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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

REYNA CRUZ VEGA,

Petitioner,

vs.

CHRISTOPHER LAROSE, WARDEN, OTAY MESA DETENTION CENTER, CORECIVIC;

GREGORY J. ARCHAMBEAULT, FIELD OFFICE DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS, SAN DIEGO FIELD OFFICE;

KRISTI NOEM, SECRETARY OF THE U.S. DEPARTMENT OF HOMELAND SECURITY; AND

PAM BONDI, ATTORNEY GENERAL OF THE UNITED STATES,

IN THEIR OFFICIAL CAPACITIES

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

Case No. **'25CV2725 CAB MSB**

INTRODUCTION

1. This case arises from the government's unlawful and unconstitutional decision to convert a routine bond proceeding into indefinite detention. Petitioner Reyna Cruz Vega has lived in the United States for more than sixteen years. She is a long-standing resident of California, the primary caregiver for her adult daughter with serious mental health needs and has no criminal record. After a full bond hearing under 8 U.S.C. § 1226(a), an Immigration Judge found that Ms. Vega was not a danger to the community and ordered her release upon the posting of an $8,000 bond.

2. Rather than allow the bond order to take effect while pursuing its appeal through the ordinary process, the Department of Homeland Security took an extraordinary and unlawful additional step: it invoked *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), an unprecedented decision that purports to treat every noncitizen who entered without inspection as an "arriving alien" perpetually "seeking admission" under 8 U.S.C. § 1225(b)(2)(A). On that basis, DHS reclassified Ms. Vega's custody status mid-proceeding — effectively nullifying the Immigration Judge's release order even as its appeal remained pending. Ms. Vega remains incarcerated not because any adjudicator has determined she is a danger or a flight risk, but because the agency changed the governing legal framework to ensure her continued detention regardless of the outcome of the bond process.

3. That action is unlawful at every level. Section 1225(b)(2)(A) governs only arriving noncitizens seeking initial admission at the border, not long-time residents arrested in the interior. For more than two decades, the Supreme Court, Congress, and the courts of appeals have recognized that detention of individuals already present in the United States is governed by § 1226(a), which guarantees individualized bond consideration before a neutral adjudicator. DHS's post-hoc invocation of § 1225 to override a lawful bond order violates the Immigration and Nationality Act, exceeds the agency's statutory authority, and flouts the Due Process Clause.

4. The consequences of that overreach are profound. Ms. Vega is separated from her daughter and community, deprived of her liberty despite an Immigration Judge's finding that she

should be released, and subjected to a detention scheme that Congress never authorized. This petition asks the Court to restore the rule of law by ordering Ms. Vega's immediate release or, at minimum, requiring the government to justify her continued detention before a neutral decision-maker as due process and the Constitution demand.

JURISDICTION & VENUE

5. This Court has jurisdiction under 28 U.S.C. § 2241 to hear this petition for a writ of habeas corpus because Petitioner is presently detained within this judicial district under color of federal authority, and the petition challenges the legality of that custody.

6. Jurisdiction is also proper under 28 U.S.C. § 1331, which confers federal question jurisdiction over claims arising under the Constitution, the Immigration and Nationality Act (INA), and the Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq.

7. The APA authorizes this Court to hold unlawful and set aside agency action that is "not in accordance with law" or "in excess of statutory jurisdiction." 5 U.S.C. § 706(2)(A), (C). Petitioner's continued detention under § 1225(b)(2)(A) constitutes such unlawful agency action.

8. Venue lies properly in this District under 28 U.S.C. § 1391(e) and § 2241(d) because Petitioner is detained at an immigration detention facility within this District and Respondents are officers or employees of the United States acting in their official capacities within this District.

PARTIES

9. Petitioner Reyna Cruz Vega is a noncitizen who has resided in the United States for many years. She is currently detained by U.S. Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center, a CoreCivic facility located in San Diego, California, within the jurisdiction of this Court.

10. Respondent CHRISTOPHER LAROSE is the Warden of the Otay Mesa Detention Center, CoreCivic, and has immediate custody of Petitioner. He is the proper respondent in this habeas action under Rumsfeld v. Padilla, 542 U.S. 426 (2004).

11. Respondent GREGORY J. ARCHAMBEAULT is the Field Office Director of U.S. Immigration and Customs Enforcement's Enforcement and Removal Operations (ERO), San Diego Field Office, which exercises supervisory authority over Petitioner's detention and removal proceedings.

12. Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security, responsible for the administration and enforcement of federal immigration laws.

13. Respondent PAM BONDI is the Attorney General of the United States and has ultimate supervisory authority over the Department of Justice and the immigration courts.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The habeas statute requires courts to act swiftly in reviewing unlawful detention. Under 28 U.S.C. § 2243, the court must "forthwith" grant the writ or issue an order to show cause unless it appears from the petition that the petitioner is not entitled to relief.

15. If an order to show cause is issued, the statute directs that the respondent must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id. This statutory framework underscores the urgency of habeas relief, reflecting the historic role of the Great Writ as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." Fay v. Noia, 372 U.S. 391, 400 (1963).

LEGAL FRAMEWORK

16. Federal immigration detention prior to a final order of removal is governed by two statutory provisions—8 U.S.C. §§ 1225 and 1226—which operate in distinct and mutually exclusive spheres. The Supreme Court has emphasized that § 1225 applies to "aliens seeking admission into the country," whereas § 1226 applies to "aliens already in the country pending the outcome of removal proceedings." Jennings v. Rodriguez, 583 U.S. 281, 289 (2018). Understanding this division is essential to determining the scope of the government's detention authority and the procedural protections that accompany it.

Section 1225: Mandatory detention of arriving applicants for admission

17. By its text and structure, § 1225 governs inspection and detention at or near the border—not the arrest of long-term residents inside the United States. Paragraph (a)(1) provides that "an alien who arrives in the United States," or "is present in the United States but has not been admitted," shall be treated as "an applicant for admission." 8 U.S.C. § 1225(a)(1). Subsection (b)(1)(A)(i) requires an immigration officer to order an "arriving" noncitizen removed without further hearing if inadmissible under §§ 1182(a)(6)(C) or (a)(7), unless the person expresses a fear of persecution or intent to seek asylum. Id. § 1225(b)(1)(A)(i). This expedited-removal process applies only to noncitizens who have been physically present in the United States for less than two years. Id. § 1225(b)(1)(A)(iii)(II).

18. Section 1225(b)(2)(A)—the provision at issue here—covers the remaining category of individuals who are "applicants for admission" and who are "seeking admission" but not subject to expedited removal. It states that "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a." 8 U.S.C. § 1225(b)(2)(A). Individuals detained under § 1225(b)(1) or (b)(2) receive no bond hearing and may be released only through humanitarian parole "for urgent humanitarian reasons or significant public benefit." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); *Oliveros v. Kaiser*, 2025 WL 2677125, at *3 (N.D. Cal. Sept. 18, 2025); 8 U.S.C. § 1182(d)(5).

19. Courts have repeatedly held that these detention provisions are limited to border inspection contexts. The statute's title—"Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"—and its repeated references to "examining immigration officers" confirm Congress's focus on inspection and admission procedures at ports of entry. *Lepe v. Andrews*, 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025); *Martinez v. Hyde*, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025); *Vazquez v. Feeley*, 2025 WL 2676082, at *12–14 (D. Nev. Sept. 17, 2025). Section 1225(b)(2)(A) applies only when an "examining immigration officer" determines that an individual is (1) an "applicant for admission," (2) "seeking admission," and (3) "not clearly and beyond a doubt entitled to be admitted." *Martinez*,

2025 WL 2084238, at *2; *Lopez Benitez v. Francis*, 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025).*

20. The present-tense phrase "seeking admission" provides the statute's limiting force. It denotes an ongoing effort to gain lawful entry—not the condition of a person who entered years ago and has since resided in the interior. *Lopez Benitez*, 2025 WL 2371588, at *7; *Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025).* As *Lopez Benitez* explained, applying § 1225(b)(2) to someone long settled in the country "pushes the statutory text beyond its breaking point." See *U.S. v. Gambino-Ruiz*, 91 F.4th 981, 988–89 (9th Cir. 2024) (rejecting "perpetual applicant" theory); *Torres*, 976 F.3d at 922–26. Reading "seeking admission" as synonymous with "applicant for admission" would erase Congress's deliberate distinction and violate the rule against surplusage. *Valencia Zapata v. Kaiser*, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025); *Martinez*, 2025 WL 2084238, at *6.*

21. The statute's design reinforces this interpretation. Its subsections repeatedly reference inspection, "arriving" aliens, and "stowaways," all of which presuppose encounters at the border or a port of entry. See 8 U.S.C. § 1225(a)(3), (b)(1), (b)(2), (d). Reading § 1225(b)(2) to reach noncitizens arrested deep in the interior "ignores the statute's context, structure, and purpose." *Vazquez*, 2025 WL 2676082, at *13–14.*

22. Accordingly, consistent with *Jennings*, *Lepe*, *Lopez Benitez*, *Oliveros*, and *Vazquez*, courts have uniformly concluded that § 1225(b) governs only individuals encountered at or near the border during inspection. Extending it to long-time residents already living within the United States "disregards the plain meaning of the statute, the structure of the INA, and decades of agency practice." *Rodriguez v. Bostock*, 2025 WL 2782499, at *3 (W.D. Wash. Sept. 30, 2025).*

Section 1226: Discretionary detention of noncitizens already present in the United States

23. Where § 1225 regulates inspection and detention at the threshold of entry, § 1226 governs the apprehension and detention of individuals already present in the United States pending removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (explaining that

§ 1226 "generally governs the process of arresting and detaining aliens who are already in the country"); *Vazquez v. Feeley,* No. 2:25-cv-01542-RFB-EJY, 2025 WL 2676082, at *14 (D. Nev. Sept. 17, 2025) (contrasting § 1225's inspection regime with § 1226's post-entry detention authority).

24. Section 1226(a) authorizes arrest and detention pending a decision on removability, and—crucially—permits release on bond or conditional parole "except as provided in subsection (c)." 8 U.S.C. § 1226(a)(1)–(2); *Jennings*, 583 U.S. at 303.

25. Implementing regulations provide for bond hearings before an immigration judge, at which a noncitizen may present evidence bearing on danger and flight risk. 8 C.F.R. § 1236.1(d); *In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *Martinez v. Clark*, 124 F.4th 775, 783 (9th Cir. 2024).

26. Section 1226 thus establishes a discretionary detention framework with individualized process for people already living in the country. *Lopez Benitez v. Francis*, No. 25-CIV-5937 (DEH), 2025 WL 2371588, at *3, *8 (S.D.N.Y. Aug. 13, 2025); *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO, 2025 WL 2716910, at *5 (E.D. Cal. Sept. 23, 2025).

Harmonizing §§ 1225 and 1226: Statutory Structure, Legislative History, and Judicial Consensus

27. Sections 1225 and 1226 operate in parallel but distinct spheres of the Immigration and Nationality Act. Section 1225 governs inspection and detention at the threshold of entry, whereas § 1226 regulates the post-entry detention of individuals already present in the United States pending removal proceedings. See *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018) (§ 1225 applies to "aliens seeking admission," while § 1226 applies to "aliens already in the country"). Reading § 1225 to extend to long-term residents encountered in the interior would collapse this statutory distinction and override Congress's carefully maintained two-track structure.

28. Congress's 2025 enactment of the Laken Riley Act confirms that dichotomy. By adding § 1226(c)(1)(E), Congress required mandatory detention only for certain "inadmissible" noncitizens — including those "present in the United States without being admitted or paroled,"

8 U.S.C. § 1182(a)(6)(A) — who are charged with or convicted of enumerated crimes. See *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 WL 2676082, at *19 (D. Nev. Sept. 17, 2025). By negative implication, § 1226(a) continues to govern all other inadmissible individuals arrested in the interior. As the Supreme Court has long held, when Congress carves out specific exceptions to a rule, "the specific exceptions prove that the rule applies generally." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). Were § 1225(b) read to mandate detention for everyone "present in the United States who has not been admitted," the newly enacted § 1226(c)(1)(E) would be meaningless — a result forbidden by the anti-surplusage canon. See *Corley v. United States*, 556 U.S. 303, 314 n.5 (2009).

29. The statute's history and administrative application reinforce this reading. For decades after IIRIRA, DHS and EOIR consistently placed long-term residents who entered without inspection into § 1229a proceedings and afforded them bond hearings under § 1226(a), unless § 1226(c) applied. See *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1259 (W.D. Wash. 2025) (describing the government's "longstanding agency practice [of] applying § 1226(a) to inadmissible noncitizens already residing in the country"); *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 n.6 (BIA 2025). When Congress amended § 1226 in 2025, it legislated against that settled backdrop, triggering the interpretive presumption that new provisions "should be understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (quoting *Haig v. Agee*, 453 U.S. 280, 297–98 (1981)).

30. Courts applying ordinary canons of construction have reached the same conclusion. They have consistently held that § 1225(b)(2)(A) applies only where a noncitizen is "seeking admission" in the active, border-inspection sense — not to those arrested years after entry. See, e.g., *Martinez v. Hyde*, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588, at *5–7 (S.D.N.Y. Aug. 13, 2025).* As those courts explain, interpreting § 1225 to govern anyone merely "present" without admission would render the term "seeking admission" superfluous, erase the role of § 1226(c)(1)(E), and contradict *Jennings'* recognition that § 1226 "generally governs" the detention of persons already in the United States.

See also *Oliveros v. Kaiser*, No. 25-cv-07117-BLF, 2025 WL 2677125, at *4 (N.D. Cal. Sept. 18, 2025); *Vazquez*, 2025 WL 2676082, at *15–16.*

31. The judiciary has now spoken with near-total unanimity. Every district court to consider the question — across the First, Second, Fourth, Fifth, Sixth, Eighth, Ninth, and Tenth Circuits — has held that noncitizens arrested in the interior are detained under § 1226(a), not § 1225(b).. *See, e.g.*, *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, —— F.Supp.3d ——, ——, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, —— F.Supp.3d ——, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); Doc. 11, *Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, —— F.Supp.3d ——, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, —— F.Supp.3d ——, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Doc. 11, *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025); *Lepe v. Andrews,* No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025). No court has adopted the government's expansive § 1225 theory.

32. In sum, the text, structure, legislative context, and overwhelming judicial consensus all confirm that § 1226 — not § 1225 — governs the detention of noncitizens like Ms. Vega who have resided within the United States for years. Her detention is therefore governed by §

1226(a)'s discretionary framework, which guarantees individualized bond consideration before a neutral adjudicator.

Constitutional Backdrop

33. This statutory distinction reflects fundamental constitutional limits on immigration detention and Congress's recognition of the different due process rights afforded to those already inside the United States. "The relevant distinction ... is between persons inside the United States and persons outside the United States. That distinction is consistent with the long history of our immigration laws and with the Constitution." *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO, 2025 WL 2716910, at *5 (E.D. Cal. Sept. 23, 2025) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). As the Supreme Court has long held, "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.*

34. Congress itself legislated with that understanding. In distinguishing between "arriving" and "residing" noncitizens, Congress reflected "its understanding of longstanding due process precedent that recognizes the more substantial due process rights of noncitizens already residing in the U.S. [as compared to] those of noncitizens recently arriving." *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 WL 2676082, at *4 (D. Nev. Sept. 17, 2025) (citing *Knauff v. Shaughnessy*, 338 U.S. 537 (1950)). This constitutional framework underscores that detention authority under § 1226(a) governs those already within the country, while § 1225 applies only to individuals seeking initial admission at the threshold.

35. Civil immigration detention, which is "nonpunitive in purpose and effect," is constitutionally permissible only where it serves the narrow purposes of preventing flight or protecting the community. *Zadvydas*, 533 U.S. at 690; *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023). Extending § 1225(b)(2)(A)'s mandatory, unreviewable detention scheme to long-term residents arrested in the interior—individuals who have long lived and worked within the United States—would contravene those constitutional limits. As multiple

courts have found, such an interpretation "violated detainees' due process rights." *Romero v. Hyde*, —— F. Supp. 3d ——, 2025 WL 2403827, at *12–13* (D. Mass. Aug. 19, 2025); *Lopez-Campos v. Raycraft*, —— F. Supp. 3d ——, 2025 WL 2496379, at *9–10* (E.D. Mich. Aug. 29, 2025).

36. The Due Process Clause also protects the liberty interest of individuals who have already been granted release on bond. "[I]ndividuals released from immigration custody on bond have a protectable liberty interest in remaining out of custody on bond." *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025). Revoking that liberty interest without lawful basis or procedural safeguards compounds the constitutional violation.

37. Interpreting the INA in light of these constitutional constraints is both consistent with the Supreme Court's mandate and compelled by it. "It is therefore reasonable to read these statutes 'against [that] backdrop,' " ensuring that mandatory detention without individualized process remains confined to the narrow border-entry context Congress intended. *Romero*, 2025 WL 2403827, at *13* (quoting *Hewitt v. United States*, 145 S. Ct. 2165, 2173 (2025)). Ms. Vega—arrested years after entering the United States and previously granted bond—is thus entitled to those due process protections and an individualized bond hearing under § 1226(a).

Burden of Proof

38. Although § 1226(a) does not specify who bears the burden of proof at a custody redetermination hearing, and the Board of Immigration Appeals ("BIA") has interpreted the statute to place that burden on the noncitizen (*In re Guerra*, 24 I. & N. Dec. 37 (BIA 2006); *In re Adeniji*, 22 I. & N. Dec. 1102, 1116 (BIA 1999)), courts within the Ninth Circuit have made clear that this regulatory allocation cannot control once a constitutional violation has occurred, including in the § 1226(a) context. See *Singh v. Barr*, 400 F. Supp. 3d 1005, 1018 (S.D. Cal. 2019) (citing *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011)).

39. Where a noncitizen has been detained without the individualized bond hearing that due process requires, the Fifth Amendment itself—not the INA or its implementing regulations—dictates the procedural framework for any remedial hearing. And under that framework, the

government must bear the burden of proving, by clear and convincing evidence, that continued detention is necessary. See *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011) (holding that due process requires the government to justify detention by clear and convincing evidence at a § 1226(a) bond hearing); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1018 (S.D. Cal. 2019) (same); *Rajnish v. Jennings*, No. 3:20-cv-07819-WHO, 2020 WL 7626414, at *4–5 (N.D. Cal. Dec. 22, 2020) (holding that placing the burden on the detained noncitizen at a § 1226(a) bond hearing violates the Constitution); *Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB (HC), 2025 WL 2420390, at *7–8 (E.D. Cal. Aug. 21, 2025) (ordering immediate release in the context of § 1226(a) unless and until the government proves by clear and convincing evidence that continued detention is justified).

40. A growing number of courts across the country have likewise concluded that due process requires the government to bear the burden of justifying continued detention by clear and convincing evidence when a noncitizen has been denied a proper § 1226(a) bond hearing. The Second Circuit, for example, has held that "the Government bears the burden of proving by clear and convincing evidence that the alien's continued detention is justified." *Velasco Lopez v. Decker*, 978 F.3d 842, 855–56 (2d Cir. 2020). Other courts have described this view as the "consensus" among district courts nationwide. *Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (collecting cases). See also *Darko v. Sessions*, 342 F. Supp. 3d 429, 436 (S.D.N.Y. 2018) ("Joining with a growing body of persuasive authority, the Court concludes that the Due Process Clause required that the Government bear the burden of proving that Ms. Darko's detention was justified."); *Brito v. Barr*, 415 F. Supp. 3d 258, 266 (D. Mass. 2019) ("[T]he Court holds that the Due Process Clause requires the Government bear the burden of proof in § 1226(a) bond hearings."); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1018 (S.D. Cal. 2019) (agreeing with the "reasoning of its sister courts" and concluding that the Due Process Clause requires the government to bear this burden). As the court in *Rajnish* observed, there is no need to "gild the lily" with further citations; the growing national consensus is clear. *Rajnish v. Jennings*, No. 3:20-cv-07819-WHO, 2020 WL 7626414, at *4–5 (N.D. Cal. Dec. 22, 2020).

41. In sum, where the government has deprived a noncitizen of the individualized § 1226(a) bond hearing that due process requires, the Constitution—not agency regulations—controls the procedure and allocation of proof at any remedial hearing. Consistent with longstanding Supreme Court precedent and an expanding consensus among federal courts, that means the government must bear the burden of demonstrating, by clear and convincing evidence, that continued detention is warranted. This safeguard is essential to minimize the risk of erroneous deprivation of liberty and to ensure that the fundamental due process protections guaranteed by the Fifth Amendment have real and enforceable meaning.

EXHUASTION OF REMEDIES

42. There is no statutory exhaustion requirement applicable to this habeas petition. *McKart v. United States*, 395 U.S. 185, 193 (1969); *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Accordingly, any exhaustion requirement is prudential, not jurisdictional.

43. Prudential exhaustion is excused where (1) agency expertise is unnecessary, (2) administrative review would be futile, or (3) the petitioner would suffer irreparable harm. *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Each of these factors supports waiver here.

44. Agency expertise is not necessary to resolve the question presented because there are no disputed facts. The issue is a pure question of statutory interpretation—whether Petitioner's detention is governed by § 1225(b)(2)(A) or § 1226(a). The Board of Immigration Appeals ("BIA") has no special competence in resolving questions of habeas jurisdiction or the statutory reach of these provisions. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

45. Administrative review would be futile. The BIA has already adopted DHS's position in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), concluding that noncitizens apprehended in the interior who entered without inspection are subject to mandatory detention under § 1225(b)(2)(A). Because the BIA has spoken definitively on this issue, it lacks authority to grant the relief Petitioner seeks. Courts regularly excuse exhaustion where the agency's

precedent forecloses the argument or renders review meaningless. See *Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (9th Cir. 2011); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).

46. Requiring exhaustion would also cause irreparable harm. Petitioner has already endured more than a month of detention since the government's unlawful rescission of her $8,000 bond order. Her next master-calendar hearing is not scheduled until November 12, 2025, leaving her to remain confined indefinitely without a meaningful opportunity for release. As multiple courts have recognized, each additional day of detention without access to bond constitutes irreparable harm that cannot later be remedied. *LG v. Choate*, No. 23-cv-00611 (D.N.M. 2024), slip op. at 14; *Salvador F.-G. v. Noem*, 2025 WL 1669356, at 4 (N.D. Okla. June 12, 2025).

47. The Central District of California recently reached the same conclusion in *Mosqueda v. Noem*, No. 5:25-cv-02304 CAS (BFM), 2025 WL 2591530, at 6–7 (C.D. Cal. Sept. 8, 2025), holding that the question of whether detention is governed by § 1225(b) or § 1226(a) is purely legal, that BIA review is futile in light of *Hurtado*, and that "[p]etitioners would be immediately and irreparably harmed by their continued deprivation of liberty without bond hearings that they are entitled to under section 1226(a)."

48. Because this petition raises a pure question of law, administrative review would be futile, and continued detention causes ongoing irreparable harm, exhaustion is not required. Habeas corpus under 28 U.S.C. § 2241 is therefore the only adequate and appropriate remedy.

FACTUAL BACKGROUND

49. Reyna Cruz Vega has lived in the United States since 2009. For more than sixteen years, she has made her home in Julian, California, raising her family, working, and building enduring ties with her community. She is the primary caregiver for her adult daughter, who suffers from schizoaffective disorder and depends on Ms. Cruz for day-to-day support. Friends, neighbors, and community leaders—including a retired Superior Court judge—have all attested to her strong character, her stability, and her deep roots in the United States. She has never been convicted of any crime. "**See Exhibit A**, I-213, Record of Deportable/Inadmissible Alien".

50. On August 12, 2025, Ms. Cruz was stopped at an internal checkpoint near Warner Springs, California. She was placed under arrest and charged under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I), the generic inadmissibility provisions for entry without inspection and lack of documentation. "**See Exhibit A**, Id., at pg. 3).

51. Shortly after her arrest, Ms. Cruz sought custody redetermination. On September 4, 2025, Immigration Judge Guy Grande held a full bond hearing. After hearing testimony and reviewing DHS's evidence, Judge Grande found that Ms. Cruz was not a danger to the community. While he expressed some concern about flight risk, he concluded that risk could be reasonably mitigated by the imposition of a bond. He therefore ordered Ms. Cruz released upon the posting of an $8,000 bond. "**See Exhibit B**, Bond Order from Immigration Judge, Dated September 4, 2025."

52. That same day, DHS filed a notice of intent to appeal, which triggered an automatic administrative stay of her release. On September 16, 2025, DHS perfected its appeal to the Board of Immigration Appeals. Ms. Cruz remained detained. "**See Exhibit C**, Filling Receipt for Appeal or Motion, Board of Immigration Appeals."

53. Then, in a highly irregular move, DHS went further. Rather than await the BIA's ruling, government counsel sought to nullify Judge Grande's bond order altogether. On September 22, 2025, Immigration Judge Meghan E. Heesch—who had not presided over the original hearing—issued a memorandum purporting to rescind the $8,000 bond. **See Exhibit D**, Bond Memorandum of the Immigration Judge." The memorandum did not revisit the facts of Ms. Cruz's case or her individualized risk assessment. Instead, it relied entirely on *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216 (BIA 2025), which concluded that individuals apprehended at interior checkpoints are "arriving aliens" subject to mandatory detention under § 1225(b)(2)(A). Acting on that memorandum, DHS reclassified Ms. Cruz's custody as mandatory and kept her detained. Id.

54. As a result, Ms. Cruz remains incarcerated at the Otay Mesa Detention Facility despite the fact that an Immigration Judge already granted her release on bond.

55. At her October 1, 2025, master calendar hearing, her immigration counsel explained to the court that habeas litigation was anticipated, and the case was continued to allow her counsel to seek federal court relief.

56. Today, Ms. Cruz remains confined even though:

a. she has lived in the United States for more than sixteen years;

b. she has no criminal history;

c. an Immigration Judge found she was not a danger and granted her release on bond; and

d. the only reason she remains in custody is because DHS has relied on *Hurtado* to override the bond order through an irregular memorandum rather than through lawful appellate process.

57. The human stakes could not be clearer. Ms. Cruz's continued detention tears her away from her daughter, who depends on her daily, and from her community, which stands ready to support her. The government's actions have converted what should have been a routine bond grant into indefinite detention.

CLAIMS FOR RELEIF

COUNT ONE

(*Unlawful Detention Under the Immigration and Nationality Act and the Administrative Procedure Act*)

58. Petitioner is detained under an unlawful and unauthorized application of 8 U.S.C. § 1225(b)(2)(A). As set forth in the governing statutory framework, § 1225 governs detention of individuals seeking admission at the border, while § 1226 governs detention of individuals already inside the United States *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Petitioner has lived in this country for over sixteen years and was encountered during an interior checkpoint stop—a form of interior enforcement that Congress expressly associated with discretionary detention under § 1226(a)

59. On her September 4, 2025, bond hearing, the Immigration Judge found that Petitioner posed no danger and minimal risk of flight and therefore set bond at $8,000. The government then filed a notice of appeal and, without awaiting review, sought to stay and rescind that bond order by invoking *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). A different Immigration Judge, acting on that basis, vacated the bond and re-classified Petitioner's detention as mandatory under § 1225(b)(2)(A).

60. That action exceeded the government's statutory authority. Nothing in the INA authorizes DHS to override a § 1226(a) bond order or to impose mandatory detention on a long-term resident encountered in the interior. Federal district courts in the Ninth Circuit confronting nearly identical circumstances have uniformly held that such detention is governed by § 1226(a) and that reliance on *Hurtado* is contrary to law. See, *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *1 (W.D. Wash. Sept. 30, 2025) ("Every district court to address this question has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice."); *See Aceros v. Kaiser*, No. 25-cv-06924-EMC (EMC), 2025 U.S. Dist. LEXIS 179594, at *23 (N.D. Cal. Sep. 12, 2025) (Finding the BIA's new ruling "unpersuasive" and "thus entitled to little deference"). See also, *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (E.D. Cal. Sept. 23, 2025); *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01562 (D. Nev. Sept. 17, 2025); *Roman v. Noem*, No. 2:25-cv-01803 (D. Nev. Sept. 23, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *4–5 (C.D. Cal. Sept. 8, 2025). *Pelico, et al. v. Kaiser, et al.*, No. 25-CV-07286-EMC, 2025 WL 2822876, at *9 (N.D. Cal. Oct. 3, 2025).

61. These courts have all found that individuals arrested inside the United States—often at checkpoints or during routine enforcement—are detained under § 1226(a) and are entitled to individualized bond determinations.

62. Courts have likewise rejected the government's attempt to "switch tracks" mid-proceeding from § 1226(a) to § 1225(b)(2). As the court explained in *Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025), "the Government cannot simply

switch tracks" after initiating full removal proceedings under § 1229a and releasing a noncitizen pursuant to § 1226(a). The record here—including Petitioner's Notice to Appear, the Immigration Judge's bond order under § 1226(a), and the government's subsequent effort to vacate that order— demonstrates that DHS itself initially treated her detention as discretionary under that provision. "Exhibit E, DHS Submission of Bond Evidence". Having elected to proceed under § 1226, Respondents cannot now overwrite the record to invoke § 1225(b)(2) and impose mandatory detention. See *Aceros*, 2025 WL 2637503, at *8*; *Oliveros v. Kaiser*, No. 25-cv-07117-BLF, 2025 WL 2677125, at *4* (N.D. Cal. Sept. 18, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *2* (D. Mass. July 7, 2025).

63. In sum, by invoking § 1225(b)(2)(A) to nullify the Immigration Judge's bond decision and to continue Petitioner's detention without lawful basis, Respondents acted beyond the scope of their statutory authority under the Immigration and Nationality Act.

COUNT TWO

(Violation of Fifth Amendment's Due Process Clause)

64. Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment, which protects all persons within the United States from arbitrary or unjustified deprivations of liberty. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Civil immigration detention, being nonpunitive, may be justified only when it serves legitimate regulatory goals—such as ensuring appearance or protecting the public—and only when accompanied by adequate procedural safeguards. *Id.* at 690; *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017).

65. Petitioner was lawfully granted bond by an Immigration Judge after a full hearing at which the government was represented and given opportunity to present evidence. The Immigration Judge concluded that Petitioner posed no danger and minimal flight risk and thus ordered release upon posting an $8,000 bond. Without notice or an opportunity to be heard, DHS and ICE unilaterally sought to rescind that order, invoking *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216 (BIA 2025). A different Immigration Judge then vacated the bond without affording

Petitioner any additional process. This abrupt deprivation of liberty, based solely on a disputed legal interpretation, occurred without individualized determination or procedural fairness.

66. The Supreme Court's decision in *Mathews v. Eldridge*, 424 U.S. 319 (1976), provides the governing framework for determining what process is constitutionally due when the government seeks to deprive a person of liberty. The Ninth Circuit applies the *Mathews* balancing test in the immigration-detention context, and district courts throughout the circuit have done so routinely. See, e.g., *Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022); *Cordero Pelico v. Kaiser*, No. 25-CV-07286-EMC, 2025 WL 2822876, at *6 (N.D. Cal. Oct. 3, 2025); *Naser Noori v. Larose, et al.,*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149, at *10 (S.D. Cal. Oct. 1, 2025); *Calderon v. Kaiser*, No. 25-CV-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *17 (D. Nev. Sept. 17, 2025); *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *5 (N.D. Cal. Aug. 21, 2025); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at 4 (N.D. Cal. Sept. 3, 2025).

67. Under *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *17 (D. Nev. Sept. 17, 2025)

68. **Private Interest at Stake:** The private interest at stake here is as weighty as any in our legal system. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Prolonged civil confinement constitutes a

"significant deprivation of liberty" requiring robust procedural safeguards. *Addington v. Texas*, 441 U.S. 418, 425–27 (1979). The cost of erroneous detention is not abstract: it means months or even years of lost freedom, isolation from community, and disruption of family life. As one court recently recognized, "[t]he deprivation of liberty occasioned by continued civil detention, without a meaningful opportunity to contest its necessity, is among the most severe governmental intrusions." *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 WL 2676082, at *17 (D. Nev. Sept. 17, 2025).

69. That liberty interest is further heightened here because Petitioner is the primary caregiver to her daughter. Continued detention has severed their daily contact and deprived both mother and child of the emotional support, care, and stability that define the parent–child relationship — one of the most fundamental liberty interests recognized by the Constitution. See *Pinchi v. Garland*, No. 2:25-cv-00431, 2025 WL 1853763, at *3 (N.D. Cal. May 6, 2025) (acknowledging the "grave human cost" of prolonged detention, including separation from family). Each additional day Petitioner spends confined not only deepens the injury to her own liberty but inflicts irreparable harm on her child, underscoring the profound private interests at stake in ensuring the adequacy of procedural protections.

70. **Risk of Erroneous Deprivation**: The risk of erroneous deprivation here is substantial. Petitioner's bond was rescinded not through an evidentiary process, but by administrative fiat—based solely on the government's unilateral legal position under *Hurtado*. She received no notice, opportunity to be heard, or neutral adjudication before her liberty was taken. Additional safeguards, such as notice and a new bond hearing before an Immigration Judge, would all but eliminate that risk. Courts have consistently found that categorical detention decisions without individualized assessment create a "high risk of error." *Ramirez Clavijo*, 2025 WL 2419263, at *5; Pinchi*, 2025 WL 2084921, at *3*.

71. **Government's Interest and Administrative Burden**: The government's interest in detaining Petitioner without hearing is minimal. Civil detention serves only regulatory—not punitive—goals, and may be justified only when it furthers legitimate objectives such as

ensuring appearance or protecting the community. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The administrative burden of affording Petitioner a bond hearing is negligible; such procedures are routine and well established. As Judge Chen observed in *Cordero Pelico*, "the government cannot claim a cognizable interest in avoiding procedures that ensure compliance with the Constitution." *Cordero Pelico*, 2025 WL 2822876, at *6.* Moreover, the government's conduct here—rescinding a lawfully issued bond and invoking a different statutory framework after the fact—further undermines any legitimate claim to administrative efficiency. *See Aceros v. Kaiser*, 2025 WL 2637503, at *8; Oliveros v. Kaiser*, 2025 WL 2677125, at *4.*

72. Balancing the *Mathews* factors confirms that the procedures afforded here were constitutionally deficient. Petitioner's liberty interest is at its apex, the risk of erroneous deprivation is high, and the government's asserted burden is minimal. The abrupt reclassification and continued detention, without a meaningful hearing or individualized justification, violate fundamental principles of due process.

73. In sum, Respondents' rescission of Petitioner's bond and continued detention under § 1225(b)(2)(A) deprived her of liberty without constitutionally adequate process. The government's shifting statutory posture, reliance on *Hurtado*, and refusal to honor the Immigration Judge's prior bond determination compound the arbitrariness of her confinement. Petitioner's detention therefore violates the Fifth Amendment's guarantee of due process.

COUNT THREE

(Violation of the Administrative Procedure Act)

74. The Administrative Procedure Act ("APA") requires that "[t]he reviewing court shall … compel agency action unlawfully withheld or unreasonably delayed," and "shall … hold unlawful and set aside agency action … found to be … not in accordance with law [or] in excess of statutory jurisdiction." 5 U.S.C. § 706(1), (2)(A), (C).

75. The Department of Homeland Security ("DHS") and Immigration and Customs Enforcement ("ICE") have unlawfully withheld and unreasonably delayed implementation of the Immigration Judge's September 4, 2025, bond order, which authorized Petitioner's release upon

posting an $8,000 bond pursuant to 8 U.S.C. § 1226(a). Rather than give effect to that lawful order, DHS invoked *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), to rescind it and reclassify Petitioner's detention under § 1225(b)(2)(A)—a statute that does not apply to noncitizens already residing in the interior.

76. By nullifying an operative bond decision and imposing continued detention under a different statutory provision, Respondents acted "not in accordance with law" and "in excess of statutory jurisdiction." 5 U.S.C. § 706(2)(A), (C). Their refusal to execute the Immigration Judge's release order also constitutes agency action "unlawfully withheld." § 706(1).

77. Federal courts considering nearly identical circumstances have rejected the government's post-hoc invocation of § 1225 as unlawful and arbitrary under the APA. See *Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at *8–12 (N.D. Cal. Sept. 12, 2025); Oliveros v. Kaiser*, No. 25-cv-07117-BLF, 2025 WL 2677125, at *4 (N.D. Cal. Sept. 18, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7–9 (S.D.N.Y. Aug. 13, 2025).* These decisions uniformly hold that DHS's reclassification of custody status after release or bond authorization is "arbitrary, capricious, and contrary to law."

78. In sum, Respondents' refusal to implement the Immigration Judge's bond order, and their substitution of an inapplicable statutory framework to justify continued detention, constitute unlawful and arbitrary agency action. The APA requires this Court to set aside those actions and compel Respondents to comply with the governing statutory authority under § 1226(a).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from custody under 8 U.S.C. § 1225(b)(2)(A), as her detention is unlawful under the Immigration and Nationality Act, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment;

b. In the alternative, order Respondents to provide Petitioner with a prompt and constitutionally adequate bond hearing before a neutral decisionmaker pursuant to 8

U.S.C. § 1226(a), at which the Government bears the burden to justify continued detention by clear and convincing evidence;

c. Declare that Petitioner's detention under § 1225(b)(2)(A) is contrary to law and in excess of statutory authority;

d. Declare that Respondents' failure to implement the Immigration Judge's bond order constitutes agency action unlawfully withheld under the Administrative Procedure Act, 5 U.S.C. § 706(1);

e. Expedite briefing and adjudication of this petition pursuant to 28 U.S.C. § 1657(a) and the Court's inherent authority, in light of Petitioner's ongoing deprivation of liberty and the urgent need for prompt resolution.

f. Award attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and any other applicable authority; and

g. Grant such other and further relief as the Court deems just and proper.

DATED: October 13, 2025

Respectfully Submitted,

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