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6  
7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA

9  
10 FIDEL SANCHEZ AVALOS,  
11 Petitioner,

12 v.

13 CHRISTOPHER J. LAROSE, Senior  
14 Warden, Otay Mesa Detention Center, San  
15 Diego, California in his official capacity;  
16 JOSEPH FREDEN, Field Office Director  
17 of San Diego Office of Detention and  
Removal, U.S. Immigration and Customs  
Enforcement; U.S. Department of  
Homeland Security;

18 TODD M. LYONS, Acting Director, U.S.  
19 Immigration and Customs Enforcement,  
U.S. Department of Homeland Security, in  
his official capacity;

20 DAREN K. MARGOLIN, Director for  
21 Executive Office for Immigration Review,  
in his official capacity;

22 KRISTI NOEM, Secretary of U.S.  
23 Department of Homeland Security, in her  
24 official capacity;  
and

25 PAMELA BONDI, Attorney General of  
26 the United States, in her official capacity,

27 Respondents.

Case No.: '25CV2906 CAB VET

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

12 2. Mr. SANCHEZ AVALOS is unlawfully detained. DHS and the Executive Office for  
13 Immigration Review (“EOIR”) have improperly concluded that Mr. SANCHEZ AVALOS,  
14 despite having been physically present within the interior of and residing in the U.S., should  
15 be deemed to be seeking admission to the U.S. and therefore subject to mandatory detention  
16 under 8 U.S.C. § 1225(b)(2)(A).

17 3. DHS has placed Mr. SANCHEZ AVALOS in removal proceedings under 8 U.S.C.  
18 § 1229a and has charged Mr. SANCHEZ AVALOS with being present in the United States  
19 without admission and therefore removable under 8 U.S.C. § 1182(a)(6)(A)(i).

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

6  
7 5. Mr. SANCHEZ AVALOS sought a bond hearing before an immigration judge  
8 (“IJ”), but withdrew the request at the bond hearing, as counsel had realized that requesting  
9 bond is futile under recent immigration law precedent.  
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11  
12 6. On September 5, 2025, the Board of Immigration Appeals (“BIA”) issued *Matter of*  
13 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which defies decades of precedent and  
14 practice by Respondents, stating that the plain language of 8 U.S.C. § 1225(b)(2)(A)  
15 divests jurisdiction from immigration judges to redetermine the custody of noncitizens who  
16 are present in the United States without admission.  
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18  
19 7. Both before and since the issuance of *Matter of Yajure Hurtado*, judges in other  
20 district courts have overwhelmingly concluded that persons similarly situated to Mr.  
21 SANCHEZ AVALOS, present and residing within the United States, are not “applicants  
22 for admission” who are “seeking admission” and subject to mandatory detention under  
23 § 1225(b)(2)(A).  
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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 8. Mr. SANCHEZ AVALOS's detention on this basis violates the plain language of  
2 the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq. Section  
3 1225(b)(2)(A) does not apply to persons like Mr. SANCHEZ AVALOS who previously  
4 entered and are now present and residing in the United States. Instead, such persons are  
5 subject to a different statute or provision, § 1226(a), that allows for release on conditional  
6 parole or bond. That provision expressly applies to people like Mr. SANCHEZ AVALOS,  
7 who are charged as removable for having entered the United States without inspection and  
8 being present without admission.

9. The BIA's and Respondents' new legal interpretation of the INA is plainly contrary  
10 to the statutory framework and decades of agency practice applying § 1226(a) to persons  
11 like Mr. SANCHEZ AVALOS who are present within the United States. The new  
12 interpretation also conflicts with Ninth Circuit and U.S. Supreme Court precedent. See  
13 *Jennings v. Rodriguez*, 583 U.S. 281, 288, 301 (2018); *Torres v. Barr*, 976 F.3d 918, 926  
14 (9th Cir. 2020); and *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024).

15 10. In addition to Mr. SANCHEZ AVALOS's statutory right to a bond hearing under  
16 § 1226(a), persons within the United States have constitutional rights. "[T]he Due Process  
17 Clause applies to all 'persons' within the United States, including aliens, whether their  
18 presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*,  
19 533 U.S. 678, 693 (2001).

1 11. Accordingly, Mr. SANCHEZ AVALOS seeks a writ of habeas corpus requiring that  
2 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).  
10

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.  
13

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. SANCHEZ AVALOS is  
17 currently detained.  
18

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 Fidel Sanchez Avalos is a 50-year-old-Mexican national who most  
25 recently entered the U.S. in 2003 or 2004 without inspection. *Exhibits A, B.* He was  
26 detained and later placed in removal proceedings with a Notice to Appear dated November  
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1 14, 2012. *Exhibit B*. DHS released him from detention on his own recognizance on  
2 November 14, 2021. *Exhibit C*. His proceedings were administratively closed on August  
3 9, 2013, through a joint motion to administratively close his case as a matter of  
4 prosecutorial discretion. *Exhibit D*. ICE removed his ankle monitor and did not require him  
5 to check in with them during the period his proceedings were closed. *Exhibit A*.  
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8 17. More than a decade after his removal proceedings were administratively closed, Mr.  
9 SANCHEZ AVALOS's removal proceedings were re-calendared, and he attended a  
10 Master Calendar Hearing at the San Diego Immigration Court on October 9, 2025. *Exhibit*  
11 *E*. ICE agents arrested Mr. SANCHEZ AVALOS following his hearing. *Exhibits A, F*. Mr.  
12 SANCHEZ AVALOS has been in immigration detention since that date. After arresting  
13 Mr. SANCHEZ AVALOS, ICE did not set a bond. Under *Matter of Yajure Hurtado*, it  
14 would be futile for Mr. SANCHEZ AVALOS to request a bond before the IJ. Mr.  
15 SANCHEZ AVALOS is currently in Respondents' legal and physical custody at the Otay  
16 Mesa Detention Center in San Diego, California. That facility is operated by CoreCivic,  
17 Inc., a Maryland corporation.  
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20 18. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention Center  
21 where Mr. SANCHEZ AVALOS is being held. He oversees the day-to-day operations of  
22 the Otay Mesa Detention Center and acts at the Direction of Respondents FREDEN,  
23 LYONS, and NOEM. Respondent LAROSE is a custodian of Mr. SANCHEZ AVALOS  
24 and is named in his official capacity.  
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1 19. Respondent Joseph FREDEN is the Acting Field Office Director of ICE in San  
2 Diego, California, and is named in his official capacity. ICE is the component of DHS that  
3 is responsible for detaining and removing noncitizens according to immigration law and  
4 oversees custody determinations. In his official capacity, he is the legal custodian of Mr.  
5 SANCHEZ AVALOS.

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

11  
12 21. Respondent Daren K. MARGOLIN is the Director of EOIR and has ultimate  
13 responsibility for overseeing the operation of the immigration courts and the Board of  
14 Immigration Appeals, including bond hearings. EOIR is the federal agency responsible for  
15 implementing and enforcing the INA in removal proceedings, including for custody  
16 redeterminations in bond hearings. He is sued in his official capacity.

17  
18 22. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official  
19 capacity. DHS is the federal agency encompassing ICE, which is responsible for the  
20 administration and enforcement of the INA and all other laws relating to the immigration  
21 of noncitizens. In her capacity as Secretary, Respondent NOEM has responsibility for the  
22 administration and enforcement of the immigration and naturalization laws under section  
23  
24 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25,  
25  
26  
27  
28

1 2002); *see also* 8 U.S.C. § 1103(a). Respondent NOEM is the ultimate legal custodian of  
2 Mr. SANCHEZ AVALOS.

3  
4 23. Respondent Pamela BONDI is the Attorney General of the United States and the  
5 most senior official in the U.S. Department of Justice (“DOJ”) and is named in her official  
6 capacity. She has the authority to interpret the immigration laws and adjudicate removal  
7 cases. The Attorney General delegates this responsibility to the Executive Office for  
8 Immigration Review (“EOIR”), which administers the immigration courts and the BIA.

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10 **LEGAL FRAMEWORK**

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

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

20  
21 26. Second, the INA provides for mandatory detention of noncitizens subject to an  
22 Expedited Removal order imposed under 8 U.S.C. § 1225(b)(1) and for other noncitizen  
23 applicants for admission to the U.S. who are deemed not clearly entitled to be admitted.  
24  
25 *See* 8 U.S.C. § 1225(b)(2).

26  
27 27. Lastly, the INA provides for detention of noncitizens who have been ordered  
28 removed, including persons in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

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

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

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).

13 31. Thus, in the decades that followed, most people who entered without inspection and  
14 were placed in standard § 1229a removal proceedings received bond hearings before IJs,  
15 unless their criminal history rendered them ineligible. That practice was consistent with  
16 many decades of earlier practice, in which noncitizens who were not deemed “arriving”  
17 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C.  
18 § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that  
19 § 1226(a) simply “restates” the detention authority previously located in § 1252(a)).

20 32. This practice both pre- and post-enactment of IIRIRA is consistent with the truism  
21 that noncitizens present within the United States – instead of noncitizens present at a border  
22

1 and seeking admission – have constitutional rights. “[T]he Due Process Clause applies to  
2 all ‘persons’ within the United States, including aliens, whether their presence here is  
3 lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

5 33. On July 8, 2025, ICE “in coordination with” the Department of Justice announced a  
6 new policy that rejected the well-established understanding of the statutory framework and  
7 reversed decades of practice.

9 34. The new policy, entitled “Interim Guidance Regarding Detention Authority for  
10 Applicants for Admission,”<sup>2</sup> claims that all noncitizens present within the United States  
11 who entered without inspection shall now be deemed “applicants for admission” under  
12 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A).  
13 The policy applies regardless of when a person is apprehended and affects those who have  
14 resided in the United States for months, years, and even decades.

17 35. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure*  
18 *Hurtado*, stating that all persons who entered without inspection are applicants for  
19 admission and are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). The BIA  
20 stated that “[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and  
21 Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to  
22 hear bond requests or to grant bond to aliens who are present in the United States without  
23 admission.”

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28 <sup>2</sup> 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 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).

23 37. As the district judge in *Rodriguez Vazquez* explained, the plain text of the statutory  
24 provisions demonstrates that § 1226(a), not § 1225(b), applies to persons like Mr.  
25 SANCHEZ AVALOS. 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

4 38. Other portions of § 1226 also explicitly apply to persons charged as being  
5 inadmissible, including those who entered without inspection. See 8 U.S.C.  
6 § 1226(c)(1)(E). Subparagraph (E)’s reference to inadmissible persons makes clear that,  
7 by default, inadmissible persons not subject to subparagraph (E)(ii) are afforded a bond  
8 hearing under subsection (a). As *Rodriguez Vazquez* explained, “[w]hen Congress creates  
9 ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions,  
10 the statute generally applies.” *Rodriguez Vazquez*, 2025 U.S. Dist. LEXIS 193611, at \*52  
11 (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400  
12 (2010)).  
13

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

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 SANCHEZ AVALOS, like *Barrera*, is not subject to it.  
12

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 *Santos* noted that the Supreme Court in *Jennings* held that Section 1225(b), the provision  
17 at issue in this petition, "applies primarily to aliens seeking entry into the United States"  
18 (583 U.S. at 297), and that Section 1226 "applies to aliens already present in the United  
19 States." *Id.* at 303. As such, *Lopez Santos* determined that a noncitizen residing in the U.S.  
20 is entitled to a bond hearing. *Lopez Santos*, at \*11.  
21

22 42. Considering the foregoing, and the plain language of Sections 1225 and 1226,  
23 Section 1226 applies to noncitizens who are present without admission and who face  
24 charges in removal proceedings of being inadmissible to the United States.  
25  
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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. SANCHEZ AVALOS who have already entered and were residing in the  
8 United States at the time they were apprehended.

9  
10 **FACTS**  
11

12 45. Mr. SANCHEZ AVALOS is a 50-year-old devoted husband and father who has been  
13 residing in San Diego, California, since approximately 2003 or 2004, when he most  
14 recently entered the United States without inspection. Mr. SANCHEZ AVALOS has two  
15 U.S. citizen daughters, M. (20-years-old) and L. (25-years-old), both of whom live with  
16 him. *Exhibit A.* M. suffers from severe anxiety and depression and relies on Mr. SANCHEZ  
17 AVALOS's financial and emotional support. *Exhibit A.*  
18

19 46. Mr. SANCHEZ AVALOS does not have any criminal history.  
20

21 47. In 2012, immigration authorities detained Mr. SANCHEZ AVALOS, and issued a  
22 Notice to Appear commencing his removal proceedings. *Exhibits A, B.* DHS released him  
23 on his own recognizance and ICE placed an ankle bracelet on him. *Exhibits A, B, C.* DHS  
24 issued him a formal Order of Release on Recognizance ("ORR") on November 14, 2012,  
25 stating the terms of his release. *Exhibit C.*  
26  
27  
28

1 48. On August 9, 2013, Mr. SANCHEZ AVALOS's removal proceedings were  
2 administratively closed and his ankle bracelet was removed. *Exhibits A, D.*  
3

4 49. Mr. SANCHEZ AVALOS was not required to report to ICE after his ankle bracelet  
5 was removed or throughout the time his case was administratively closed. *Exhibit A.* That  
6 said, he complied with all of the terms of his ORR.  
7

8 50. During summer 2025, Mr. SANCHEZ AVALOS's removal proceedings were  
9 recalendared. *Exhibit E.* Neither Mr. SANCHEZ AVALOS nor his attorney received notice  
10 of this. He dutifully attended his Master Calendar Hearing on October 9, 2025, at the San  
11 Diego Immigration Court.  
12

13 51. Mr. SANCHEZ AVALOS was detained by ICE officials in their offices after he  
14 exited the courtroom, despite his having previously been released on his own recognizance,  
15 and his dutifully appearing as requested and the IJ had reset his next hearing to January 6,  
16 2026. *Exhibits A, F, G.* Mr. SANCHEZ AVALOS submitted a request for a bond hearing  
17 on October 14, 2025. *Exhibit H.* A bond hearing was scheduled for October 10, 2025.  
18 *Exhibit I.* At the hearing, the IJ granted Mr. SANCHEZ AVALOS's request to withdraw  
19 the bond request, as the court did not have jurisdiction based on recent immigration law  
20 precedent. *Exhibit J.*  
21

22 52. Considering ICE and EOIR's compliance with *Matter of Yajure Hurtado*, Mr.  
23 SANCHEZ AVALOS will continue to be detained unlawfully for the foreseeable future.  
24  
25  
26  
27  
28

## EXHAUSTION

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

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

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

56. As such, for the reasons discussed above, exhaustion is futile

## **CAUSES OF ACTION**

## **FIRST CAUSE OF ACTION**

**Mr. SANCHEZ AVALOS's Detention is in Violation of 8 U.S.C. § 1226(a)**

57. Mr. SANCHEZ AVALOS incorporates by reference the factual allegations set forth in the preceding paragraphs.

58. The mandatory detention provision in 8 U.S.C. § 1225(b)(2) does not apply to Mr. SANCHEZ AVALOS, who is present and residing in the United States and has been placed under § 1229a removal proceedings and charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i). As relevant here, § 1225(b)(2) does not apply to those who previously entered the country and have been present and residing in the United States before being apprehended and placed in removal proceedings by Respondents. Such noncitizens may only be detained under § 1226(a), unless subject to § 1226(c), or § 1231.

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

## SECOND CAUSE OF ACTION

**Mr. SANCHEZ AVALOS's Detention Violates the Administrative Procedure Act,  
5 U.S.C. § 706(2)**

60. Mr. SANCHEZ AVALOS incorporates by reference the factual allegations set forth in the preceding paragraphs.

61. Under the Administrative Procedure Act, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in

1 excess of statutory jurisdiction, authority, or limitations, or short of statutory right.”  
2 5 U.S.C. § 706(2)(A)-(C).  
3

4 62. Respondents’ detention of Mr. SANCHEZ AVALOS under § 1225(b)(2) is arbitrary  
5 and capricious. Respondents’ detention of Mr. SANCHEZ AVALOS violates the INA and  
6 the Fifth Amendment. Respondents do not have statutory authority under § 1225(b)(2) to  
7 detain Mr. SANCHEZ AVALOS.  
8

9 63. Mr. SANCHEZ AVALOS’s detention is arbitrary, capricious, an abuse of discretion,  
10 violates the Constitution, and without statutory authority, therefore violating  
11 5 U.S.C. § 706(2).  
12

### 13 **THIRD CAUSE OF ACTION**

#### 14 **Mr. SANCHEZ AVALOS’s Detention Violates His Fifth Amendment Right to Due 15 Process**

16 64. Mr. SANCHEZ AVALOS incorporates by reference the factual allegations set forth  
17 in the preceding paragraphs.  
18

19 65. The government may not deprive a person of life, liberty, or property without due  
20 process of law. U.S. Const. amend. V. “Freedom from imprisonment— from government  
21 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that  
22 the Clause protects.” *Zadvydas*, 533 U.S. at 690 (2001).  
23

24 66. Mr. SANCHEZ AVALOS has a fundamental interest in liberty and being free from  
25 official restraint.  
26

27 67. The Respondents’ continued detention of Mr. SANCHEZ AVALOS without  
28 allowing Mr. SANCHEZ AVALOS to have a fair bond hearing before an IJ, and most

1 importantly, without the assurance of knowing that Respondents will honor the bond that  
2 an IJ is likely to grant considering Mr. SANCHEZ AVALOS's longstanding community  
3 ties and lack of criminal history (which indicate he is neither a flight risk nor a danger to  
4 the community) violates his right to due process.

5  
6 **PRAYER FOR RELIEF**  
7

8 WHEREFORE, Mr. SANCHEZ AVALOS respectfully asks that this Court take  
9 jurisdiction over this matter and grant the following relief:

10 a. Issue an Order to Show Cause ordering Respondents to show cause why this  
11 Petition should not be granted within three days;  
12  
13 b. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner, or  
14 in the alternative, issue an order that requires an IJ to conduct a bond hearing  
15 for Petitioner, and that Respondents' must honor any bond that an IJ may set  
16 and to thereafter release Petitioner from their custody upon the payment of the  
17 bond;  
18  
19 c. Award Petitioner attorney's fees and costs under the Equal Access to Justice  
20 Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified  
21 under law; and  
22  
23 d. Grant any other and further relief that this Court deems just and proper.

24  
25 Dated: October 27, 2025

Respectfully submitted

26  
27 By: /s David A. Schlesinger  
28 David A. Schlesinger  
Attorney for Petitioner  
E-mail: david@jsslegal.com

PETITION FOR WRIT OF HABEAS CORPUS AND  
ORDER TO SHOW CAUSE WITHIN THREE DAYS

**VERIFICATION PURSUANT TO 28 U.S.C. 2242**

I represent Petitioner Fidel SANCHEZ AVALOS in these habeas corpus proceedings. Mr. SANCHEZ AVALOS 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