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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jose Juan Perez Rodriguez

Plaintiff,

Kristi Noem, Secretary of Homeland
Security; Pamela Bondi, U.S. Attorney
General; Todd M. Lyons, Acting Director
of Immigration and Customs
Enforcement; John E. Cantu, ICE Arizona
Field Office Director; Luis Rosa, Warden
of Florence Processing Center,

Defendants.

Petitioner's Petition for Writ of Habeas
Corpus

DATED this 21th day of October, 2025

/s/ Alejandra Martinez
Attorney for Plaintiff

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VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Congress “does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’ns, Inc.*, 531 U.S. 457, 468 (2001). The government’s recent misconstruction of 8 U.S.C. § 1225 to provide for mandatory detention of *all* noncitizens who enter the country illegally is akin to finding an elephant in a mousehole. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The plainly wrong construction of the statute has caused the Petitioner—and many others like him—to be unlawfully detained without bond.

2. For nearly thirty years immigration judges (IJ), immigration lawyers for noncitizens, and attorneys from the U.S. Department of Homeland Security (DHS) construed 8 U.S.C. § 1226(a) to allow for bond eligibility for noncitizens who entered the country without inspection. This was well-settled law. Indeed, just this year when Congress passed the Laken Riley Act (LRA) it revealed its understanding that noncitizens who entered the country without inspection are eligible for a bond. The LRA’s amendments to 8 U.S.C. § 1226(c) add provisions providing that noncitizens who entered the country illegally and commit certain enumerated offenses are not eligible for a bond. Congress would not have passed the LRA if it understood that noncitizens who entered the country unlawfully were already subject to mandatory detention under 8 U.S.C. § 1225.

1 3. Notwithstanding the plain language of §§ 1226 and 1225, on September 5, 2025,
2 the BIA of Immigration Appeals (BIA) decided *Yajure Hurtado*, in which it determined
3 that any person who entered the United States without admission is mandatorily detained
4 under 8 U.S.C. § 1225(b)(2)(A). 29 I&N Dec. at 216. By disregarding the statutes' plain
5 meaning, the BIA dramatically changed the practice of immigration law resulting in the
6 illegal detention of noncitizens across the country. The Court should therefore follow the
7 avalanche of other district court opinions made on this issue and grant the Petitioner's writ
8 of habeas corpus. *See, e.g., Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299
9 (D. Mass. July 7, 2025); *Martinez v. Hyde*, No. 1:25-cv-11613-BEM, --- F. Supp. 3d ----,
10 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 1:25-cv-05937-
11 DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025); *Rosado v. Figueroa*, No. 2:25-cv-
12 02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation
13 adopted sub nom. *Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025
14 WL 2349133 (D. Ariz. Aug. 13, 2025); *Aguilar Maldonado v. Olson*, No. 0:25-cv-03142-
15 SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No.
16 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v.*
17 *Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*,
18 No. 1:25-cv-06373-DEH, 2025 WL 2398831 (S.D.N.Y. Aug. 12, 2025); *Ramirez Clavijo*
19 *v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-*
20 *Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025);
21 *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27,
22 2025); *Otero Escalante v. Bondi*, No. 25-cv-3051-ECT-DJF, --- F. Supp. 3d ----, 2025 WL

1 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-
2 EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 3:25-
3 cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda*
4 *v. Noem*, No. 5:25-cv-02304-CAS-BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025);
5 *Jimenez v. Berlin*, ---F. Supp. 3d---, 2025 WL 2639390, at *10 (D. Mass. Sept. 8, 2025);
6 *Pizarro Reyes v. Raycraft*, No. 25-cv-12546-RJW-APP, 2025 WL 2609425 (E.D. Mich.
7 Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.
8 Sept. 9, 2025); *Palma Perez v. Berg*, No. 8:25-cv-00494-JFB-RCC, 2025 WL 2531566 (D.
9 Neb. Sept. 3, 2025); *Reynosa Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL
10 2402271 (D. Neb. Aug. 4, 2025); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025
11 WL 2374224 (D. Neb. Aug. 14, 2025); *Hernandez Marcelo v. Trump*, No. 3:25-CV-00094-
12 RGE-WPK, 2025 WL 2741230 (S.D. Iowa Sept. 10, 2025); *Vazquez v. Feeley*, No. 2:25-
13 CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Luna Quispe v.*
14 *Crawford*, No. 1:25-cv-1471-AJT-LRV, 2025 WL 2783799 (E.D. Va. Sep. 29, 2025); *Silva*
15 *v. Larose*, No. 25-cv-2329-JES-KSC, 2025 WL 2770639 (S.D. Cal. Sep. 29, 2025); *Chang*
16 *Barrios v. Shepley*, No. 1:25-cv-00406-JAW, 2025 WL 2772579 (D. Me. Sep. 29, 2025);
17 *Belsai D.S. v. Bondi*, No. 25-cv-03682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct.
18 1, 2025); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996 (D.
19 Mass. Oct. 3, 2025); *Cerritos Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (ESW),
20 2025 WL 2821282 (D. Ariz. Oct. 3, 2025).

21 4. The Petitioner entered the United States without inspection approximately 40 years
22 ago—when he was around six years old. In or around July 2023, Petitioner was

1 apprehended within the interior of the United States and was issued a Notice to Appear
2 (NTA) in immigration court. *See* Exhibit A. DHS ordered the Petitioner released on his
3 own recognizance on July 7, 2023. *See* Exh. B. In doing so, the Respondents determined
4 that he posed no danger or flight risk and that pursuing his removal was not a priority.

5 5. Despite complying with the conditions of his release, the Immigration and Customs
6 Enforcement (ICE) abruptly re-detained the Petitioner on August 25, 2025, while he was
7 reporting at his routine ICE check-in. This sudden deprivation of liberty is unsupported by
8 a new legal or factual basis. Petitioner is now being held without bond, in flagrant violation
9 of statutory and constitutional due process protections.

10 6. The erroneous BIA decision in *Yajure Hurtado* dictates that the IJ lacks jurisdiction
11 to consider bond requests for noncitizens who are present in the United States without
12 admission or parole. As the Petitioner entered the United States without inspection, he falls
13 within the category of noncitizens that *Yajure Hurtado* has rendered ineligible for bond.

14 7. The Petitioner accordingly files this petition seeking a writ of habeas corpus
15 ordering his release from custody immediately, or alternatively, order the Respondents to
16 provide him with a bond hearing under § 1226(a) within seven days of the Court's order.

17 **II. PARTIES**

18 8. Petitioner Jose Juan Perez Rodriguez is a noncitizen who is currently detained in
19 immigration detention at the Florence Processing Center in Florence, Arizona. Petitioner
20 was first detained at Prairieland Detention Center in Alvarado, Texas. ICE then moved
21 Petitioner to a detention facility out of state in Arizona. ICE did not set bond, and Petitioner
22

1 is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Yajure*
2 *Hurtado*.

3 9. Respondent Kristi Noem is the Secretary of the Department of Homeland Security
4 and is charged with implementing the immigration laws of the United States. Secretary
5 Noem is being sued in her official capacity.

6 10. Respondent Pamela Bondi is the Attorney General for the United States and is
7 charged with overseeing the Executive Office of Immigration Review (EOIR). General
8 Bondi is being sued in her official capacity.

9 11. Respondent Todd M. Lyons is the Acting Director of the ICE, a sub-agency of
10 Homeland Security. It is under ICE's authority that the Petitioner is being held without
11 bond. Acting Director Lyons is being sued in his official capacity.

12 12. Respondent John E. Cantu is the Field Office Director of the Phoenix, Arizona ICE
13 Field Office. It is under Respondent Cantu's order that the Petitioner is in immigration
14 custody. Respondent Cantu is being sued in his official capacity.

15 13. Respondent Luis Rosa is the Warden and/or immediate custodian at the Florence
16 Processing Center in Florence, Arizona. Respondent Rosa is being sued in his official
17 capacity.

18 **III. JURISDICTION AND VENUE**

19 14. This Court has subject matter jurisdiction over Petitioner's petition for a writ of
20 habeas corpus pursuant to 28 U.S.C. § 2241. The Court also has jurisdiction pursuant to 28
21 U.S.C. § 1331 (Federal Question Jurisdiction) inasmuch as the case is a civil action arising
22 under the laws of the United States.

1 15. Although only the Courts of Appeals have jurisdiction to review removal orders
2 directly through a petition for review, *see* 8 U.S.C. §§ 1252(a)(1), (a)(5), (b), District Courts
3 have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness
4 or constitutionality of their detention by ICE. *See, e.g., Jennings v. Rodriguez*, 583 U.S.
5 281, 292-96 (2018); *Demore v. Hyung Joon Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas*
6 *v. Davis*, 533 U.S. 678, 687–88 (2001).

7 16. Venue is proper in this district because the Petitioner is detained within this district,
8 and a substantial amount of the events giving rise to this claim occurred within this district.
9 28 U.S.C. § 1391(e)(1).

10 **IV. LEGAL FRAMEWORK REGARDING MANDATORY IMMIGRATION**
11 **DETENTION AND BOND ELIGIBILITY**

12 **A. Congress deliberately provided for immigration detention in two different**
13 **statutes, 8 U.S.C. § 1226 and 8 U.S.C. § 1225, to address two very different**
14 **groups of noncitizens in different circumstances.**

15 17. This case involves the interplay between the general custody for individuals in
16 traditional removal proceedings before an IJ under 8 U.S.C. § 1226 and the mandatory
17 custody provisions for those noncitizens seeking admission at the port of entry or the border
18 under 8 U.S.C. § 1225. The Respondents' authority to detain noncitizens under §§ 1226 or
19 1225 depends on the individualized circumstances of the noncitizen and the procedural
20 posture of the removal case.

21 18. Both §§ 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration
22 Reform and Immigrant Responsibility Act (IIRIRA) of 1996 to provide detention for
different subsets of noncitizens. Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-

1 546, 3009-582 to 3009-583, 3009-585. According to IIRIRA’s legislative history, §
2 1226(a) was intended to “restate[] the [then-] current provisions of section 242(a)(1)
3 regarding the authority of the Attorney General to arrest, detain, and release *on bond* an
4 alien who is not lawfully in the United States.” *See Rodriguez v Bostock*, 779 F. Supp. 3d
5 1239, 1260 (W.D. Wash. Sep. 30, 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)
6 (emphasis added)). Noncitizens found within the country are detained under § 1226(a),
7 while those seeking admission into the United States are detained under § 1225(b)(2).

8 19. In 1997, following the enactment of the IIRIRA, the Executive Office for
9 Immigration Review (EOIR) drafted new regulations explaining that, in general, people
10 who entered the country without inspection were not considered detained under § 1225 and
11 that they were instead detained under § 1226(a) “and eligible for bond and bond
12 redetermination.” *See* Inspection and Expedited Removal of Aliens; Detention and
13 Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg.
14 10312, 10323 (Mar. 6, 1997).

15 20. Thus, in the decades that followed, most people who entered without inspection and
16 were placed in standard removal proceedings received bond hearings under § 1226(a). That
17 practice was consistent with many more decades of prior practice, in which noncitizens
18 who were not deemed “arriving” were entitled to a custody hearing before an IJ or other
19 hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H. Rept. No. 104-469, Part 1, at
20 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously
21 found at § 1252(a)).
22

1 21. Since the Petitioner was found in the United States approximately 40 years after his
2 unlawful entry, he is obviously *not* seeking admission into the country, and thus §
3 1225(b)(2) is inapplicable.

4 **i. The Petitioner is in custody under 8 U.S.C. § 1226 and the IJ can order his
5 release on bond.**

6 22. Section 1226(a) “authorizes the Government to detain certain aliens *already in the*
7 *country* pending outcome of removal proceedings.” *Jennings*, 583 U.S. at 289 (emphasis
8 added). The Petitioner was already in the country—for at least 40 years—and is in custody
9 pending the outcome of his removal proceedings. He was issued a NTA before an IJ and
10 has a preliminary hearing scheduled for October 29, 2025. The logical conclusion,
11 therefore, is that he is in custody under § 1226(a).

12 23. Section 1226(a) establishes the discretionary framework for noncitizens arrested
13 and detained “[o]n warrant issued by the Attorney General.” For such individuals, the
14 Attorney General (1) “may continue to detain the arrested alien,” (2) “may release the alien
15 on . . . bond of at least \$1,500,” or (3) “may release the alien on . . . conditional parole.” 8
16 U.S.C. §§ 1226(a)(1)-(2). DHS makes an initial custody determination on whether to allow
17 the noncitizen to be released pending the posting of a bond. 8 C.F.R. § 1236. However,
18 such determinations “may be reviewed by an Immigration Judge pursuant to 8 C.F.R. §
19 1236.” 8 C.F.R. § 1003.19(a).

20 24. Under 8 U.S.C. § 1226, an IJ may grant bond if the noncitizen demonstrates that he
21 or she is not a danger to the community or pose a significant risk of flight. *Matter of Guerra*,
22 24 I&N Dec. 37, 40 (BIA 2006). Once a bond has been granted by the IJ, DHS is only

1 authorized to revoke a bond upon a finding of materially changed circumstances meriting
2 the noncitizen's return to custody. *See, e.g., Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA
3 1981) (finding a change in circumstances, in part, when it was determined that the
4 noncitizen was "wanted for murder in the Philippines . . .").

5 25. Section 1226(c) requires mandatory detention for specifically enumerated
6 categories of noncitizens. Section 1226(c), until recently, required the detention of
7 noncitizens who are inadmissible or deportable because they have committed or been
8 sentenced for certain criminal offenses, or because they are affiliated with terrorist groups
9 or activities. *See* 8 U.S.C. §§ 1226(c)(1)(A)-(D).

10 26. In January 2025, Congress enacted the Laken Riley Act (LRA), which
11 expanded this list by adding § 1226(c)(1)(E), which requires detention of individuals who
12 (1) are inadmissible under §§ 1182(a)(6)(A), (C), or (7), *and* (2) who have been charged
13 with, arrested for, or convicted of certain crimes, including burglary, theft, shoplifting, or
14 crimes resulting in death or serious bodily injury. Laken Riley Act, Pub. L. No. 119-1, 139
15 Stat. 3 (2025).

16 27. The enactment of the LRA confirms that Congress did not intend for noncitizens
17 who entered the country unlawfully and are found within the interior of the United States
18 to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Indeed, the LRA
19 explicitly provides for mandatory detention for noncitizens who both entered the country
20 unlawfully *and* committed one of the above enumerated offenses within the United States.
21 By carving out an exception to the general rule allowing for bond for noncitizens who
22 entered the country unlawfully, the LRA reflects Congress' understanding that not all

1 noncitizens who entered the country illegally are subject to mandatory detention under §
2 1225(b)(2)(A). *Yajure Hurtado* effectively provides that LRA was an unnecessary,
3 needless bill.

4 28. Section 1226(a) leaves no doubt that it applies to people who confront removal for
5 being inadmissible to the United States, including those who are present without admission
6 or parole.

7 **ii. The Petitioner is not subject to mandatory immigration under § 1225(b)(2)(A).**

8 29. Section 1225(b)(2)(A), the provision invoked by the Respondents, is plainly not
9 applicable here since it only applies to those noncitizens seeking admission at the border.

10 The statute states:

11 In the case of an *who is an applicant for admission*, if the examining
12 immigration officer determines that an alien seeking admission is not clearly
13 and beyond a doubt entitled to be admitted, the alien shall be detained for a
14 proceeding under section 1229a of this title.

15 (Emphasis added). For § 1225(b)(2)(A) to apply, “several conditions must be met—in
16 particular, an ‘examining immigration officer’ must determine that the individual is: (1) an
17 ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt
18 entitled to be admitted.’” *Martinez v. Hyde*, CV No. 25-11613-BEM, at *6-7. “One who is
19 ‘seeking admission’ is presently attempting to gain admission into the United States.”
20 *Belsai D.S. v. Bondi*, 2025 WL 2802947, at *6.

21 30. As the Supreme Court has explained, the detention authority under 1225(b)(2)(A)
22 applies “at the Nation’s borders and ports of entry, where the Government must determine
whether an alien seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287; *see*

1 *also Lopez-Campos*, 2025 WL 2496379, at *18 (“1225(b)(2)(A) applies when people are
2 being inspected, which usually occurs at the border, when they are seeking lawful entry
3 into this country.”). “Noncitizens who are just ‘present’ in the country—those like
4 [Petitioner], who have been here for years upon years and never proceeded to obtain any
5 form of citizenship (*e.g.* asylum, permanent residency, refugee status, visas, etc.)—are not
6 ‘seeking’ admission.” *Lopez-Campos*, 2025 WL 2496379, at *16–17.

7 31. As stated above, the Petitioner has been in the United States for four decades
8 subsequent to an unlawful entry. He was arrested in the interior of the United States and,
9 as such, is not in custody under § 1225(b)(2)(A).

10 **B. The Respondents’ misconception of § 1225(b)(2)(A) as encompassing all**
11 **noncitizens who entered the country illegally is contrary to decades of**
12 **established practice and has resulted in the unlawful detention of the**
13 **Petitioner.**

14 32. The Respondents’ misconception of the statutes is part of a scheme to greatly
15 expand immigration detention generally by using the mandatory detention provisions of 8
16 U.S.C. § 1225.

17 33. On July 8, 2025, ICE, “in coordination with” Department of Justice (DOJ),
18 announced a new policy that rejected well-established understanding of the statutory
19 framework and reversed decades of practice.

20 34. The new policy, entitled “Interim Guidance Regarding Detention Authority for
21 Applicants for Admission,” claims that all persons who entered the United States without
22 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A).

1 The policy applies regardless of when a person is apprehended, greatly affecting those who
2 have resided in the United States for months, years, and even decades.

3 35. On September 5, 2025, the BIA—reversing decades of practice—adopted this same
4 position in *Yajure Hurtado*. 29 I&N Dec. at 216. There, the BIA held that all noncitizens
5 who entered the United States without admission or parole are subject to detention under
6 § 1225(b)(2)(A) and are ineligible for IJ bond hearings. *Id.*

7 36. As demonstrated in the string cite above, the Respondents efforts to expand 8 U.S.C.
8 § 1225 to provide for more mandatory detention has been rejected by courts across the
9 nation. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply
10 to people like Petitioner, who have already entered and were residing in the United States
11 at the time they were apprehended.

12 V. FACTS

13 37. The Petitioner, a citizen of Mexico, entered the United States without inspection
14 approximately 40 years ago. He is married and has four children, including two U.S.
15 citizens.

16 38. Petitioner is the beneficiary of an approved family-based visa petition (Form I-130)
17 filed by his U.S. citizen brother in April 2001.¹ *See* Exh. C. This petition falls under F4
18 preference category (siblings of U.S citizens), which is subject to annual numerical limits.²

19 _____
20 ¹ Because the priority date for this petition is April 28, 2001, the Petitioner is “grandfathered” under 8 U.S.C. § 1255(i). This provision allows certain individuals with immigration petitions filed on or before April 30, 2001 to apply for adjustment of status despite having entered the United States without inspection.

21 ² Visas in the preference immigrant categories are capped annually under numerical limits established by law. *See* 8
22 U.S.C. §§ 1151(c) and 1153(a). Additionally, per-country limits further restrict the number of visas issued to nationals of any single country. *See* 8 U.S.C. § 1152. If these annual or per-country limits are reached for a fiscal year, applicants

1 As a result, a visa is not yet available, as the Petitioner's priority date of April 28, 2001,
2 remains later than the current cutoff date of April 8, 2001 in the October 2025 visa bulletin.³

3 While the Petitioner will be eligible to apply for adjustment of status under 8 U.S.C. §
4 1255(i) once his priority date becomes current, there is no predicable timeframe for when
5 that will occur.

6 39. In addition, the Petitioner's U.S. citizen daughter filed an immediate relative visa
7 petition on his behalf on August 28, 2025. *See* Exh. D. Immediate relative petitions are not
8 subject to numerical caps, but the adjudication time by U.S. Citizenship and Immigration
9 Services (USCIS) is currently estimated at approximately 18 months.⁴ Once the I-130 is
10 approved, the Petitioner will be eligible to immediately adjust status under 8 U.S.C. §
11 1255(i).

12 40. The Petitioner therefore has two viable avenues for relief: (1) adjustment of status
13 based on the F4 petition once the visa bulletin becomes current; or (2) adjustment of status
14 as an immediate relative upon approval of his daughter's pending petition. Continued
15 detention would significantly impair his ability to meaningfully pursue either form of relief,
16 as detained removal proceedings are typically expedited and unlikely to be continued for
17 an extended period of time.

18 _____
19 may face delays in obtaining an immigrant visa until their priority date, which is the date the Form I-130 is properly
20 filed with USCIS, becomes current under the Visa Bulletin. *See Visa Availability and Priority Dates*, USCIS.GOV,
<https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates> (last
21 visited October 20, 2025). This backlog results in significant delays in certain categories and for applicants from
22 specific high-demand countries, including Mexico.

³ *Visa Bulletin for October 2025*, TRAVEL.STATE.GOV, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-october-2025.html> (last visited October 20, 2025).

⁴ *See I-130 Processing Times*, USCIS.GOV, <https://egov.uscis.gov/processing-times/> (last visited October 20, 2025).

1 41. In or around July 2023, Petitioner was apprehended within the interior of the United
2 States by the Respondents and placed in traditional removal proceedings before an IJ. *See*
3 Exh. A. The NTA alleges, in part, that the Petitioner entered the country without admission
4 or parole. *Id.* After determining that Petitioner was not a danger to the community nor
5 posed a risk of flight, ICE released the Petitioner from custody under an order of release
6 on recognizance. *See* Exh. B. Petitioner has complied with the terms of his release.

7 42. Despite complying with the terms of his release, including periodic check-ins with
8 ICE, and a clear pathway to LPR status, the Petitioner was redetained on August 25, 2025.
9 The redetention was not based on any material changed circumstances.

10 43. The Petitioner is now being held without bond at the Florence Processing Center in
11 Florence, Arizona.

12 44. Pursuant to *Yajure Hurtado*, the IJ is unable to consider any bond request from the
13 Petitioner. As a result, Petitioner remains in detention. Without relief from this Court, he
14 faces the prospect of months, or even years, in immigration custody and separation from
15 his family and the community that he created for the past 40 years in the United States.

16 VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

17 45. The Petitioner has exhausted his administrative remedies to the extent required by
18 law. It would be futile to require the Petitioner to file a bond redetermination request with
19 the Immigration Court given that the BIA has already announced its decision on the issue
20 of bond jurisdiction in *Yajure Hurtado*. In fact, *Yajure Hurtado* states that “Immigration
21 Judges lack authority to hear bond requests or to grant bond to aliens, like the Petitioner,
22

1 who are present in the United States without admission.” *Yajure Hurtado*, 29 I&N Dec.
2 at. 225 (emphasis added).

3 **VII. CLAIMS FOR RELIEF**

4 **Count I. Statutory claim: The Petitioner is eligible for bond under § 1226(a)**
5 **and is not subject to mandatory detention under § 1225(b)(2)(A).**

6 46. The Petitioner has a clear right to a custody hearing by an IJ under 8 U.S.C. §
7 1226(a)(2). The Respondents are detaining the Petitioner in direct violation of this statute
8 which authorizes the IJ to grant release on bond.

9 47. The statute cannot be clearer and requires the Petitioner to be given a bond hearing
10 under 8 U.S.C. § 1226(a)(2). While the BIA reached the opposite conclusion in *Yajure*
11 *Hurtado*, this interpretation is erroneous and even if it were plausible, it is not entitled to
12 *Chevron* deference pursuant to the Supreme Court’s decision in *Loper Bright Enterprises*
13 *v. Raimondo*. 603 U.S. 369, 369 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def.*
14 *Council, Inc.*, 467 U.S. 837 (1984)). The Petitioner, as such, is entitled to a bond hearing
15 under the statute’s plain language.

16 48. Moreover, in *Monteon-Camargo v. Barr*, the Fifth Circuit found that where the BIA
17 announces a “new rule of general applicability” which “drastically change[s] the
18 landscape,” retroactive application would “contravene basic presumptions about our
19 legislative system” and should in that case be disfavored unless the government can
20 demonstrate that the advantages of retroactive application outweigh these grave
21 disadvantages. 918 F.3d 423, 430-431 (2019) (quoting *Matter of Diaz-Lizarraga*, 26 I&N
22 Dec. 847, 849, 852 (BIA 2016)).

1 49. Applying *Yajure Hurtado* to individuals like Petitioner, who entered the United
2 States without inspection decades before the BIA's decision, would be impermissibly
3 retroactive. The BIA's decision contradicts decades of statutory practice and administrative
4 precedent, under which such individuals were detained under § 1226(a) and entitled to a
5 bond hearing. Retroactively applying *Yajure Hurtado* would strip these long-established
6 rights and impose a new disability by rendering them ineligible for bond, contrary to settled
7 expectations. *See Landgraf v. Usi Film Prods.*, 511 U.S. 244, 265 (1994) ("As Justice
8 Scalia has demonstrated, . . . [e]lementary considerations of fairness dictate that individuals
9 should have an opportunity to know what the law is and to conform their conduct
10 accordingly; settled expectations should not be lightly disrupted.").

11 **Count II. *Accardi* Violation**

12 50. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-
13 Immigration and Naturalization Service issued an interim rule to interpret and apply
14 IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of
15 Aliens," the agencies explained that "[d]espite being applicants for admission, aliens who
16 are *present without having been admitted or paroled* (formerly referred to as aliens who
17 entered without inspection) will be eligible for bond and bond redetermination." 62 Fed.
18 Reg. 10312, 10323 (emphasis added). The agencies thus made clear that individuals who
19 had entered without inspection were eligible for consideration for bond and bond hearings
20 before IJs under 8 U.S.C. § 1226 and its implementing regulations.

21 51. Nonetheless, pursuant to *Yajure Hurtado*, EOIR has a policy and practice of
22 applying § 1225(b)(2)(A) to individuals like Petitioner.

1 52. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued
2 detention in violation of § 1226(a) and its regulations at 8 C.F.R. §§ 236.1, 1236.1, and
3 1003.19, which for decades have recognized that noncitizens present without admission
4 are eligible for a bond hearing. *See Jennings*, 583 U.S. at 288-29 (describing § 1226
5 detention as relating to people “inside the United States” and “present in the country.”).
6 Such protection is not a mere regulatory grace but is a baseline Due Process requirement.
7 *See Hernandez-Lara v Lyons*, 10 F. 4th 19, 41 (1st Cir. 2021). The only exception for such
8 noncitizens subject to § 1226(a) is where the noncitizen is subject to mandatory detention
9 under 8 U.S.C. § 1226(c) for certain crimes and certain national security grounds of
10 removability. *See Demore v. Kim*, 538 U.S. 510, 512 (2003).

11 53. Government agencies are required to follow their own regulations. *United States ex*
12 *rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *United States v. Heffner*, 420 F.2d
13 809, 811 (4th Cir. 1969) (“An agency of the government must scrupulously observe rules,
14 regulations, or procedures which it has established. When it fails to do so, its action cannot
15 stand and courts will strike it down.”). A violation of the *Accardi* doctrine may itself
16 constitute a violation of the Fifth Amendment Due Process Clause and justify release from
17 detention, particularly when liberty is at stake. *See, e.g., Sering Ceesay v. Kurzdorfer*, 781
18 F. Supp. 3d 137, 160 (W.D.N.Y. 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383, 388
19 (D. Mass. 2017)).

20 **Count II. Fifth Amendment Substantive and Procedural Due Process Claim**

21 54. The Respondents may not deprive a person of life, liberty, or property without due
22 process of law. U.S. Const. Amend. V. The Petitioner has a weighty liberty interest as his

1 freedom “from government . . . detention . . . lies at the heart of the liberty that [the Fifth
2 Amendment] protects.” *Zadvydas*, 533 U.S. at 690.

3 55. Individuals who have been released from custody gain a protected liberty interest in
4 remaining free from custody, and ICE must show materially changed circumstances to
5 justify redetention. *See, e.g., See Matter of Sugay*, 17 I. & N. at 640; *Lopez-Arevelo v. Ripa*,
6 No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025) (“[O]nce
7 released from immigration custody, noncitizens acquire ‘a protectable liberty interest in
8 remaining out of custody on bond.”); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D.
9 Cal. 2019); *see also Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017) (“Once a
10 noncitizen has been released, the law prohibits federal agents from rearresting him merely
11 because he is subject to removal proceedings. Rather, the federal agents must be able to
12 present evidence of materially changed circumstances—namely, evidence that the
13 noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order
14 of removal.”).

15 56. To protect this liberty interest, due process requires notice and a hearing where the
16 noncitizen may challenge the basis for redetention.

17 57. The Petitioner was released on an Order of Release on Recognizance by ICE in
18 2023. *See* Exh. B. He has a liberty interest in being free from detention. Yet, ICE arbitrarily
19 took him back into detention during the check-in on August 25, 2025.

20 58. Given his 40 years in the United States, his U.S. citizen family and his opportunity
21 to obtain his lawful permanent residence in the United States, the application of
22

1 § 1225(b)(2)(A) to Petitioner violates his substantive and procedural due process
2 protections under the Fifth Amendment.

3 **VIII. PRAYER FOR RELIEF**

4 For the foregoing reasons, the Petitioner requests that the Respondents be cited to
5 appear and that, upon due consideration, the Court enter an order:

- 6 a. Ordering the Respondents, pursuant to 28 U.S.C. § 2243, to demonstrate within five
7 days why the Petitioner's writ of habeas corpus should not be granted;
- 8 b. Granting a writ of habeas corpus finding that the Petitioner's detention is unlawful
9 and unconstitutional;
- 10 c. Providing declaratory relief that the Petitioner's detention is unlawful;
- 11 d. Ordering the Petitioner's immediate release from custody, or alternatively, order the
12 Respondents to provide him with a bond hearing under § 1226(a) within seven days
13 of the Court's order;
- 14 e. Ordering that Respondents not transfer the Petitioner to any facility outside of the
15 boundaries of Florence, Arizona while this writ is pending.
- 16 f. Awarding Petitioner reasonable attorney fees, expenses and costs; and
- 17 g. Granting Petitioner such other and further relief as the Court may deem just and
18 proper.

19 /s/ Alejandra Martinez
20 Alejandra Martinez
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VERIFICATION UNDER 28 U.S.C. § 2242

Acting on behalf of the Petitioner, I verify that the foregoing factual allegations are true and correct as required by 28 U.S.C. § 2242.

Respectfully submitted,

/s/ Alejandra Martinez
Alejandra Martinez

ATTORNEY FOR PETITIONER

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Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): **Jose Juan PEREZ RODRIGUEZ , ;**

**Kristi Noem , Secretary of Homeland Security;
Pamela Bondi , U.S. Attorney General; Todd M. Lyons
, Acting Director, Immigration &
Customs Enforcement; John Cantu , Florence ICE
Field Office Director; Luis Rosa , Warden of Florence
Service Processing Center;**

County of Residence: Pinal

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Pinal

Plaintiff's Atty(s):

**Alejandra Martinez , Attorney
De Mott, Curtright, & Armendariz, LLP
8023 Vantage Dr., Suite 800
San Antonio, Texas 78230
210-590-1844**

Defendant's Atty(s):

U.S. Attorney's Office for the District of Arizona ,

IFP REQUESTED

REMOVAL FROM COUNTY, CASE #

II. Basis of Jurisdiction:

2. U.S. Government Defendant

III. Citizenship of Principal Parties(Diversity Cases Only)

N/A

Plaintiff:-

N/A

Defendant:-

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

463 Alien Detainee

VI.Cause of Action:

28 U.S.C. § 2241 Suit seeking relief from unlawful immigration detention

VII. Requested in Complaint

No

Class Action:

Dollar Demand:

No

Jury Demand:

VIII. This case is not related to another case.

Signature: Alejandra Martinez

Date: 10/21/2025

Case 2:25-cv-03921-JJT--ESW Document 1-2 Filed 10/21/25 Page 2 of 2

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014