. For example, on July 28, 2025, the U.S. District Court for the  
4 Central District of California, Eastern Division, issued a Temporary Restraining Order (TRO)  
5 enjoining DHS from categorically denying initial § 236(a) bond hearings to respondents in § 240  
6 proceedings under DHS's July 8, 2025 7/8/25 DHS Guidance Notice. *See, Lazaro Maldonado*  
7 *Bautista et al. v. Santacruz, Jr., et al.*<sup>23</sup>

9           33.           On August 29, 2025, the U.S. District Court for the District of Minnesota,  
10 issued an Order for Injunctive Relief against four of the same Respondents named in this case,  
11 enjoining them from denying that petitioner – who had been present in the U.S. for ten years - a  
12 bond hearing. That Court found that he “more clearly falls under a plain text reading of section  
13 1226(a). As other courts have observed, “[t]aken together these two statutes principally govern  
14 the detention of non-citizens pending removal proceedings—section 1225 governs detention of  
15 noncitizens ‘seeking admission into the country,’ whereas section 1226 governs detention of non-  
16 citizens ‘already in the country.’” *Francisco T. v. Bondi, et al.*, Case No. 0:25-cv-03219-JMB-  
17 DTS [CM/ECF Doc. 17] Filed 08/29/25, Page 7-8.<sup>24</sup>

21  
22 <sup>22</sup> *See, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*  
23 (last visited September 8, 2025).

24 <sup>23</sup> *See* Exhibit 10, Temporary Restraining Order entered 7/28/2025 in *Lazaro Maldonado Bautista et*  
25 *al. v. Santacruz, Jr., on behalf of themselves and others similarly situated, et al.*, Plaintiffs-  
26 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.

27 <sup>24</sup> *See* Exhibit 11, Restraining Order entered 8/29/2025 in *Francisco T. v. Bondi, et al.*, Case No.  
28 0:25-cv-03219-JMB-DTS, [CM/ECF Doc. 17], U.S. District Court for the District of Minnesota.

1           34.           On August 14, 2025, the U.S. District Court for the District of Nebraska issued  
2 a Memorandum and Order granting the Petitioner’s immediate release and her writ of habeas  
3 corpus on the ground “the government is unlawfully detaining Petitioner in violation of her Due  
4 Process rights by invoking a unliteral automatic stay of the bond a duly appointed Immigration  
5 Judge determined was appropriate.”<sup>25</sup> See, *Floribertha Mayo Anicasio, Petitioner v. Jerome*  
6 *Kramer, Lincoln County Sheriff, in his official capacity, et al.*, Case No. 4:-cv-031580JFB-RCC  
7 [CM/ECF Doc. 34 at 1, 3].  
8

9           35.           Also, in the Tacoma, Washington, immigration court, IJs previously stopped  
10 providing bond hearings for persons who entered the United States without inspection and who  
11 have since resided here, reasoning such people are subject to mandatory detention under §  
12 1225(b)(2)(A). There, in granting preliminary injunctive relief, the U.S. District Court for the  
13 Western District of Washington found that such a reading of the INA is likely unlawful and that §  
14 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United  
15 States. *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, --- F. Supp. 3d ---, 2025 WL  
16 1193850 (W.D. Wash. Apr. 24, 2025).<sup>26</sup>  
17  
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19           36.           DHS’s interpretation defies the INA. As the *Rodriguez Vazquez* court and  
20 other courts explained, the plain text of the statutory provisions demonstrates that § 1226(a), not §  
21 1225(b), applies to persons who have resided in the United States for more than 2 years – like  
22 Petitioner.  
23

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25 <sup>25</sup> See Exhibit 12, Memorandum and Order entered 8/14/2025 in *Floribertha Mayo Anicasio,*  
26 *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].

27 <sup>26</sup> See Exhibit 13, Order entered 8/19/2025 in *Romero v. Hyde, et al.*, Case No. 1:25-cv-11631-BEM  
28 [CM/ECF Doc. 32], U.S. District Court for the District of Massachusetts.

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

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

1           39.           Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply  
2 to people like Petitioner, who have already entered and were residing in the United States at the  
3 time they were apprehended. Because Petitioner has no criminal record, he was arrested and  
4 detained under Section 1226(a).

5           40.           Indeed, in 1997, after Congress amended the INA through the Illegal  
6 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and the then-  
7 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.  
8 Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the  
9 agencies explained that:  
10

11                                 Despite being applicants for admission, [noncitizens] who are present  
12 without having been admitted or paroled (formerly referred to as  
13 [noncitizens] who entered without inspection) *will be eligible* for bond  
14 and bond redetermination.

15                                 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had  
16 entered without inspection *were* eligible for consideration for bond and bond hearings before IJs  
17 under 8 U.S.C. § 1226 and its implementing regulations.

18           41.           At his bond hearing, Petitioner emphasized his strong ties to the community  
19 and submitted multiple letters of support from family and friends.<sup>27</sup>

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

25           43.           Petitioner now remains in custody and his petition to the Ninth Circuit Court of  
26 Appeals will take months to resolve. *See*, CM/ECF Docket, showing Scheduling Order setting  
27

28 <sup>27</sup> *See*, Exhibit 7, Petitioner’s Bond Hearing Exhibits.

1 briefing on Petitioner's Petition for Review of a Decision of the Board of Immigration Appeals  
2 through December 24, 2025.<sup>28</sup>

3 44. Meanwhile, Petitioner remains in custody and his conditions of confinement  
4 are indistinguishable from criminal incarceration: He is separated from family, housed in a  
5 facility with criminal defendants, and subject to the Florence Detention Center's detention rules.  
6

7 **CLAIMS FOR RELIEF**  
8 **FIRST CLAIM FOR RELIEF**

9 **Violation of Fifth Amendment – Substantive Due Process**

10 45. Petitioner realleges and incorporates herein the allegations contained in the  
11 preceding paragraphs of the petition as if fully set forth herein.

12 46. The Due Process Clause of the Fifth Amendment forbids the government from  
13 depriving any "person" of liberty "without due process of law," including noncitizens. U.S.  
14 Const. amend. V.

15 47. Substantive due process asks whether a person's life, liberty, or property is  
16 deprived without sufficient purpose. There is no question that Petitioner has been deprived of his  
17 liberty in this case.  
18

19 48. The government's continued detention of Petitioner is not supported by any  
20 special interest or compelling justification that outweighs his liberty interest.  
21

22 49. Petitioner's ongoing detention when so many federal courts have held that he  
23 is entitled to be considered for release upon posting an appropriate bond under § 1225 constitutes  
24 prolonged detention and violates his substantive due process rights.  
25

26  
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28 <sup>28</sup> See, Exhibit 13, CM/ECF Docket Report for Petitioner's Emergency Motion for Stay of Removal,  
9<sup>th</sup> Circuit Case No. 25-5628.

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

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3           50.       Petitioner realleges and incorporates herein the allegations contained in the  
4 preceding paragraphs of the petition as if fully set forth herein.

5           51.       The Due Process Clause of the Fifth Amendment guarantees Petitioner the  
6 right to procedural due process in seeking a bond redetermination and the government may not  
7 unreasonably restrict this right.

8           52.       The government's knowing misclassification of Petitioner as an "applicant for  
9 admission" under § 1225 in order to justify its argument for mandatory detention is not supported  
10 by any special interest or compelling justification that outweighs Petitioner's liberty interest.  
11

12           53.       The continued detention of Petitioner is not supported by any special interest  
13 or compelling justification that outweighs his liberty interest.  
14

**PRAYER FOR RELIEF**

15           **WHEREFORE** Petitioner Alejandro Garcia-Rosales respectfully requests that the  
16 Court grant the following relief:  
17

- 18           1.           Assume jurisdiction over this matter;  
19           2.           Order the immediate release of Petitioner pending these proceedings, pursuant  
20 to the Court's inherent powers;  
21           3.           If Petitioner is not immediately released, order Respondents not to transfer  
22 Petitioner out of this District during the pendency of these proceedings, to preserve  
23 jurisdiction;  
24           4.           Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order  
25 Respondents to immediately release Petitioner from custody or, in the alternative,  
26 order Respondents to show cause why this Petition should not be granted within three  
27 days;  
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- 5. Award Petitioner reasonable attorneys' fees and costs; and
- 6. Grant any further relief the Court deems just and proper.

DATED this 27th Day of September, 2025.

By: */s/ Nera Shefer*  
Nera Shefer, Esq.  
Shefer Law Firm, P.A.  
800 SE 4<sup>th</sup>. Ave #803  
Hallandale Beach, Florida 33009  
Florida Bar# 0814121

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

I represent Petitioner Werclain Lopez-Cruz 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 27th day of September, 2025.

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

## LIST OF EXHIBITS

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3	Exhibit 1	Order Granting Bond.
4	Exhibit 2	Petitioner's Response Brief on Appeal.
5	Exhibit 3	Respondent's Bond Hearing Exhibits
6	Exhibit 4	<u>ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission</u> (last visited September 8, 2025).
7	Exhibit 5	<i>Diaz Martinez v. Hyde</i> , — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025)
8	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.
9	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.
10	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].
11	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.
12	Exhibit 10	<i>Matter of Yajure Hurtado</i> , 29 I&N Dec. 216 (B.I.A. 2025).
13	Exhibit 11	Petitioner's Petition for Review of a Decision of the Board of Immigration Appeals, 9 <sup>th</sup> Circuit Case No. Case No. 25-5628.
14	Exhibit 12	Petitioner's Emergency Motion for Stay of Removal, 9 <sup>th</sup> Circuit Case No. Case No. 25-5628.
15	Exhibit 13	CM/ECF Docket for 9 <sup>th</sup> Circuit Case No. Case No. 25-5628.
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