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5 Attorney for Petitioner

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7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA (LAS VEGAS)**

10 MARIO ERNESTO HERNANDEZ
11 DURAN,

12 A# 

13 Petitioner-Plaintiff,

Case No. 2:25-cv-02105

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28 U.S.C.
§ 2241 AND COMPLAINT FOR
DECLARATORY/INJUNCTIVE
RELIEF**

14
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19 v.

20
21 Michael V. Bernacke, Field Office
22 Director, U.S. Immigration and Customs
23 Enforcement;
24 John Mattos, Warden, Nevada Southern
25 Detention Center;

26
27 Kristi Noem, Secretary, U.S. Department
28

**AND EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER & PRELIMINARY
INJUNCTION**

1 of Homeland Security;
2 Rodney S. Scott, Commissioner, U.S.
3 Customs and Border Protection; and
4 Pam Bondi, Attorney General of the
5 United States,
6 Respondents–Defendants.
7
8

9 **INTRODUCTION**

- 10
11 1. Petitioner **Mario Ernesto Hernandez Duran** (“Mario”) is detained at the Nevada
12 **Southern Detention Center (NSDC)** in Pahrump, Nevada. On **September 29, 2025**, the
13 Las Vegas Immigration Court (**IJ Glen R. Baker**) **denied bond jurisdiction solely**
14 **under *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025)**. (Ex. 2, IJ Order Denying
15 Bond.)
16
17 2. Mario is a long-time Las Vegas resident, a restaurant worker turned electrician, a primary
18 caregiver, and the father of two U.S. citizen children, including [REDACTED]
19 [REDACTED] (born [REDACTED]), for whom Mario has long provided daily care, academic
20 support, and stability. (Ex. 1, EOIR-42B excerpts; Ex. 3, Affidavit of [REDACTED]
21 [REDACTED]; Ex. 4, Affidavit of [REDACTED])
22
23 3. Mario seeks this Court’s declaration that his custody is governed by **8 U.S.C. § 1226(a)**; a
24 **TRO/PI** enjoining reliance on § 1225(b)(2)/Yajure to foreclose bond; and an order
25 requiring a **prompt, procedurally adequate bond hearing—or release if not held by a**
26 **date certain**.
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1
2 **JURISDICTION AND VENUE**

3 4. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas), 28 U.S.C. § 1331 (federal
4 question), and the Suspension Clause to satisfy Petitioner’s prayer for release. Petitioner
5 challenges the legality of detention, not a discretionary bond amount.
6

7 5. Venue is proper in the District of Nevada because Petitioner is detained within this
8 District, and the immediate custodian and Field Office Director exercises its duty here, and
9 therefore custody is here. Habeas jurisdiction is in personam and runs to the custodian.
10

11
12 **PARTIES**

13 6. Petitioner is a noncitizen detained by ICE at NSDC, A#  with removal
14 proceedings pending in the Las Vegas Immigration Court.
15

16 7. Respondent Michael V. Bernacke is the Field Office Director for ICE with custody
17 authority over Petitioner.

18 8. Respondent John Mattos is the Warden of NSDC, where Petitioner is confined.

19 9. Respondents Kristi Noem, Rodney S. Scott, and Pamela J. Bondi are named to ensure
20 complete injunctive relief.
21

22
23 **EXHAUSTION AND PRUDENTIAL CONSIDERATIONS**

24 10. No statute requires exhaustion for this § 2241 claim. Alternatively, exhaustion is futile
25 because the BIA’s published Matter of Yajure-Hurtado categorically adopts a no-bond
26 position, as invoked below; the Immigration Judge has already refused bond jurisdiction
27 on that basis (Ex. 2).
28

FACTUAL ALLEGATIONS

1
2 11. **Deep community ties & work history.** Mario has lived and worked in Las Vegas since
3 2006. He worked roughly a decade at **L&L Hawaiian Barbecue** before transitioning 5+
4 years ago to the **electrical trade**, where he continues to work and support his family. (Ex.
5 3, [REDACTED] **Salmeron Aff.**)
6

7 12. **Family network & good character.** Mario is well-regarded by a close community circle;
8 friends and family “trust him,” and he is known as “a kind and hard-working, stable man,”
9 consistently **putting his family first**. (Ex. 3, [REDACTED] **Salmeron Aff.**)
10

11 13. **Primary caregiver to USC child.** Mario has been **continuously present** for his son
12 [REDACTED] (USC) since birth and has been the **primary day-to-day caregiver** for at least
13 the past five years. He spends **2–3 hours nightly** helping [REDACTED] with reading, writing,
14 and math and has made schoolwork—especially **American history and government**.
15 (Ex. 4, [REDACTED] **Aff.**)
16

17 14. [REDACTED]
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22
23 period which ended **two years ago**. Physicians have not prescribed for [REDACTED] **any**
24 **medications since then**. (Ex. 4, [REDACTED] **Aff.**) Affiant [REDACTED] corroborates longstanding
25 maternal instability and says Mario’s mother, his grandmother, often stepped in to ensure
26 [REDACTED]’s care. (Ex. 3, **Pedro Aff.**)
27
28

1 15. **Custody and current living situation.** Following counsel involvement, **full custody**
2 shifted to Mario; [REDACTED] has now **lived with Mario for five years**, together with Mario's
3 fiancée and [REDACTED]'s toddler half-brother (USC). ([REDACTED] Aff.)

4 16. **Activities & stability.** Mario and [REDACTED] **bike, hike Mt. Charleston**, go to **Lake Mead**,
5 play **soccer** at the park (Eastern & Sahara), attend **church** with extended family several
6 Sundays per month, and take occasional trips to **California beaches**—all markers of
7 **routine, stability, and supervision.** ([REDACTED] Aff.)

8 17. **Exceptional hardship if detention continues.** [REDACTED] describes **constant worry and**
9 **pain** with his father detained and asks the Court to **release him**; he “cannot imagine living
10 in this country without him.” This this is **the only home he has ever known**, and he fears
11 for his safety if he relocates to Mexico. ([REDACTED] Aff.)

12 18. **IJ's categorical denial based on *Yajure*.** On **Sept. 29, 2025**, the IJ **refused bond**
13 **jurisdiction** because *Yajure-Hurtado* purportedly **eliminates IJ authority** for persons
14 present without admission. (Ex. 2.) This **categorical refusal**—without individualized
15 findings of flight risk or danger—keeps Mario detained **without a hearing** despite robust
16 equities and relief eligibility (42B). (Ex. 1.)

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22 **LEGAL BACKGROUND**

23 19. The INA prescribes three principal detention tracks for noncitizens in removal
24 proceedings. First, **8 U.S.C. § 1226** governs detention for individuals in **standard**
25 **removal proceedings before an Immigration Judge** under **§ 1229a**. See **8 C.F.R. §§**
26 **1003.19(a), 1236.1(d)** (authorizing IJ custody redeterminations for those detained under §
27

1 1226(a)); by contrast, certain noncitizens with specified criminal or security grounds are
2 subject to **mandatory detention under § 1226(c)**.

3
4 20. Second, **8 U.S.C. § 1225(b)** provides for **mandatory detention** in two narrow
5 “admissions” contexts: (i) expedited removal under **§ 1225(b)(1)** and (ii) certain **recent**
6 **arrivals “seeking admission”** processed under **§ 1225(b)(2)**.

7
8 21. Third, **8 U.S.C. § 1231** governs detention **after a final removal order**, including during
9 withholding-only proceedings. See **§ 1231(a)–(b)**.

10
11 22. This case concerns the **pre-final-order** detention provisions at **§§ 1226(a)** and
12 **1225(b)(2)**.

13
14 23. Congress enacted §§ 1226 and 1225 in **IIRIRA (1996)**, reorganizing detention authority
15 but preserving the basic division between **interior custody under § 1226** and
16 **admissions/border processing under § 1225**. See Pub. L. No. 104–208, Div. C, §§ 302–
17 03. Congress **recently amended § 1226(a)** in the **Laken Riley Act (2025)**, to address
18 criminal convictions warranting mandatory detention, an issue absent in this case, without
19 altering the longstanding role of **IJ bond authority for § 1226(a) detainees**.

20
21
22 24. Following IIRIRA, **EOIR and DHS** issued federal regulations as guidance which provide
23 that, as a **general matter, individuals who have entered this country without**
24 **inspection (EWI) and are placed in § 1229a proceedings are detained under § 1226,**
25 **not § 1225**. See **Inspection and Expedited Removal of Aliens; Detention and**
26 **Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed.**
27
28

1 **Reg. 10312, 10323 (Mar. 6, 1997)** (recognizing § 1226(a) detention with IJ bond
2 review).

3
4 25. For decades thereafter, **noncitizens who were not treated as “arriving”** and were placed
5 in **ordinary § 1229a proceedings** received **bond hearings under § 1226(a)**, unless §
6 **1226(c)** applied. That practice accords with pre-IIRIRA law (**former § 1252(a)**) and
7 contemporaneous legislative history noting § **1226(a)** “restates” the detention authority
8 previously found in § 1252(a).
9

10 26. On **July 8, 2025**, ICE—**“in coordination with” DOJ**—issued an **Interim Guidance**
11 purporting to reclassify **all EWI noncitizens** as § **1225(b)(2)** detainees, regardless of
12 **when** or **where** they were apprehended, and irrespective of **years of residence** in the
13 United States.
14

15
16 27. The **Interim Guidance** (titled **“Interim Guidance Regarding Detention Authority for**
17 **Applicants for Admission”**) asserts that **all EWIs** are now **“applicants for admission”**
18 who must be detained **under § 1225(b)(2)(A)**, thereby **foreclosing IJ bond hearings**.
19 The policy applies nationwide and retroactively to long-settled residents.
20

21 28. On **September 5, 2025**, the **BIA** issued **Matter of Yajure-Hurtado**, **29 I&N Dec. 216**
22 **(BIA 2025)**, adopting the same position: **all noncitizens present without admission or**
23 **parole are subject to § 1225(b)(2)(A)** and thus **ineligible for IJ bond**.
24

25
26 29. In the months since, **dozens of federal district courts**—including multiple courts within
27 the Ninth Circuit—have **rejected** DHS/EOIR’s categorical § **1225(b)(2)** theory and
28 **declined to follow Yajure**, holding that § **1226(a)** governs detention of long-resident

1 EWIs in § 1229a proceedings and ordering **prompt § 1226(a) bond hearings (or**
2 **release)** with appropriate procedural safeguards.

3
4 30. The earliest wave of decisions arose after **Tacoma IJs** ceased providing bond hearings to
5 EWIs with long residence. The **Western District of Washington** held that reading of the
6 **INA likely unlawful**, concluding **§ 1226(a), not § 1225(b)**, governs persons **not**
7 **apprehended upon arrival** to the United States. **Rodriguez-Vazquez v. Bostock**, 779 F.
8 Supp. 3d 1239 (W.D. Wash. 2025).

9
10 31. Since then, **courts across the country** have adopted the same reading of the **INA’s**
11 **detention authorities**, granting **TRO/PI** relief and mandating **seven-day bond-hearing-**
12 **or-release** remedies with **DHS’s clear-and-convincing burden, ability-to-pay** and **ATD**
13 considerations, and **written findings**—and expressly **rejecting** the blanket reliance on §
14 **1225(b)(2)/Yajure** in interior cases.

15
16
17 32. The reason courts have **uniformly rejected** the 2025 policy and **Yajure** is textual and
18 structural: it **defies the INA**. The statutory scheme shows that **§ 1226(a)** is the **default**
19 detention authority for **§ 1229a** removal proceedings, while **§ 1225(b)** is a **specialized**
20 **border-inspection regime**.

21
22 33. **Section 1226(a)** by its terms governs detention “**pending a decision on whether the**
23 **[noncitizen] is to be removed from the United States.**” Those merits determinations
24 occur in **§ 1229a** proceedings to decide **inadmissibility or deportability**—the very
25 posture here.
26
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1 34. Congress also wrote **§ 1226(c)** to encompass certain **inadmissibility** categories (e.g., **§**
2 **1182** grounds), confirming that **§ 1226** reaches **noncitizens charged as inadmissible**—
3 including some who entered without inspection. Under the familiar negative-implication
4 canon, when **Congress creates specific exceptions (mandatory detention under §**
5 **1226(c))**, it **confirms that the statute otherwise applies**—i.e., **§ 1226(a)** supplies **bond-**
6 **eligible** authority for everyone **not** covered by those exceptions. See, e.g., **Shady Grove**
7 **Orthopedic Assocs., P.A. v. Allstate Ins. Co.**, **559 U.S. 393, 400 (2010)**.
8

9
10 35. Accordingly, **§ 1226** applies to individuals charged as **inadmissible** and placed in **§ 1229a**
11 **proceedings**—which is this case—unless a specific **§ 1226(c)** exception applies. **Nothing**
12 in **§ 1226** excludes EWIs arrested in the **interior** from its scope.
13

14 36. By contrast, **§ 1225(b)** is tailored to **border/port-of-entry inspections** of persons
15 **“seeking admission.”** Its mandatory detention scheme is rooted in **the government’s**
16 **admissions authority at the border**. See **Jennings v. Rodriguez**, **583 U.S. 281, 287**
17 **(2018)** (describing **§ 1225(b)**’s operation **“at the Nation’s borders and ports of entry”**).
18 Extending **§ 1225(b)(2)** to **long-resident EWIs arrested in the interior** collapses the
19 statute’s core distinction and **nullifies § 1226(a)**.
20
21

22 37. **Conclusion.** Because Petitioner **was not apprehended at the border** and is litigating
23 removability in **§ 1229a proceedings**, **§ 1226(a)** governs his detention, entitling him to an
24 **individualized IJ bond hearing**. The categorical reliance on **§ 1225(b)(2)/Yajure** to
25 **foreclose IJ bond jurisdiction** is **contrary to the statute’s text, structure, history, and**
26 **decades of practice**, and should be enjoined.
27
28

1 38. **Recent Nevada District Court practice (Las Vegas)**¹. In 2025, Las Vegas judges
2 granted **TRO/PI** relief in materially similar cases—**holding § 1226(a) governs** and
3 **enjoining reliance on § 1225(b)(2)/Yajure** to foreclose bond jurisdiction—then
4 **ordering a bond hearing within seven (7) days or release**, with **DHS bearing a clear-**
5 **and-convincing burden**, and with **ability-to-pay, ATD, and written findings**
6 requirements.
7

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9 **CLAIMS FOR RELIEF**

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11 COUNT I – Detention Contrary to Statute (INA § 236(a); 28 U.S.C. § 2241).
12 Respondents’ categorical reliance on § 1225(b)(2) and Yajure-Hurtado to deny bond
13 jurisdiction is contrary to § 1226(a), which governs interior custody during removal
14 proceedings.
15

16 COUNT II – Fifth Amendment Due Process. Prolonged civil detention without an
17 individualized bond hearing violates due process. The Court should order a prompt,
18 procedurally adequate bond hearing or release.
19

20 COUNT III – Habeas (Suspension Clause). The writ lies to test the legality of executive
21 detention, and the Court should order a § 1226(a) bond hearing with adequate procedures,
22 or release.
23

24 **Emergency Motion for TRO and Preliminary Injunction (Winter factors)**

25 ¹ **Maldonado Vázquez v. Feeley**, No. 2:25-cv-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17,
26 2025) (granting PI; holds § 1226(a) governs and enjoins reliance on § 1225(b)(2) to deny bond
27 **Sanchez Roman v. Noem**, No. 2:25-cv-01684-RFB-EJY, 2025 WL 2710211 (D. Nev. Sept. 23, 2025)
(orders § 1226(a) bond hearing within 7 days or release; enjoins use of § 1225(b)(2))
28 **E.C. v. Noem**, No. 2:25-cv-01789-RFB-BNW (D. Nev. Oct. 14, 2025) (granting PI; incorporates
Maldonado; orders 7-day § 1226(a) bond hearing or release) (order on docket ECF 19)
Carlos v. Noem, No. 2:25-cv-01900-RFB-BNW (D. Nev. Oct. 10, 2025) (granting TRO; cites **Maldonado &**
Sanchez Roman; rejects § 1225(b)(2) theory and the EOIR automatic-stay practice) (order at ECF 21)

1 22. **Likelihood of success.** Mario is an **interior arrestee** with long residence and pending
2 relief (42B). The government's position **categorically forecloses** bond based on §
3 **1225(b)(2)/Yajure** rather than conducting the **individualized § 1226(a)** analysis
4 Congress prescribed. **Nevada district rulings** confronting this policy have already
5 determined that § **1226(a)** governs and have enjoined the government from using §
6 **1225(b)(2)/Yajure** to block bond.
7

8 23. **Irreparable harm.** The **ongoing loss of liberty** is irreparable. Here the harm is magnified:
9 Mario is [REDACTED]'s **primary caregiver** and academic support; detention dislocates a
10 vulnerable USC child who previously endured [REDACTED] and
11 [REDACTED] until Mario intervened. ([REDACTED] Aff. ¶¶ describing admissions/meds;
12 [REDACTED] Aff.)
13
14

15 24. **Balance of equities & public interest.** The equities and public interest favor
16 **individualized, lawful custody determinations.** The record shows **strong community**
17 **ties, stable employment, church and family involvement, and daily parenting**—all
18 undercutting flight risk and danger. ([REDACTED] Aff.; [REDACTED] Aff.) Tailored relief protects
19 both liberty and safety by ensuring consideration of **non-financial conditions** and **ATDs.**
20
21

22 25. **Requested TRO/PI terms (consistent with recent Nevada orders).** Order the
23 government to:
24

- 25 • Provide a § **1226(a) bond hearing within 7 days** before an IJ;
- 26
27
28

- 1 • Place the **burden on DHS** to prove **danger or flight risk by clear and convincing**
2 **evidence**;
- 3
- 4 • Require **contemporaneous written findings**;
- 5
- 6 • Require consideration of **ability to pay** and **alternatives to detention**; and
- 7
- 8 • If the hearing does **not** occur by the deadline, **release** Mario forthwith on appropriate
9 conditions.

10 **REQUESTED RELIEF**

11 Petitioner respectfully asks the Court to:

- 12 A. Declare that 8 U.S.C. § 1226(a) governs Petitioner’s detention and that reliance on §
13 1225(b)(2)/Yajure-Hurtado to deny bond jurisdiction is unlawful.
- 14
- 15 B. Enjoin Respondents from withholding a bond hearing on that basis.
- 16
- 17 C. Order a bond hearing within seven (7) days before an Immigration Judge under §
18 1226(a), at which DHS bears the burden by clear and convincing evidence to prove
19 danger or flight risk, with consideration of ability to pay and alternatives to detention
20 and with contemporaneous written findings; if no hearing occurs by the deadline, order
21 immediate release on appropriate conditions.
- 22
- 23
- 24 D. Grant any further just relief.

25 **Attorney Verification (28 U.S.C. §§ 2242, 1746)**

26 **I, Jon Eric Garde**, counsel for Petitioner, declare under penalty of perjury that the factual
27 allegations in this Petition are true and correct to the best of my knowledge, information, and
28

1 belief, based on my review of Petitioner’s records, court filings, agency records, and the attached
2 exhibits, and on communications with Petitioner, who is presently detained at NSDC. Because
3 Petitioner is detained and time is of the essence given the scheduled individual hearing on
4 November 19, 2025, I am executing this verification on his behalf pursuant to 28 U.S.C. § 2242.
5
6

7 Dated: 10/24/2025 at Las Vegas

/s/ Jon Eric Garde, Esq. _____

8 Jon Eric Garde, Esq. Counsel for Petitioner
9

10 **Exhibit List**

Page No.

11

12 Ex. 1 – Selected EOIR-42B pages (Index, supporting declarations, hardship evidence)

13 (redacted).....1

14 Ex. 2 – IJ Order Denying Bond (Las Vegas Immigration Court, Sept. 29, 2025).....

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18 Ex. 3 – Affidavit of [REDACTED]214

19 Ex. 4 – Affidavit of [REDACTED]215

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[PROPOSED] ORDER GRANTING TEMPORARY RESTRAINING ORDER /
PRELIMINARY INJUNCTION

Having considered Petitioner’s § 2241 petition and Emergency Motion, the Court finds (1) the likely success of Petitioner on the merits; (2) irreparable harm to be suffered by the Petitioner; (3) balance of equities favors the Petitioner, ,and (4) the public interest favor relief.

IT IS ORDERED that Respondents are ENJOINED from relying on 8 U.S.C. § 1225(b)(2) and *Matter of Yajure-Hurtado, et. al.* to deny Petitioner a bond hearing.

IT IS FURTHER ORDERED that within SEVEN (7) DAYS of this Order, Respondents shall provide Petitioner a procedurally adequate bond hearing under 8 U.S.C. § 1226(a) before an Immigration Judge, at which DHS bears the burden by CLEAR AND CONVINCING EVIDENCE to prove danger or flight risk, with consideration of ability to pay and alternatives to detention, and with contemporaneous written findings. If Respondents fail to provide such a

1 hearing by the deadline, the Field Office Director shall IMMEDIATELY RELEASE Petitioner on
2 appropriate conditions.

3 Dated: _____

4 _____
5 United States District Judge
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13 **CERTIFICATE OF SERVICE**

14 I, Jon Eric Garde, Esq., hereby certify that on October 27, 2025, I electronically filed the
15 foregoing with the Clerk of Court using the CM/ECF system, with copies sent by Certified Mail to the
16 following:
17

- 18 1. Michael V. Bernacke, Field Office Director, ICE (ERO – Salt Lake City)
19 2975 Decker Lake Drive, Suite 100
20 West Valley City, UT 84119-6096
21
22 2. John Mattos, Warden, Nevada Southern Detention Center (CoreCivic)
23 2190 East Mesquite Avenue
24 Pahrump, NV 89060
25
26 3. Kristi Noem, Secretary, U.S. Department of Homeland Security
27 Office of the General Counsel
28 2707 Martin Luther King Jr. Ave. SE, Mail Stop 0485

1 Washington, DC 20528-0485

2 4. Rodney S. Scott, Commissioner, U.S. Customs and Border Protection

3 CBP Headquarters

4 1300 Pennsylvania Avenue NW

5 Washington, DC 20229

6
7 5. Pamela J. Bondi, Attorney General of the United States

8 U.S. Department of Justice

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11
12 Respectfully submitted,

13
14 /s/ Jon Eric Garde, Esq.

15 Jon Eric Garde, Esq.

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