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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUAN GABRIEL BERNARDO
AQUINO,

Case No.: **'25CV2904 RSH MMP**

Petitioner,

v.

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center, San
Diego, California in his official capacity;
JOSEPH FREDEN, Field Office Director
of San Diego Office of Detention and
Removal, U.S. Immigration and Customs
Enforcement; U.S. Department of
Homeland Security;
TODD M. LYONS, Acting Director, U.S.
Immigration and Customs Enforcement,
U.S. Department of Homeland Security, in
his official capacity;
DAREN K. MARGOLIN, Director for
Executive Office for Immigration Review,
in his official capacity;
KRISTI NOEM, Secretary of U.S.
Department of Homeland Security, in her
official capacity;
and
PAMELA BONDI, Attorney General of
the United States, in her official capacity,

Respondents.

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS;
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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

Agency Doc. No.

A 

1 Petitioner Juan Gabriel BERNARDO AQUINO (“Petitioner” or “BERNARDO
2 AQUINO”), by and through his attorney, David Schlesinger, petitions this Court for a
3 writ of habeas corpus under 28 U.S.C. §§ 2241 to remedy Respondents’ detaining him
4 unlawfully, and states as follows:

5 **INTRODUCTION**

6 1. Petitioner Juan Gabriel BERNARDO AQUINO (“Mr. BERNARDO AQUINO” or
7 “Petitioner”), by and through his undersigned counsel, files this petition for writ of habeas
8 corpus and complaint for declaratory and injunctive relief to compel his immediate release
9 from immigration detention where he has been held by the U.S. Department of Homeland
10 Security (“DHS”) since being detained on October 15, 2025. Mr. BERNARDO AQUINO
11 is in the physical custody of Respondents at the Otay Mesa Detention Center in San Diego,
12 California.

13 2. Mr. BERNARDO AQUINO is unlawfully detained. DHS and the Executive Office
14 for Immigration Review (“EOIR”) have improperly concluded that Mr. BERNARDO
15 AQUINO, despite being physically present within the interior of and residing in the U.S.,
16 and having been arrested at his ICE check-in in San Diego, California, should be deemed
17 to be seeking admission to the U.S. and therefore subject to mandatory detention under
18 8 U.S.C. § 1225(b)(2)(A).

19 3. DHS has placed Mr. BERNARDO AQUINO in removal proceedings under 8 U.S.C.
20 § 1229a and has charged Mr. BERNARDO AQUINO with being present in the United
21 States without admission and therefore removable under 8 U.S.C. § 1182(a)(6)(A)(i).

1 4. Based on the charge of removability, DHS has denied Mr. BERNARDO AQUINO's
2 release from immigration custody. This denial is largely based upon a new DHS policy
3 issued on July 8, 2025,¹ instructing all Immigration and Customs Enforcement (ICE)
4 employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—i.e.,
5 present without admission—to be an “applicant for admission” under 8 U.S.C.
6 § 1225(b)(2)(A) and therefore subject to mandatory detention during the removal hearing
7 process.

8 5. Mr. BERNARDO AQUINO has not sought a bond hearing before an immigration
9 judge (“IJ”) because doing so is futile.

10 6. On September 5, 2025, the Board of Immigration Appeals (“BIA”) issued *Matter of*
11 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which defies decades of precedent and
12 practice by Respondents, stating that the plain language of 8 U.S.C. § 1225(b)(2)(A) divests
13 jurisdiction from immigration judges to redetermine the custody of noncitizens who are
14 present in the United States without admission.

15 7. Both before and since the issuance of *Matter of Yajure Hurtado*, judges in other
16 district courts have overwhelmingly concluded that persons similarly situated to Mr.
17 BERNARDO AQUINO, present and residing within the United States, are not “applicants

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27 1 “Interim Guidance Regarding Detention Authority for Applicants for Admission”,
28 ICE, July 8, 2025. Available at: <https://immpolicytracking.org/policies/ice-issuesmemo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policydocuments>.

1 for admission" who are "seeking admission" and subject to mandatory detention under
2 § 1225(b)(2)(A).
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4 8. Mr. BERNARDO AQUINO's detention on this basis violates the plain language of
5 the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq. Section
6 1225(b)(2)(A) does not apply to persons like Mr. BERNARDO AQUINO who previously
7 entered and are now present and residing in the United States. Instead, such persons are
8 subject to a different statute or provision, § 1226(a), that allows for release on conditional
9 parole or bond. That provision expressly applies to people like Mr. BERNARDO AQUINO
10 who are charged as removable for having entered the United States without inspection and
11 being present without admission.
12

13 9. The BIA's and Respondents' new legal interpretation of the INA is plainly contrary
14 to the statutory framework and decades of agency practice applying § 1226(a) to persons
15 like Mr. BERNARDO AQUINO who are present within the United States. The new
16 interpretation also conflicts with Ninth Circuit and U.S. Supreme Court precedent. *See*
17 *Jennings v. Rodriguez*, 583 U.S. 281, 288, 301 (2018); *Torres v. Barr*, 976 F.3d 918, 926
18 (9th Cir. 2020); and *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024).
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20 10. In addition to Mr. BERNARDO AQUINO's statutory right to a bond hearing under
21 § 1226(a), persons within the United States have constitutional rights. "[T]he Due Process
22 Clause applies to all 'persons' within the United States, including aliens, whether their
23 presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*,
24 533 U.S. 678, 693 (2001).
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1 11. Accordingly, Mr. BERNARDO AQUINO seeks a writ of habeas corpus requiring
2 that he be released, or, at a minimum, an order that an IJ conduct a bond hearing and that
3 Respondents adhere to any bond that may be granted.
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5 **JURISDICTION**

6 12. Jurisdiction is proper and relief is available under 28 U.S.C. § 1331 (federal
7 question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of sovereign
8 immunity), 28 U.S.C. § 2241 (habeas corpus jurisdiction), and Article I, Section 9, clause
9 2 of the U.S. Constitution (the Suspension Clause).
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11 13. This Court may grant relief under 28 U.S.C. § 2241, the Declaratory Judgment Act,
12 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.
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14 **VENUE**

15 14. Under *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500
16 (1973), venue lies in this judicial district, the one in which Mr. BERNARDO AQUINO is
17 currently detained.
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19 15. Venue is also properly in this Court under 28 U.S.C. § 1391(e) because Respondents
20 are employees, officers, and agents of the United States, and a substantial part of the events
21 or omissions giving rise to the claims occurred in the Southern District of California.
22

23 **PARTIES**

24 16. Petitioner Juan Gabriel BERNARDO AQUINO is a 46-year-old-Mexican national
25 who most recently entered the U.S. in 2008 without inspection. He was detained and later
26 placed in removal proceedings with a Notice to Appear dated July 30, 2014. *See Exhibits*
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1 *A, B.* DHS released him from detention on his own recognizance on August 4, 2014. *Exhibit*
2 *C.* His proceedings were administratively closed on March 17, 2015. *Exhibit D.* He was
3 not required to report or check in with ICE during that period. *Exhibit A.* A decade after
4 his removal proceedings were administratively closed, Mr. BERNARDO AQUINO's
5 removal proceedings were re-calendared and he was required to check-in with ICE.
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7 *Exhibits D, E.*

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9 17. Mr. BERNARDO AQUINO was arrested by ICE agents on October 15, 2025, at his
10 ICE check-in at 880 Front Street, San Diego, California 92101. *Exhibits A, F.* Mr.
11 BERNARDO AQUINO has been in immigration detention since that date. After arresting
12 Mr. BERNARDO AQUINO, ICE did not set a bond. Under *Matter of Yajure Hurtado*, it
13 would be futile for Mr. BERNARDO AQUINO to request a bond before the IJ. Mr.
14 BERNARDO AQUINO is in Respondents' legal and physical custody at the Otay Mesa
15 Detention Center in San Diego, California. That facility is operated by CoreCivic, Inc., a
16 Maryland corporation.

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18 18. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention Center
19 where Mr. BERNARDO AQUINO is being held. He oversees the day-to-day operations of
20 the Otay Mesa Detention Center and acts at the Direction of Respondents FREDEN,
21 LYONS and NOEM. Respondent LAROSE is a custodian of Mr. BERNARDO AQUINO
22 and is named in his official capacity.

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24 19. Respondent Joseph FREDEN is the Acting Field Office Director of ICE in San
25 Diego, California, and is named in his official capacity. ICE is the component of DHS that
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1 is responsible for detaining and removing noncitizens according to immigration law and
2 oversees custody determinations. In his official capacity, he is Mr. BERNARDO
3 AQUINO's legal custodian.
4

5 20. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
6 official capacity. Among other things, ICE is responsible for the administration and
7 enforcement of the immigration laws, including the removal of noncitizens. In his official
8 capacity as head of ICE, he is the legal custodian of Mr. BERNARDO AQUINO.

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10 21. Respondent Daren K. MARGOLIN is the Director of EOIR and has ultimate
11 responsibility for overseeing the operation of the immigration courts and the Board of
12 Immigration Appeals, including bond hearings. EOIR is the federal agency responsible for
13 implementing and enforcing the INA in removal proceedings, including for custody
14 redeterminations in bond hearings. He is sued in his official capacity.
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17 22. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official
18 capacity. DHS is the federal agency encompassing ICE, which is responsible for the
19 administration and enforcement of the INA and all other laws relating to the immigration
20 of noncitizens. In her capacity as Secretary, Respondent NOEM has responsibility for the
21 administration and enforcement of the immigration and naturalization laws under section
22 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25,
23 2002); *see also* 8 U.S.C. § 1103(a). Respondent NOEM is the ultimate legal custodian of
24 Mr. BERNARDO AQUINO.
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23. Respondent Pamela BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (“DOJ”), and is named in her official capacity. She has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (“EOIR”), which administers the immigration courts and the BIA.

LEGAL FRAMEWORK

24. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings conducted under 8 U.S.C. § 1229a.

25. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in § 1229a removal proceedings before an IJ. Persons covered by § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a) and 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).

26. Second, the INA provides for mandatory detention of noncitizens subject to an Expedited Removal order imposed under 8 U.S.C. § 1225(b)(1) and for other noncitizen applicants for admission to the U.S. who are deemed not clearly entitled to be admitted. *See* 8 U.S.C. § 1225(b)(2).

27. Lastly, the INA provides for detention of noncitizens who have been ordered removed, including persons in withholding-only proceedings. *See 8 U.S.C. § 1231(a)-(b).*

28. This case concerns the detention provisions in 8 U.S.C. §§ 1225(b)(2) and 1226(a).

1 29. The detention provisions in 1225(b)(2) and 1226(a) were enacted as part of the
2 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L.
3 No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.
4 Section 1226(a) was most recently amended in early 2025 by the Laken Riley Act, Pub. L.
5 No. 119-1, 139 Stat. 3 (2025).
6

7 30. Following the enactment of the IIRIRA, EOIR drafted new regulations applicable to
8 proceedings before immigration judges, explaining that, in general, people who entered the
9 country without inspection – also referred to as being “present without admission” – were
10 not considered detained under § 1225 and that occurred instead under § 1226(a). *See*
11 Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct
12 of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
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14 31. Thus, in the decades that followed, most people who entered without inspection and
15 were placed in standard § 1229a removal proceedings received bond hearings before IJs,
16 unless their criminal history rendered them ineligible. That practice was consistent with
17 many decades of earlier practice, in which noncitizens who were not deemed “arriving”
18 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C.
19 § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that
20 § 1226(a) simply “restates” the detention authority previously located in § 1252(a)).
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22 32. This practice both pre- and post-enactment of IIRIRA is consistent with the truism
23 that noncitizens present within the United States – instead of noncitizens present at a border
24 and seeking admission – have constitutional rights. “[T]he Due Process Clause applies to
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1 all ‘persons’ within the United States, including aliens, whether their presence here is
2 lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.
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4 33. On July 8, 2025, ICE “in coordination with” the Department of Justice announced a
5 new policy that rejected the well-established understanding of the statutory framework and
6 reversed decades of practice.
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8 34. The new policy, entitled “Interim Guidance Regarding Detention Authority for
9 Applicants for Admission,”² claims that all noncitizens present within the United States
10 who entered without inspection shall now be deemed “applicants for admission” under
11 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A).
12 The policy applies regardless of when a person is apprehended and affects those who have
13 resided in the United States for months, years, and even decades.
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15 35. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure*
16 *Hurtado*, stating that all persons who entered without inspection are applicants for
17 admission and are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). The BIA
18 stated that “[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and
19 Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to
20 hear bond requests or to grant bond to aliens who are present in the United States without
21 admission.”
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28 ² Available at: <https://immpolicytracking.org/policies/ice-issues-memoeliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents>.

1 36. The overwhelming majority of district judges to consider this question across the
2 country (including in this District), however, have rejected the ICE policy memo and the
3 BIA's decision in *Matter of Yajure Hurtado*. District judges have instead held that Section
4 1225 governs detention of noncitizens outside the country who are "seeking admission" to
5 the United States, while Section 1226 concerns those living in the United States who
6 entered without inspection. *See Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 U.S.
7 Dist. LEXIS 171714 (S.D. Cal. Sep. 3, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-
8 cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 171364, at *16, (C.D. Cal. July 28, 2025)
9 ("[T]he Court finds that the potential for Petitioners' continued detention without an initial
10 bond hearing would cause immediate and irreparable injury, as this violates statutory rights
11 afforded under § 1226(a)."); *Ceja Gonzalez v. Noem*, No. 5:25-cv-02054-ODW (ADSx),
12 2025 U.S. Dist. LEXIS 206688 (C.D. Cal. Aug. 13, 2025); *Benitez v. Francis*, 2025 U.S.
13 Dist. LEXIS 157214 (S.D.N.Y. Aug. 8, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX-
14 DLR (CDB), 2025 U.S. Dist. LEXIS 156344 (D. Ariz. Aug. 11, 2025), *report and*
15 *recommendation adopted without objection*, *Rosado v. Figueroa*, No. CV-25-02157-PHX-
16 DLR (CDB), 2025 U.S. Dist. LEXIS 156336 (D. Ariz. Aug. 13, 2025); *Martinez v. Hyde*,
17 Civil Action No. 25-11613-BEM, 2025 U.S. Dist. LEXIS 141724 (D. Mass. July 24, 2025);
18 *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS 128085 (D. Mass. July
19 7, 2025); *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 U.S. Dist. LEXIS 206523 (S.D.
20 Tex. Oct. 8, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash.
21 2025); *Diosdado A.V. v. Bondi*, No. 25-cv-3162 (KMM/ECW), Doc. No. 16 (D. Minn.
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1 Aug. 19, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 U.S. Dist. LEXIS
2 169423 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-1093, 2025 U.S. Dist.
3 LEXIS 167280, at *7 (W.D. La. Aug. 27, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-
4 RGK-AS, 2025 U.S. Dist. LEXIS 171945, at *8, (C.D. Cal. Aug. 26, 2025); *Leal-*
5 *Hernandez v. Noem*, No. 1:25-cv-02428, 2025 U.S. Dist. LEXIS 165015, at *24, (D. Md.
6 Aug. 24, 2025); *Romero v. Hyde*, Civil Action No. 25-11631-BEM, 2025 U.S. Dist. LEXIS
7 160622, at *30, (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789,
8 2025 U.S. Dist. LEXIS 158808, at *4, (C.D. Cal. Aug. 15, 2025); *dos Santos v. Noem*, No.
9 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488, at *19-20, (D. Mass. Aug. 14, 2025);
10 *Belsai D.S. v. Bondi*, No. 25-cv-3682 (KMM/EMB), 2025 U.S. Dist. LEXIS 194262, at
11 *12-14, (D. Minn. Oct. 1, 2025); *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 U.S.
12 Dist. LEXIS 201967 (S.D. Tex. Oct. 7, 2025); *Reyes v. Raycraft*, No. 25-cv-12546, 2025
13 U.S. Dist. LEXIS 175767, at *14-15, (E.D. Mich. Sep. 9, 2025); *Lopez-Arevelo v. Ripa*,
14 No. EP-25-CV-337-KC, 2025 U.S. Dist. LEXIS 188232, at *18-20, (W.D. Tex. Sep. 21,
15 2025); *Chogollo Chafla v. Scott*, No. 2:25-cv-00437-SDN, 2025 U.S. Dist. LEXIS 184909,
16 at *14-15, (D. Me. Sep. 21, 2025); *Eliseo A.A. v. Olson*, No. 25-3381 (JWB/DJF), 2025
17 U.S. Dist. LEXIS 201993 (D. Minn. Oct. 8, 2025).

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24 37. As the district judge in *Rodriguez Vazquez* explained, the plain text of the statutory
25 provisions demonstrates that § 1226(a), not § 1225(b), applies to persons like Mr.
26 BERNARDO AQUINO. Section 1226(a) applies by default to all persons “pending a
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1 decision on whether the [noncitizen] is to be removed from the United States.” *Rodriguez*
2 *Vazquez*, 2025 U.S. Dist. LEXIS 193611, at *6.

3 38. Other portions of § 1226 also explicitly apply to persons charged as being
4 inadmissible, including those who entered without inspection. See 8 U.S.C.
5 § 1226(c)(1)(E). Subparagraph (E)’s reference to inadmissible persons makes clear that,
6 by default, inadmissible persons not subject to subparagraph (E)(ii) are afforded a bond
7 hearing under subsection (a). As *Rodriguez Vazquez* explained, “[w]hen Congress creates
8 ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions,
9 the statute generally applies.” *Rodriguez Vazquez*, 2025 U.S. Dist. LEXIS 193611, at *52
10 (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400
11 (2010)).

12 39. On September 19, 2025, a district judge in the Western District of Kentucky,
13 Louisville Division, reached the same conclusion after taking notice of the recent
14 congressional amendments, via the Laken Riley Act, to Section 1226. *See Barrera v.*
15 *Tindall*, Civil Action No. 3:25-cv-541-RGJ, 2025 U.S. Dist. LEXIS 184356 (W.D. Ky.
16 Sep. 19, 2025). The Laken Riley Act added a new subsection under Section 1226(c) for
17 certain persons who would have otherwise fallen under Section 1226(a). *Barrera* noted
18 that if § 1225(b)(2) already mandated detention of any person who has not been admitted,
19 regardless of how long they have been here, then “adding § 1226(c)(1)(E) to the statutory
20 scheme was pointless and this Court, too, will not find that Congress passed the Laken
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22 scheme was pointless and this Court, too, will not find that Congress passed the Laken
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24 scheme was pointless and this Court, too, will not find that Congress passed the Laken
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26 scheme was pointless and this Court, too, will not find that Congress passed the Laken
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1 Riley Act to 'perform the same work' that was already covered by § 1225(b)(2)." See
2 *Barrera*, at *9-10.

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4 40. In its further analysis of the text, *Barrera* observed, "Respondents 'completely
5 ignore,' or even read out, the term 'seeking' from 'seeking admission.'" (citing *Lopez-*
6 *Campos*, 2025 U.S. Dist. LEXIS 169423, at *16). The term "seeking" "implies action." *Id.*
7 Noncitizens who have been present in the country for years, like Barrera who has been here
8 20 years, are not actively "seeking admission." *Id.* Since the plain language of Section 1225
9 requires someone to be "seeking admission" to be subject to mandatory detention, Mr.
10
11 BERNARDO AQUINO, like Barrera, is not subject to it.

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13 41. Relying on the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281
14 (2018), the district judge in *Lopez Santos v. Noem*, No. 3:25-CV-01193 SEC P, 2025 U.S.
15 Dist. LEXIS 183412 (W.D. La. Sep. 11, 2025), also reached the same conclusion. *Lopez*
16
17 *Santos* noted that the Supreme Court in *Jennings* held that Section 1225(b), the provision
18 at issue in this petition, "applies primarily to aliens seeking entry into the United States"
19 (583 U.S. at 297), and that Section 1226 "applies to aliens already present in the United
20 States." *Id.* at 303. As such, *Lopez Santos* determined that a noncitizen residing in the U.S.
21 is entitled to a bond hearing. *Lopez Santos*, at *11.

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23 42. Considering the foregoing, and the plain language of Sections 1225 and 1226,
24 Section 1226 applies to noncitizens who are present without admission and who face
25 charges in removal proceedings of being inadmissible to the United States.
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1 43. By contrast, § 1225(b) applies to persons arriving at U.S. ports of entry or who
2 recently entered the United States and are encountered at or near the border. The statute's
3 entire framework is premised on inspections at the border of people who are "seeking
4 admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

5
6 44. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to
7 persons like Mr. BERNARDO AQUINO who have already entered and were residing in
8 the United States at the time they were apprehended.

9
10 **FACTS**
11

12 45. Mr. BERNARDO AQUINO is a 46-year-old devoted husband and father who has
13 been residing in San Diego, California, since 2008, when he most recently entered the
14 United States without inspection. He has three U.S. citizen daughters. *Exhibit A*. Two of
15 Mr. BERNARDO AQUINO's daughters live with him, including his 9-year-old daughter,
16 G.B.H., who suffers from anxiety. *Exhibit A*. G.B.H. was present with Mr. BERNARDO
17 AQUINO at his ICE check-in appointment on October 15, 2025. *Exhibits A, F*.

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19 46. Mr. BERNARDO AQUINO does not have any criminal history.

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21 47. On July 30, 2014, Mr. BERNARDO AQUINO was detained by immigration
22 authorities as he was walking to his vehicle in Oceanside, California. *Exhibit A*. Mr.
23 BERNARDO AQUINO was released by ICE five days later on his own recognizance.
24
25 *Exhibit C*. DHS issued him a formal Order of Release on Recognizance ("ORR") on August
26 4, 2014, stating the terms of his release. *Id.*

1 48. On March 17, 2015, Mr. BERNARDO AQUINO's removal proceedings were
2 administratively closed. *Exhibit D.*

3
4 49. Mr. BERNARDO AQUINO was not required to report to ICE following his release
5 on his own recognizance or throughout the time his case was administratively closed.
6 *Exhibit A.* That said, he complied with all of the terms of his ORR.

7
8 50. In July 2025, Mr. BERNARDO AQUINO received notice that DHS had filed a
9 motion to recalendar his removal proceedings. *Exhibit D.* His next Master Calendar
10 Hearing is scheduled for January 15, 2026, at the San Diego Immigration Court.

11
12 51. Mr. BERNARDO AQUINO was detained by ICE officials at his check-in on
13 October 15, 2025, despite presenting evidence that he had previously been released on his
14 own recognizance, and his young daughter's being present with him. *Exhibits A, C, F.*

15
16 52. Considering ICE and EOIR's compliance with *Matter of Yajure Hurtado*, Mr.
17 BERNARDO AQUINO will continue to be detained unlawfully for the foreseeable future.

18
EXHAUSTION

19
20 53. Exhaustion in this case is futile. ICE's new policy was issued "in coordination with
21 DOJ," which oversees the immigration courts. Moreover, as noted, the most recent
22 published BIA precedent decision on this issue (*Matter of Yajure Hurtado*) states that
23 persons like Mr. BERNARDO AQUINO are subject to mandatory detention as applicants
24 for admission. Therefore, even if Mr. BERNARDO AQUINO seeks a custody
25 redetermination before the IJ and the IJ grants his release on bond, the government will
26 reserve appeal and the BIA will reverse the IJ's order under *Matter of Yajure Hurtado*.

1 54. Further, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General
2 are defendants, the DOJ has affirmed its position that persons like Petitioner are applicants
3 for admission and subject to detention under § 1225(b)(2)(A). *Exhibit G* (Mot. to Dismiss,
4 *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt.
5 49 at 27–31).

6 55. The DOJ has taken the same position in the *Maldonado Bautista* litigation, *see*
7 *Maldonado Bautista*, 2025 U.S. Dist. LEXIS 171364 at *14 (C.D. Cal. July 28, 2025)
8 (referencing Opp. to Ex Parte TRO Application, *Maldonado Bautista*, No. 5:25-cv-01873-
9 SSS-BFM, (C.D. Cal. July 24, 2025), Dkt. 8), and in the *Ceja Gonzalez* litigation. *Exhibit*
10 *H* (Opp. to Ex Parte TRO Application and OSC, *Ceja Gonzalez*, No. 5:25-cv-02054-ODW-
11 BFM (C.D. Cal. August 8, 2025), Dkt. 7 at 17-21).

12 56. For the reasons discussed above, exhaustion is futile.

13 **CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**

15 **Mr. BERNARDO AQUINO's Detention is in Violation of 8 U.S.C. § 1226(a)**

16 57. Mr. BERNARDO AQUINO incorporates by reference the factual allegations set
17 forth in the preceding paragraphs.

18 58. The mandatory detention provision in 8 U.S.C. § 1225(b)(2) does not apply to Mr.
19 BERNARDO AQUINO, who is present and residing in the United States and has been
20 placed in § 1229a removal proceedings and charged with inadmissibility under 8 U.S.C.
21 § 1182(a)(6)(A)(i). As relevant here, § 1225(b)(2) does not apply to those who previously
22

23 § 1182(a)(6)(A)(i). As relevant here, § 1225(b)(2) does not apply to those who previously
24

25 § 1182(a)(6)(A)(i). As relevant here, § 1225(b)(2) does not apply to those who previously
26

27 § 1182(a)(6)(A)(i). As relevant here, § 1225(b)(2) does not apply to those who previously
28

1 entered the country and have been present and residing in the United States before being
2 apprehended and placed in removal proceedings by Respondents. Such noncitizens may
3 only be detained under § 1226(a), unless subject to § 1226(c) or § 1231.
4

5 59. The application of § 1225(b)(2) to Mr. BERNARDO AQUINO unlawfully mandates
6 his continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).
7

8 **SECOND CAUSE OF ACTION**

9 **Mr. BERNARDO AQUINO's Detention Violates the Administrative Procedure Act, 10 5 U.S.C. § 706(2)**

11 60. Mr. BERNARDO AQUINO incorporates by reference the factual allegations set
12 forth in the preceding paragraphs.

13 61. Under the Administrative Procedure Act, a court must “hold unlawful and set aside
14 agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in
15 accordance with the law,” that is “contrary to constitutional right [or] power,” or that is “in
16 excess of statutory jurisdiction, authority, or limitations, or short of statutory right.”
17 5 U.S.C. § 706(2)(A)-(C).

18 62. Respondents’ detention of Mr. BERNARDO AQUINO under § 1225(b)(2) is
19 arbitrary and capricious. Respondents’ detention of Mr. BERNARDO AQUINO violates
20 the INA and the Fifth Amendment. Respondents do not have statutory authority under
21 § 1225(b)(2) to detain Mr. BERNARDO AQUINO.

22 63. Mr. BERNARDO AQUINO’s detention is arbitrary, capricious, an abuse of
23 discretion, violates the Constitution, and without statutory authority, therefore violating
24 5 U.S.C. § 706(2).

THIRD CAUSE OF ACTION

Mr. BERNARDO AQUINO's Detention Violates His Fifth Amendment Right to Due Process

64. Mr. BERNARDO AQUINO incorporates by reference the factual allegations set forth in the preceding paragraphs.

65. 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*, 533 U.S. at 690.

66. Mr. BERNARDO AQUINO has a fundamental interest in liberty and being free from official restraint.

67. The Respondents' continued detention of Mr. BERNARDO AQUINO without allowing Mr. BERNARDO AQUINO to have a fair bond hearing before an IJ, and most importantly, without the assurance of knowing that Respondents' will honor the bond that an IJ is likely to grant considering Mr. BERNARDO AQUINO's longstanding community ties and lack of criminal history (which indicate he is neither a flight risk nor a danger to the community) violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, Mr. BERNARDO AQUINO respectfully asks that this Court take jurisdiction over this matter and grant the following relief:

a. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days:

- b. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner, or in the alternative, issue an order that requires an IJ to conduct a bond hearing for Petitioner, and that Respondents must honor any bond that an IJ may set and to thereafter release Petitioner from their custody upon the payment of the bond;
- c. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- d. Grant any other and further relief that this Court deems just and proper.

Dated: October 27, 2025

Respectfully submitted

By: /s David A. Schlesinger
David A. Schlesinger
Attorney for Petitioner
E-mail: david@jsslegal.com

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I represent Petitioner Juan Gabriel BERNARDO AQUINO in these habeas corpus proceedings. Mr. BERNARDO AQUINO is currently being held in detention at the Otay Mesa Detention Center and is not able to appear in my office to sign this Verification. I have reviewed his attached declaration and the documents annexed to the petition, and discussed his case with colleagues from my office who have worked closely with him, but they are not eligible to be admitted to this Court's Bar and therefore cannot sign this Verification. Based on their representations to me, I verify that the information contained in the foregoing petition is true and correct to the best of my knowledge and belief.

Executed on this October 27, 2025, in San Diego, California.

By: /s David A. Schlesinger
David A. Schlesinger
Attorney for Petitioner
E-mail: david@jsslegal.com