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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Jose Enrique ARCE-CERVERA,

Petitioner-Plaintiff,

v.

Kristi NOEM, in her Official Capacity, Secretary, U.S. Department of Homeland Security;

Pam BONDI, in her Official Capacity, Attorney General of the United States;

Todd M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Jason KNIGHT, Salt Lake City Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security; and

John MATTOS, Warden, Nevada Southern Detention Center.

Respondents-Defendants.

Agency No.

A 

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Challenge to Unlawful
Incarceration Under Color of
Immigration Detention Statutes;
Request for Declaratory and
Injunctive Relief

INTRODUCTION

2 1. Petitioner Jose Enrique Arce-Cervera ("Mr. Arce-Cervera"), Agency Number [REDACTED]
3 [REDACTED] by and through his undersigned counsel, respectfully submits this petition for a writ of habeas
4 corpus and a complaint for declaratory and injunctive relief to stop the U.S. Department of
5 Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) from
6 unlawfully detaining him in immigration custody while his removal proceedings are pending.

7 2. Petitioner requests his immediate release from custody at the Nevada Southern Detention
8 Center, where ICE is unlawfully detaining him without providing clear and convincing evidence
9 that he poses a flight risk or danger to the community, as required by the Due Process Clause of
10 the Fifth Amendment. Alternatively, he seeks a constitutionally compliant bond hearing at which
11 the government bears the burden of justifying his continued detention.

12 3. By way of background, Mr. Arce-Cervera has been in custody since June 27, 2025. ICE
13 first encountered him while he was held at the Clark County Detention Center (“CCDC”)
14 following an arrest for domestic battery. Subsequently, ICE formally took him into custody and
15 transferred him to the ERO Salt Lake City – Las Vegas Sub Office for processing. He was
16 subsequently housed at the Nevada Southern Detention Center, where he remains today.

17 4. On August 11, 2025, the Domestic Battery charge against Mr. Arce-Cervera was
18 dismissed by the Las Vegas Justice Court, and the case was formally closed. Following that, on
19 September 5, 2025, Mr. Arce-Cervera submitted a request to the Las Vegas Immigration Court
20 for a bond redetermination hearing.

21 5. A bond hearing was conducted on September 15, 2025, during which the Immigration
22 Judge did not determine whether Mr. Arce-Cervera constituted a danger to the community or a
23 flight risk. Instead, the Judge concluded that he lacked jurisdiction to consider Mr. Arce-Cervera's
24 request for bond redetermination in light of the Board of Immigration Appeals' recent decision
25 in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision held that Immigration
26 Judges lack jurisdiction to grant bond or hear bond redetermination requests for individuals who
27 entered the United States without inspection (i.e., "applicants for admission").

28 6. Mr. Arce-Cervera's prolonged detention violates the Due Process Clause of the Fifth

1 Amendment, as DHS has failed to establish, by clear and convincing evidence, that Mr. Arce-
2 Cervera is either a danger to the community or a flight risk. Furthermore, Mr. Arce-Cervera is not
3 subject to mandatory detention and therefore entitled to a bond hearing.

4 7. Mr. Arce-Cervera respectfully seeks immediate release from detention, or in the
5 alternative, a constitutionally adequate bond hearing at which the government bears the burden to
6 justify detention.

7 **CUSTODY**

8 8. Mr. Arce-Cervera is currently in custody of ICE at the Nevada Southern Detention
9 Center in Pahrump, Nevada. Mr. Arce-Cervera is therefore in “custody” of [the DHS] within the
10 meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

11 **JURISDICTION**

12 9. This action arises under the Constitution of the United States and the Immigration and
13 Nationality Act (INA), 8 U.S.C. § 1101 et seq.

14 10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 2241
15 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. §§ 2201 et seq.
16 (Declaratory Judgment Act), the All Writs Act, 28 U.S.C. § 1651, Article I, Section 9, Clause 2
17 of the U.S. Constitution (the Suspension Clause), Article III of the U.S. Constitution, and under
18 the common law.

19 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

25 12. Courts have long recognized the significance of the habeas statute in protecting
26 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
27 important writ known to the constitutional law of England, affording as it does a *swift* and
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1 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,
2 400 (1963) (emphasis added).

3 13. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs
4 courts to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious
5 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations
6 omitted). The Ninth Circuit warned against any action creating the perception “that courts are
7 more concerned with efficient trial management than with the vindication of constitutional
8 rights.” *Id.*

9 **VENUE**

10 14. Venue is proper in this Court under 28 U.S.C. § 1331(e) because the Respondents are
11 officers or employees of the United States acting in their official capacities.

12 15. Mr. Arce-Cervera is currently under the supervision of the ERO Salt Lake City – Las
13 Vegas Sub Office, which falls within the jurisdiction of this District. This action does not involve
14 any real property.

15 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 16. In the context of habeas corpus claims, exhaustion of administrative remedies is a
17 *prudential* requirement rather than a *jurisdictional* one, as it is not explicitly required by statute.
18 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Courts have discretion to waive
19 prudential exhaustion where administrative remedies are inadequate or ineffective, when
20 pursuing them would be futile, when irreparable harm would result, or where the administrative
21 process would be void. *Id.* (citing *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). The
22 burden is on the party seeking waiver of prudential exhaustion to demonstrate that at least one of
23 the *Laing* factors applies. *Aden v. Nielsen*, 2019 WL 5802013, at 2 (W.D. Wash. Nov. 7, 2019).

24 17. In this case, any appeal to the Board is futile in light of *Matter of Yajure Hurtado*, 29
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1 I&N Dec. 216 (BIA 2025)." The Ninth Circuit has made clear that exhaustion is not required
2 where administrative recourse would be futile—such as when the agency's position on the
3 relevant issue is already established and the outcome of the appeal is certain. *El Rescate Legal*
4 *Servs., Inc. v. Exec. Off. of Imm. Rev.*, 959 F.2d 742, 747 (9th Cir. 1992).

5 18. The *Matter of Yajure Hurtado* was issued as a precedential decision by the BIA. Under 8
6 C.F.R. § 1003.1(g)(1), such decisions are binding in all cases involving the same issue(s); see
7 also 8 C.F.R. § 1003.1(d)(1)(i). Because the BIA has already exercised its expertise and reached
8 a conclusive determination in *Yajure Hurtado*, further exhaustion is unnecessary. The decision
9 establishes that individuals found inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—that is, those
10 present in the U.S. without being admitted or paroled—are subject to mandatory detention
11 without bond under 8 U.S.C. § 1225(b)(2) upon BIA review.

12 19. Therefore, Mr. Arce-Cervera respectfully requests that the Court waive the prudential
13 exhaustion requirement on grounds of futility. As established in *Aden*, 2019 WL 5802013, at 2,
14 satisfying just one of the *Laing* factors is sufficient; therefore, analysis of the remaining factors is
15 unnecessary.

16 **PARTIES**

17 20. Mr. Arce-Cervera is a citizen and national of Mexico who entered the United States
18 in April 2008 and has continuously resided in the country since that time. He is a resident of Las
19 Vegas, Nevada, and is currently detained and under the direct custody and control of Respondents
20 and their agents.

21 21. Respondent John MATTOS is the Warden of the Nevada Southern Detention Center,
22 where Petitioner is currently held. He has immediate physical custody of Petitioner pursuant to
23 the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and,
24 as such, serves as one of Petitioner's legal custodians.

22. Respondent Jason KNIGHT is sued in his official capacity as the Acting Director of the Salt Lake City Field Office of U.S. Immigration and Customs Enforcement. Respondent KNIGHT is a legal custodian of Petition and has authority to release him.

23. Respondent Todd M. 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 Mr. Arce-Cervera.

24. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Mr. Arce-Cervera.

25. Respondent Pam BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the authority to interpret immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

STATEMENT OF FACTS

Mr. Arce-Cervera is a 28-year-old native and citizen of Mexico who entered the United States without inspection around April 2008. Since that time, he has continuously resided in the United States and has not departed.

Mr. Arce-Cervera has resided in the United States for approximately seventeen years, during which time he has built deep and lasting ties to his community. The United States is his home. He attended elementary and middle school in the Las Vegas area and later went on to earn his GED on May 15, 2014. Following his education, Mr. Arce-Cervera obtained his real estate license and has since built a stable and successful career in the industry.

1 He is engaged to his U.S. citizen fiancé, Ms. Yarisol Corral, with whom he has shared a
2 committed relationship for two years. The couple is actively making plans for their wedding and
3 marriage.

4 He is a vital support to his fiancé and her family, particularly to his mother-in-law, Mrs.
5 Irma Corral, who is currently battling breast cancer. Additionally, Mr. Arce-Cervera's brother
6 and sister both reside in Las Vegas, Nevada, close to his residence. He maintains close
7 relationships with his siblings, as well as his nephews and nieces, and takes pride in being an
8 involved family member.

9 Currently, Mr. Arce-Cervera lives with his fiancé in Las Vegas, Nevada. They have plans
10 to purchase a home together following their marriage. Since August 2023, they have cohabitated
11 and intend to continue building their life together.

12 On June 27, 2025, the Department of Homeland Security (DHS) initiated removal
13 proceedings against Mr. Arce-Cervera by filing a Notice to Appear (NTA), charging him as
14 removable pursuant to INA § 212(a)(6)(A) for being present in the United States without
15 admission or parole. The NTA stated:

- 16 1. You are not a citizen or national of the United States;
- 17 2. You are a native of Mexico and a citizen of Mexico;
- 18 3. You entered the United States at or near UNKNOWN, on or about unknown date;
- 19 4. You were not then admitted or paroled after inspection by an Immigration Officer.

20 The NTA further charged him as being an alien present in the United States who has not
21 been admitted or paroled.

22 Mr. Arce-Cervera was taken into custody by Immigration and Customs Enforcement
23 (ICE) immediately following the conclusion of his detention related to a criminal matter at the
24 Clark County Detention Center. He was arrested on June 6, 2025, and charged with domestic
25 battery. However, that charge was dismissed by the Las Vegas District Court on August 17, 2025.
26 The arrest arose from a domestic dispute with his fiancé, which both parties describe as a typical
27 marital disagreement rather than a criminal incident. This misunderstanding led to the current
28 removal proceedings.

1 On September 5, 2025, Mr. Arce-Cervera requested a bond redetermination hearing
2 before the Immigration Judge. In support of his request, he submitted substantial evidence
3 demonstrating that he posed neither a danger to the community nor a flight risk, including a letter
4 from his fiancé attesting to his character and community ties. Despite this, the Immigration Judge
5 denied the request on September 15, 2025, concluding that he lacked jurisdiction because Mr.
6 Arce-Cervera was subject to mandatory detention even though he was not stopped at the border,
7 and he has resided in the United States for seventeen years. As a result, the Judge did not consider
8 or evaluate the compelling evidence presented in support of Mr. Arce-Cervera's release.

9 Mr. Arce-Cervera has not efficiently been given the opportunity to prove his eligibility
10 for bond and release.

LEGAL BACKGROUND

12 | Right to Liberty and Due Process

13 The Fifth Amendment of the U.S. Constitution guarantees that “[no] person shall... be
14 deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.
15 Importantly, the Supreme Court has clarified that this protection extends to noncitizens, stating:
16 “Once an alien enters the country, the legal circumstances change, for the Due Process clause
17 applies to all ‘persons’ within the United States. *Zadvydas v. Davis*, 533 U.S. 678, 699–701
18 (2001).

19 Civil immigration detention is meant to serve limited regulatory purposes: ensuring
20 appearance at proceedings and protecting the community. The Supreme Court in *Demore v. Kim*,
21 538 U.S. 510 (2003), emphasized that detention may only last for the “brief period necessary
22 for... removal proceedings” and cannot be punitive.

23 Where detention extends beyond those limited purposes or rests on mere allegations, it
24 violates due process. As the Court stressed in *Zadvydas*: “freedom from imprisonment – from
25 government custody, detention, or other forms of physical restraint – lies at the heart of the liberty
26 that the Clause protects.” 533 U.S. at 690.

27 | Civil Nature of Immigration Detention

1 The Supreme Court has repeatedly held that immigration detention is civil, not punitive. In
2 *Bell v. Wolfish*, 441 U.S. 520, 535 (1979), the Court explained: "If a restriction or condition is not
3 reasonably related to a legitimate governmental objective, it amounts to punishment."

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5 **FIRST CAUSE OF ACTION**

6 **I. Procedural Due Process**

7 Under the Due Process Clause of the Fifth Amendment to the United States Constitution,
8 no person shall be "deprived of life, liberty, or property, without due process of law." U.S. Const.
9 amend. V. That interest is particularly weighty when government detention is at issue. "Freedom
10 from imprisonment—from government custody, detention, or other forms of physical restraint—
11 lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533
12 U.S. 678, 690, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).

13 These due process rights apply to noncitizens residing in the United States. The Supreme
14 Court has firmly established that "the Due Process Clause applies to all 'persons' within the
15 United States, including aliens, whether their presence here is lawful, unlawful, temporary, or
16 permanent." *Zadvydas*, 533 U.S. at 693; *see also Trump v. J.G.G.*, 604 U.S. 670, 673, 145 S. Ct.
17 1003, 221 L. Ed. 2d 529 (2025) ("It is well established that the Fifth Amendment entitles aliens
18 to due process of law in the context of removal proceedings." (citation omitted)). Indeed, once a
19 noncitizen is present in the United States, they have a "weighty" liberty interest in remaining in
20 the United States, as they stand to lose rights to "stay and live and work" in the country and "to
21 rejoin [their] immediate family." *Landon v. Plasencia*, 459 U.S. 21, 34, 103 S. Ct. 321, 74 L. Ed.
22 2d 21 (1982) (citation omitted). This is true "regardless of how someone entered the country:
23 '[O]nce passed through our gates, even illegally,' noncitizens 'may be expelled only after
24 proceedings conforming to traditional standards of fairness encompassed in due process of law.'" *Make the Rd.*, 2025 WL 2494908, at 10 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345
25 U.S. 206, 212, 73 S. Ct. 625, 97 L. Ed. 956 (1953)).

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Mr. Arce-Cervera here argues that the immigration judge erred in concluding that he was mandatorily detained pursuant to 8 U.S.C. § 1225(b)(2)(A). Mr. Arce-Cervera re-alleges and incorporates by reference all preceding paragraphs.

a. **Statutory Framework.**

The two primary statutes at issue here are 8 U.S.C. § 1225 and 8 U.S.C. § 1226. Both statutes generally govern detention of noncitizens pending removal proceedings. Section 1225 focuses on mandatory detention provisions, while Section 1226 focuses on discretionary detentions.

8 U.S.C. § 1225

Section 1225 applies to "applies to 'applicants for admission,' who are, as relevant here, noncitizens 'present in the United States who [have] not been admitted.'" *Gomes v. Hyde*, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at 2 (D. Mass. July 7, 2025) (quoting 8 U.S.C. § 1225(a)(1)). Under this Section, all applicants must be inspected by an immigration officer. 8 U.S.C. § 1225(a)(3). Under subsection (b), certain applicants for admission may be subject to removal proceedings. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108-09, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020). Because Section 1225 is mandatory, a "noncitizen detained under Section 1225(b)(2) may be released only if he is paroled 'for urgent humanitarian reasons or significant public benefit.'" *Gomes*, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at 1 (emphasis added). However, Section 1225(b) only "authorizes the Government to detain certain aliens seeking admission into the country." 8 U.S.C. § 1225(b). (emphasis added).

8 U.S.C. § 1226

While section 1225 "authorizes the Government to detain certain aliens seeking admission into the country," section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018) (emphasis added). Section 1226(a) sets out the "default rule" for noncitizens already present in the country. *Id.* at 288. It provides:

1 On a warrant issued by the Attorney General, an alien may be arrested and
2 detained pending a decision on whether the alien is to be removed from the
3 United States. . . [T]he Attorney General--(1) may continue to detain the arrested
4 alien; and (2) may release the alien on--(A) bond . . . ; or (B) conditional parole . .

5 8 U.S.C. § 1226(a). "Section 1226(a), therefore, establishes a discretionary detention
6 framework." *Lopez Benitez*, 2025 WL 2371588, at 3 (*internal citations omitted*). An immigration
7 officer makes the initial determination to either detain or release the noncitizen, but after that
8 decision has been made, the noncitizen may request a bond hearing before an immigration judge.
9 8 C.F.R. § 1236.1(c)(8), (d)(1). At any such bond hearing, "the burden is on the non-citizen to
10 'establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger
11 to persons or property, is not a threat to the national security, and does not pose a risk of flight.'" *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017) (*citing In re Guerra*, 24 I. & N. Dec.
12 37, 38 (BIA 2006)).

13 Recently, Congress amended 8 U.S.C. § 1226. While Section 1226(a) is a discretionary
14 framework, Congress added two new mandatory detentions to Section 1226 codified in Section
15 1226(c) through the Laken Riley Act. Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025). Added as a
16 two-step process, the Attorney General must detain a noncitizen if (1) they are inadmissible
17 because they are in the United States without being admitted or paroled, obtained documents or
18 admission through misrepresentation or fraud, or lacks valid documentation and (2) "is charged
19 with, is arrested for, is convicted of, admits having committed, or admits committing acts which
20 constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law
21 enforcement officer offense, or any crime that results in death or serious bodily injury to another
22 person." U.S.C. §§ 1226(c)(1)(E)(i)-(ii).

1 "Summarizing the relevant distinctions. . . noncitizens detained under Section 1225(b)(2)
2 must remain in custody for the duration of their removal proceedings, while those detained under
3 Section 1226(a) are entitled to a bond hearing before an [immigration judge] at any time before
4 entry of a final removal order." *Vazquez v. Bostock*, 779 F. Supp.3d 1239, 1247 (W.D. Wash.
5 2025). In other words, Section 1225(b) "supplement[s] § 1226's detention scheme." *Rodriguez*
6 *Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022).

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8 **b. Section 1225(b)(2)(A) Does Not Apply to Mr. Arce-Cervera.**

9 Here, the government contends that Mr. Arce-Cervera is properly detained under Section
10 1225 because he is "seeking admission" into the United States, even though he has been in the
11 United States for the last seventeen years. The immigration judge erroneously concluded that
12 because petitioner is an "applicant for admission." Section 1225(b)(2)(A) applies.

13 The text of Section 1225 reads as, an "applicant for admission" is "an alien present in the
14 United States who has not been admitted or who arrives in the United States." 8 U.S.C. §
15 1225(a)(1). "Admission" and "admitted" are defined as "the lawful entry of the alien into the
16 United States after inspection and authorization by an immigration officer." 8 U.S.C. §
17 1101(a)(13). Section 1226 more broadly states that a noncitizen can be detained on "a warrant
18 issued by the Attorney General." 8 U.S.C. § 1226(a).

19 The question before the Court is whether "an alien present in the United States who has
20 not been admitted" includes someone like Mr. Arce-Cervera, who is not presently seeking
21 admission and has been in the United States for the last seventeen years without inspection or
22 authorization. In other words, present without admittance.

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1 Section 1225 is titled "*Inspection by immigration officers; expedited removal of*
2 *inadmissible arriving aliens; referral for hearing,*" and the inclusion of the term "*arriving*"
3 indicates that the statute applies specifically to noncitizens who are arriving at the border, rather
4 than those already present in the United States. *Pizarro Reyes*, 2025 U.S. Dist. LEXIS 175767,
5 2025 WL 2609425, at 5. This interpretation is supported by the statutory text, which centers on
6 inspection procedures for individuals entering as "crewmen" or "stowaways." 8 U.S.C. §
7 1225(b)(2). These narrow and specific categories of entry suggest that § 1225 applies only to
8 noncitizens at the border or a port of entry who are actively seeking admission to the United
9 States. See *Pizarro Reyes*, 2025 WL 2609425, at 5 (citing *Dubin v. United States*, 599 U.S. 110,
10 118, 143 S. Ct. 1557, 216 L. Ed. 2d 136 (2023)). This analysis supports a more limited
11 interpretation of § 1225. *Id.*

14 Beyond its title, the placement and context of Section 1225 within the broader statutory
15 framework offer further interpretive guidance. Courts are instructed to interpret statutes as a
16 whole, not as isolated provisions. *King v. Burwell*, 576 U.S. 473, 486, 135 S. Ct. 2480, 192 L.
17 Ed. 2d 483 (2015). In this context, the Supreme Court has identified Section 1226 as the "default
18 rule" governing the detention of noncitizens who are already physically present in the United
19 States. *Jennings v. Rodriguez*, 583 U.S. 281, 288, 301, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018).
20 As noted in *Pizarro Reyes*, the structure of the statute suggests that Congress intentionally placed
21 the broader, catchall provision of Section 1226 after the more specific and narrowly focused
22 Section 1225 to encompass noncitizens who do not fall within the categories defined in Section
23 1225. *Pizarro Reyes*, 2025 U.S. Dist. LEXIS 175767, 2025 WL 2609425, at 5; *see also Vazquez*,
24 779 F. Supp. 3d at 1258.

1 Recent Congressional amendments must also be taken into account—specifically, the
2 Laken Riley Act, which modified Section 1226, as discussed above. As the Supreme Court has
3 recognized, “when Congress acts to amend a statute, we presume it intends the amendment to
4 have real and substantive effect.” *Stone v. I.N.S.*, 514 U.S. 386, 397, 115 S. Ct. 1537, 131 L. Ed.
5 2d 465 (1995). The Laken Riley Act introduced a new subsection under Section 1226(c),
6 imposing mandatory detention for certain individuals, within an otherwise discretionary
7 detention framework. As other courts have observed, this amendment reflects Congress’s intent
8 to expand specific mandatory detention provisions without altering the default applicability of
9 Section 1226 to noncitizens already present in the United States.
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11 If § 1225(b)(2) already mandated detention of any alien who has not been
12 admitted, regardless of how long they have been here, then adding §
13 1226(c)(1)(E) to the statutory scheme was pointless¹ and this Court, too, ‘will not
14 find that Congress passed the Laken Riley Act to ‘perform the same work’ that
15 was already covered by § 1225(b)(2).

16 *Lopez-Campos v. Raycraft*, 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379 at 8 (E.D.
17 Mich. Aug. 29, 2025) (quoting *Maldonado v. Olsen*, 2025 U.S. Dist. LEXIS 158321, 2025 WL
18 2374411, at 12 (D. Minn. Aug. 15, 2025)). If “Congress had intended for Section 1225 to govern
19 all noncitizens present in the country, who had not been admitted, then it would not have recently
20 adopted an amendment to Section 1226 that prescribes a subset of noncitizens be exempt from
21 the discretionary bond framework.”.

22 In support of its decision, the Immigration Judge primarily relied on the recent Board of
23 Immigration Appeals ruling in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In that
24 case, the BIA described it as a “legal conundrum” for an individual to be physically present in
25 the United States without having been admitted, yet no longer considered “seeking admission.”
26 *Id.* at 221. The BIA concluded that such individuals fall under Section 1225 because they fail to
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1 cite any legal authority establishing that, after residing unlawfully in the interior for an
2 unspecified period, they are no longer applicants for admission. *Id.*

3 We respectfully urge this Court to reject that interpretation for several reasons. First,
4 courts are not required to defer to agency interpretations of law simply because a statute is
5 ambiguous. As the Supreme Court recently held in *Loper Bright Enterprises v. Raimondo*, 603
6 U.S. 369, 412–13, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024), “[c]ourts must exercise their
7 independent judgment in deciding whether an agency has acted lawfully,” and under the
8 Administrative Procedure Act, deference is not warranted solely due to statutory ambiguity.

9
10 Second, the structure and context of the Immigration and Nationality Act make it difficult
11 to classify a noncitizen as “seeking admission” when they have never presented themselves at a
12 port of entry or made any affirmative attempt to enter. Interpreting the statute to cover
13 individuals who have lived in the interior for years without lawful status stretches the meaning of
14 “seeking admission” beyond recognition.

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16 Third, while the BIA in *Yajure Hurtado* maintained that its reading of Section 1225(b)
17 does not render the Laken Riley Act superfluous, *id.* at 222, this position is unconvincing. As
18 discussed above, if the BIA’s interpretation were adopted, it would effectively nullify the recent
19 statutory amendments enacted through the Laken Riley Act—contrary to the principle that
20 congressional amendments are presumed to have meaningful effect. *See Lopez-Campos*, 2025
21 U.S. Dist. LEXIS 169423, 2025 WL 2496379, at 8.

22
23 The Immigration Judge’s holding that section 1225(b)(2)(A) applies to all noncitizens
24 present in the United States without admission is erroneous as the interpretation of the statute (1)
25 disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between
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1 sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous;
2 and (4) is inconsistent with decades of prior statutory interpretation and practice.

3 Other district courts have reached a similar conclusion. *See, e.g., Lopez Benitez v.*
4 *Francis*, No. 25-Civ-5937, 2025 U.S. Dist. LEXIS 153952, 2025 WL 2267803 (S.D.N.Y. Aug.
5 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at 9 (D. Mass. July 24,
6 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS 128085, 2025 WL
7 1869299, at 8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 2025 U.S. Dist. LEXIS 171714,
8 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486,
9 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v.*
10 *Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); Doc. 11, *Benitez v. Noem*,
11 No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-
12 JRR, 2025 U.S. Dist. LEXIS 165015, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v.*
13 *Hyde*, No. 25-11631-BEM, 2025 U.S. Dist. LEXIS 160622, 2025 WL 2403827 (D. Mass. Aug.
14 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal.
15 Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn.
16 Aug. 15, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488,
17 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157,
18 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted 2025 U.S.
19 Dist. LEXIS 156336, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Doc. 11, *Maldonado Bautista*
20 *v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, (C.D. Cal. July 28, 2025).

21 The Immigration Judge did not identify any authority, other than the Board of
22 Immigration Appeals' recent decision in *Matter of Yajure Hurtado*, finding that noncitizens such
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1 as Petitioner who have been present in the United States for many years are subject to section
2 1225(b)(2)(A).

3 **SECOND CAUSE OF ACTION**

4 **II. Substantive Due Process**

5 Substantive due process forbids arbitrary or punitive detention. As the Supreme Court has
6 emphasized, “Freedom from imprisonment—from government custody, detention, or other forms
7 of physical restraint—lies at the heart of the liberty that the Due Process Clause protects.”
8 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In the context of civil immigration proceedings,
9 the government’s authority to detain is limited to two legitimate purposes: (1) protecting the public
10 from danger, and (2) ensuring the individual’s appearance at future proceedings. *Demore v. Kim*,
11 538 U.S. 510, 518–19 (2003). Detention that does not serve either purpose amounts to
12 unconstitutional punishment.

13 Here, although Mr. Arce-Cervera was initially detained following an arrest, the criminal
14 charges were later dismissed. He has presented substantial evidence demonstrating that he poses
15 neither a danger to the community nor a flight risk. As the Supreme Court held in *Bell v. Wolfish*,
16 441 U.S. 520, 535 (1979), “[i]f a restriction or condition is not reasonably related to a legitimate
17 governmental objective, it amounts to punishment.” Petitioner’s continued detention—based on
18 speculation rather than evidence—bears no reasonable relation to a lawful objective and is
19 therefore punitive and unconstitutional.

20 **a. Application of the *Mathews v. Eldridge* Balancing Test**

21 To determine whether a civil detention violates a detainee’s due process rights, courts apply
22 the three-part balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L.
23 Ed. 2d 18 (1976). The Court must weigh: (1) the private interest that will be affected by the official
24 action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and
25 the probable value, if any, of additional or substitute procedural safeguards; and (3) the United
26 States’ interest in detaining the individual to ensure his or her appearance at future proceedings.
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1 States' interest, including the function involved and the fiscal and administrative burdens that the
2 additional or substitute procedural requirement would entail. *Id.* at 335.

3 ***Private Interest***

4 It is beyond dispute that Mr. Arce-Cervera has a compelling and constitutionally protected
5 interest in avoiding continued detention. The right to be free from government-imposed
6 confinement is among the most fundamental of all liberty interests. As the Supreme Court held
7 in *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004), “[l]iberty is the most elemental of liberty
8 interests.” Similarly, in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), the Court reaffirmed that
9 “[f]reedom from imprisonment—from government custody, detention, or other forms of physical
10 restraint—lies at the heart of the liberty the Due Process Clause protects.”

11 In assessing due process violations, courts may also examine the conditions of confinement
12 to determine whether civil detention is effectively indistinguishable from criminal incarceration.
13 *Martinez v. Noem*, 2025 U.S. Dist. LEXIS 174415, 2025 WL 2598379, at 2 (W.D. Tex. Sep. 8,
14 2025). Mr. Arce-Cervera is currently confined at the Nevada Southern Detention Center under
15 conditions that mirror those of penal detention and is unjustly separated from his fiancée. Such
16 confinement, absent a lawful and individualized justification, is a grave intrusion on his liberty
17 and runs afoul of due process protections.

18 ***Risk of Erroneous Deprivation***

19 The second *Mathews* factor considers “the risk of an erroneous deprivation of [Petitioner’s]
20 interest through the procedures used, and the probable value, if any, of additional or substitute
21 procedural safeguards.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). In this case, that risk is
22 substantial.

23 Federal Respondents have failed to provide any evidence that Mr. Arce-Cervera poses a
24 danger to the community or is a flight risk. Without such a showing, the likelihood of an
25 unjustified deprivation of his fundamental liberty interest is unacceptably high. The absence of
26 meaningful procedural safeguards—such as a constitutionally adequate bond hearing—only
27 amplifies the risk of error and underscores the urgent need for judicial intervention.

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1 ***Government's Interest***

2 The third and final *Mathews* factor examines “the Government’s interest, including the
3 function involved and the fiscal and administrative burdens that the additional or substitute
4 procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

5 While the government’s interests in protecting the public from dangerous noncitizens and
6 ensuring an individual’s eventual removal are undeniably important, *Rodriguez Diaz*, 53 F.4th
7 1189–90, those interests are fully addressed through an individualized bond determination by an
8 Immigration Judge under § 1226. As the Ninth Circuit has made clear, “the government has no
9 legitimate interest in detaining individuals who have been determined not to be a danger to the
10 community and whose appearance at future immigration proceedings can be reasonably ensured
11 by a lesser bond or alternative conditions.” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir.
12 2017).

13 Where the government cannot articulate any specific justification for continuing to detain a
14 noncitizen who has already prevailed—or would prevail—at a proper bond hearing, the
15 detention ceases to serve a lawful immigration purpose. As Justice Kennedy warned in *Demore*
16 *v. Kim*, such circumstances raise serious constitutional concerns: “[w]hether the detention is not
17 to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate
18 for other reasons.” *Demore*, 538 U.S. 510, 532–33 (Kennedy, J., concurring).

19 **Conclusion on Causes of Action**

20 Mr. Arce-Cervera’s continued detention violates both procedural and substantive due process.
21 The Immigration Judge denied his liberty based on a misapplication of the law, and DHS failed
22 to carry its burden of proving that Mr. Arce-Cervera poses a flight risk or danger to the
23 community. Despite this, his detention persists without any lawful or evidentiary basis.

24 Accordingly, the Constitution requires either Petitioner’s immediate release or, at minimum,
25 a custody redetermination hearing that fully complies with due process.

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PRAYER FOR RELIEF

WHEREFORE, Mr. Arce-Cervera prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Declare that the IJ's September 15, 2025, Order Denying Motion for Bond and detention of Mr. Arce-Cervera was an unlawful exercise of authority;
- (3) Order ICE to immediately release Mr. Arce-Cervera from his unlawful
- (4) Declare a hearing can be held before a neutral adjudicator to determine whether re-incarceration would be lawful because the government has shown that he is a danger or has clear and convincing evidence;
- (5) Declare that Mr. Arce-Cervera cannot be re-arrested unless and until he is brought on the question of whether his re-incarceration would be lawful—i.e., whether the government has demonstrated to a neutral adjudicator that he is a danger or a flight risk based on clear and convincing evidence;
- (6) Award reasonable costs and attorney fees; and
- (7) Grant such further relief as the Court deems just and proper.

Dated: October 13, 2025

Respectfully submitted,

Karen S. Monrreal, Esq.
Attorney for Mr. Arce-Cervera

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 October 03, 2025 in Reno, NV.


Karen S. Monreal
Attorney for Petitioner Arce-Cervera