UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Jorge BAUTISTA-AVALOS,

Petitioner,

v.

Michael BERNACKE, Field Office Director of Enforcement and Removal Operations, Salt Lake City Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; John MATTOS, Warden of Nevada Southern Detention Center,

Respondents.

Case No. 25-1987

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

## INTRODUCTION

1. This petition challenges the ongoing and unlawful detention of Jorge Bautista Avalos, a long-time Nevada resident and father of three U.S. citizen daughters, who remains confined at the Nevada Southern Detention Center under the Department of Homeland Security's ("DHS") new, overbroad interpretation of the Immigration and Nationality Act ("INA"). Despite his deep ties and lawful deferred action, Petitioner has been held in immigration detention since May 2025.

2. Petitioner was arrested in Las Vegas — far from any port of entry — and placed in removal proceedings under 8 U.S.C. § 1229a. He is not subject to expedited removal under § 1225(b)(1), nor to post-order detention under § 1231(a).

3. Nevertheless, on October 7, 2025, an Immigration Judge "IJ" denied bond, finding that Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), required his detention under § 1225(b)(2). This conclusion disregards decades of statutory interpretation and agency practice recognizing that individuals arrested in the interior fall under § 1226(a) and are entitled to bond hearings.

4. The United States District Court for the District of Nevada recently rejected this very policy in *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 17, 2025), finding DHS's invocation of § 1225(b)(2) and the EOIR-43 automatic stay unconstitutional and contrary to the INA.

5. Respondents' newly asserted interpretation is plainly contrary to the statutory framework and irreconcilable with decades of agency practice, which have consistently applied § 1226(a) and its implementing regulation, 8 C.F.R. § 236.1, to individuals like Petitioner—long-term residents arrested in the interior and placed in removal proceedings under § 240.

6. Petitioner seeks a writ ordering his release, or in the alternative, a prompt custody redetermination hearing under § 1226(a), free from the unlawful restrictions imposed by *Yajure Hurtado* and 8 C.F.R. § 1003.19(i)(2).

**JURISDICTION**

7. Petitioner is in the physical custody of Respondents and detained at the Nevada Southern Detention Center in Pahrump, Nevada.

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

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

**VENUE**

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Nevada, the judicial district in which Petitioner currently is detained.

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

**REQUIREMENTS OF 28 U.S.C. § 2243**

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

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

**PARTIES**

14. Petitioner Jorge Bautista Avalos is a 43-year-old national of Mexico who has resided continuously in the United States since 2007. He has lived with his wife, C.F.V. Hernández, and their three daughters in Marcola, Oregon, where he has worked as a Head Ranch Hand at J.C. Ranch for more than 18 years.

15. Respondent Michael Bernacke is the Director of the Salt Lake City Field Office of ICE's Enforcement and Removal Operations division. As such, Michael Bernacke is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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

17. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

18. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

19. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

20. Respondent John Mattos is employed by as Warden of the Nevada Southern Detention Center in Pahrump, Nevada, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

**LEGAL FRAMEWORK**

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

22. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

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

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

28. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

29. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

30. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to the mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

31. In a May 22, 2025, unpublished decision from the Board of Immigration Appeals (BIA), EOIR adopts this same position.[2] That decision holds that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for IJ bond hearings.

32. That position was formalized in Matter of Hurtado, 29 I&N Dec. 216 (BIA 2025), which rejected decades of contrary practice and held that § 1225(b)(2), not § 1226(a), governs detention of EWIs.

33. Federal courts have rejected this exact conclusion. In *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025) the court held that § 1226(a) applies to long-settled residents arrested in the interior; *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

34. Most recently, this court, District of Nevada in *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 9, 2025), held that EOIR's automatic stay regulation, 8 C.F.R. § 1003.19(i)(2) (Form EOIR-43), is unconstitutional because it deprives noncitizens of

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

[2] *Available at* https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf.

liberty without due process. The court ordered same-day release of the petitioner and noted that DHS's reliance on § 1225(b)(2) to detain long-settled residents raises serious statutory and constitutional concerns.

35. As *Rodriguez Vazquez*, *Gomes*, and *Maldonado* demonstrate, the text and structure of the INA make clear that § 1226(a) applies to noncitizens apprehended in the interior, including those charged as inadmissible for entry without inspection.

36. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

37. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

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

**FACTS**

39. Petitioner Jorge Bautista Avalos is a 43-year-old national of Mexico who has resided continuously in the United States since 2007. He lives in Marcola, Oregon, with his wife C.F.V. Hernández and their three daughters — V (23), K (17), and R (15) — all of whom are U.S.

citizens. Petitioner has worked as the Head Ranch Hand at J.C. Ranch for more than 18 years, where his employer and community members consistently describe him as honest, hardworking, and indispensable

40. On September 15, 2025, while visiting Las Vegas, Nevada, Petitioner was taken into custody by local police based on an allegation of misdemeanor domestic battery. The Clark County District Attorney's Office rejected the charge the same day, and no prosecution or conviction followed. Despite the dismissal, ICE took Petitioner into custody and transferred him to the Nevada Southern Detention Center in Pahrump, Nevada, where he remains detained.

41. DHS placed Petitioner in removal proceedings before the Las Vegas Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, inter alia, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as a noncitizen who entered the United States without being admitted or paroled, and under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an immigrant not in possession of a valid unexpired immigrant visa or other valid entry document at the time of application for admission. **Exhibit A.**

42. Petitioner has no criminal record, no pending charges, and no prior immigration violations. His only immigration infraction dates to his initial entry without inspection in 2007, after which he has lived continuously and lawfully integrated into U.S. society.

43. Petitioner and his wife have been married for 23 years, raising three daughters who depend on him for emotional and financial stability. His eldest daughter V. has described how her father's labor and sacrifice supported her education and sustained their family through crises such as the 2020 Oregon wildfires, when he stayed behind to protect community livestock.

44. His middle daughter K., a U.S.-born high school student and Oregon National Guard recruit, has a documented history of anxiety and learning disabilities. Her school counselor and teachers confirm that she has thrived only with her father's daily support

45. His youngest daughter R., age 15, is under active medical and psychological treatment for anxiety and depression. Her physician, Dr. L.P, and her therapist, S.A, LCSW, both confirm that R.'s condition has deteriorated during her father's detention and that his presence is essential to her recovery.

46. Following Petitioner's arrest and transfer to Nevada Southern Detention Center, in Pahrump, Nevada, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

47. Petitioner subsequently requested a bond redetermination hearing before an IJ. **Exhibit B.**

48. On October 7, 2025, IJ Daniel Daugherty of the Las Vegas Immigration Court denied bond, and was bound to the holding that jurisdiction lay under 8 U.S.C. § 1225(b)(2) rather than § 1226(a), in the Board's recent binding decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025). The IJ did not find Petitioner to be a flight risk or danger, but concluded he was an "applicant for admission" subject to mandatory detention. "The Court finds that he is not a danger to the community nor a flight risk. The court would have set bond in the amount of $3500 with ATD at the direction of DHS." **Exhibit D**. Petitioner by and through counsel reserved appeal, and the government waived appeal.

49. Petitioner's detention under *Matter of Yajure Hurtado* exemplifies DHS's unlawful expansion of 8 U.S.C. § 1225(b)(2) to long-term residents apprehended in the interior. Multiple federal courts — including the U.S. District Court for the District of Nevada — have found the

government's interpretation unlikely to withstand judicial review. In *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 17, 2025), Judge Boulware granted a preliminary injunction, concluding that DHS's reliance on § 1225(b)(2) for interior arrests and the automatic-stay procedure under 8 C.F.R. § 1003.19(i)(2) "violates due process both facially and as applied." The court emphasized that the government's statutory theory "contradicts the text, structure, and decades of practice under § 1226(a)." Declaratory relief on the scope of § 1225(b)(2) remains pending in several cases, including *Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.) (hearing Oct. 17, 2025), but the weight of judicial opinion indicates that DHS's current interpretation cannot be sustained.

50. Petitioner's record shows nearly two decades of stable residence, longstanding employment, tax compliance, community leadership, and complete absence of criminal conduct. Letters from his employer, church, and neighbors describe him as "indispensable to the ranch and community" and "a man of honesty, faith, and service". **Exhibit B, C**.

51. Any further appeal within the administrative system is futile. On September 5, 2025, the BIA issued Matter of Hurtado, 29 I&N Dec. 216 (BIA 2025), adopting DHS's position that all noncitizens who entered without inspection are "applicants for admission" subject to § 1225(b)(2) mandatory detention. The Department of Justice has repeatedly defended this interpretation in federal court, including in *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

52. Without relief from this Court, Petitioner faces prolonged, unlawful detention, separated from his U.S. citizen daughters, including a National Guard recruit and a child in active therapy, despite an undisputed record showing he poses no danger and no flight risk.

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## CLAIMS FOR RELIEF

### COUNT I

### Violation of the INA

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

54. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to long-settled noncitizens apprehended in the interior of the United States. By its plain text, § 1225(b)(2) applies to individuals who are apprehended at the border or ports of entry as "applicants for admission." By contrast, § 1226(a) governs the detention of noncitizens, including those charged as inadmissible under § 1182(a)(6)(A)(i), who are placed in § 1229a removal proceedings after residing in the country

55. Federal courts have repeatedly rejected DHS's recent attempt to apply § 1225(b)(2) to persons like Petitioner. See *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 9, 2025). These courts have confirmed that § 1226(a), not § 1225(b)(2), governs detention for noncitizens apprehended after residing in the United States.

56. The Board of Immigration Appeals' recent decision in Matter of Hurtado, 29 I&N Dec. 216 (BIA 2025), adopting DHS's contrary position, does not bind this Court. *Hurtado* represents an abrupt, unexplained reversal of decades of agency practice and is not entitled to deference.

57. Accordingly, Respondents' application of § 1225(b)(2) to Petitioner is contrary to the statutory framework of the INA, exceeds their lawful authority, and unlawfully mandates his continued detention.

**COUNT II**

**Violation of Due Process**

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

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

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

61. On October 7, 2025, IJ Daniel Daugherty of the Las Vegas Immigration Court issued a decision denying bond to Petitioner Jorge Bautista Avalos. The IJ explicitly found that Petitioner is not a danger to the community nor a flight risk, and stated that, but for the Board's recent precedent decision, he would have set bond in the amount of $3,500 with Alternatives to Detention (ATD) at DHS's discretion. Nevertheless, the IJ concluded that he was bound by the Board's decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), which reclassified all individuals who entered without inspection as "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2). On that basis, the IJ held that he lacked jurisdiction to grant bond under § 1226(a). This decision mirrors the statutory and constitutional issues now under review in *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 17, 2025), where the district court found the government's interpretation of § 1225(b)(2) and its reliance on the EOIR-43 automatic stay to be inconsistent with the INA and violative of due process.

62. Because the IJ concluded he lacked jurisdiction under 8 U.S.C. § 1226(a), DHS did not file Form EOIR-43 to invoke the automatic stay under 8 C.F.R. § 1003.19(i)(2). Instead, the government waived appeal, while Petitioner reserved appeal of the IJ's jurisdictional finding.

63. As a result, Petitioner remains detained indefinitely, even though the IJ explicitly found that he is not a danger to the community nor a flight risk, and that he would have set bond at $3,500 with ATD at DHS's discretion if permitted. Petitioner's ongoing confinement, based solely on an administrative interpretation of statutory authority, deprives him of liberty without any individualized judicial determination.

64. This posture highlights the same constitutional infirmities identified by federal courts reviewing the government's new application of § 1225(b)(2) and the automatic-stay framework. In *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 17, 2025), the court held that DHS's reliance on § 1225(b)(2) for interior arrests, coupled with EOIR's automatic-stay regulation, "violates due process both facially and as applied," and emphasized that the government's statutory theory contradicts the text, structure, and decades of practice under § 1226(a).

65. Here, although no automatic stay was filed, the deprivation is functionally identical: Petitioner remains detained solely because the IJ believed *Yajure Hurtado* precluded jurisdiction, despite clear findings that he poses no risk of flight or danger. This continued detention violates the Due Process Clause of the Fifth Amendment, as it serves no legitimate governmental purpose and results from a legally erroneous and constitutionally suspect interpretation of the Immigration and Nationality Act.

**PRAYER FOR RELIEF**

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

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring Respondents to immediately release Petitioner pursuant to the Immigration Judge's October 7, 2025, alternative finding,

wherein the IJ expressly determined that Petitioner is not a danger to the community nor a flight risk, and stated that he would have set bond in the amount of $3,500 with Alternatives to Detention (ATD) at DHS's discretion but for the binding effect of Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025); or, in the alternative, to provide Petitioner with a constitutionally adequate bond hearing under 8 U.S.C. § 1226(a) within fourteen (14) days before a neutral decisionmaker, without application of the automatic stay provision in 8 C.F.R. § 1003.19(i)(2);

c. Enjoin Respondents from invoking or applying the EOIR-43 automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), to override the Immigration Judge's custody determinations;

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

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

RESPECTFULLY SUBMITTED,

/s/Daniel F. Lippmann
BY: DANIEL F. LIPPMANN, ESQ.

Dated: October 15, 2025.