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8 *Attorney for Petitioner*

9 Cesar Millan Osuna

10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 Cesar Millan-Osuna,

13 Petitioner,

14 v.

15 John E. Cantu, Field Office Director of  
16 Enforcement and Removal Operations, Phoenix  
17 Field Office, Immigration and Customs  
18 Enforcement; Kristi Noem, Secretary, U.S.  
19 Department of Homeland Security; Pamela  
20 Bondi, U.S. Attorney General; David R. Rivas,  
21 Warden of San Luis Regional Detention Center;  
22 Todd Lyons, Acting Director, Immigration and  
23 Customs Enforcement and Removal Operations.

24 Respondents.

Case No. TBD

**PETITION FOR WRIT OF  
HABEAS CORPUS**

## INTRODUCTION

1  
2 1. Since at least the passage of the Immigration and Nationality Act of 1952,  
3 noncitizens who entered the country illegally could generally be released on bond while their  
4 removal proceedings were pending. Yet earlier this year, U.S. Immigration and Customs  
5 Enforcement (ICE) “revisited” its position and determined that all noncitizens who are present  
6 without admission are subject to mandatory detention while in removal proceedings. The Board of  
7 Immigration Appeals (BIA) recently reached the same conclusion in a precedential decision,  
8 *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding for the first time that all  
9 noncitizens who entered the country without admission are categorically ineligible for bond  
10 regardless of how long they have lived in the United States.

11 2. Over 100 federal judges have already found the government’s novel interpretation  
12 incompatible with the INA. *See infra* nn. 3, 4. The provision on which the government relies states  
13 that noncitizens who are “seeking admission” are subject to mandatory detention while in removal  
14 proceedings. 8 U.S.C. § 1225(b)(2)(A). Congress defined “admission” as “the lawful entry of the  
15 alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C.  
16 § 1101(a)(13)(A). Thus, by its plain terms, the provision only applies to noncitizens who present  
17 themselves at a port of entry. And in addition to disregarding the plain text of § 1225(b)(2)(A), the  
18 government’s contrary interpretation renders superfluous other provisions of the INA that require  
19 the mandatory detention of noncitizens who have engaged in criminal activity—including a  
20 provision, § 1226(c)(1)(E), enacted this year in the Laken Riley Act.

21 3. The government’s argument also flouts the Justice Department’s own regulations.  
22 Since 1997, the Justice Department has precluded immigration judges from granting bond to so-  
23 called “arriving aliens”—*i.e.*, those who seek admission at a port of entry—but not to those who  
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1 entered the country without inspection. This distinction was the result of a deliberate choice made  
2 by the Attorney General following the passage of the Illegal Immigration Reform and Immigrant  
3 Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, Div. C, 110 Stat. 3009-546. And under  
4 bedrock principles of administrative law, agencies cannot “overrule” by adjudication regulations  
5 that were promulgated after notice and comment. *Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980).

6 4. As a result of the government’s new interpretation, every noncitizen who entered  
7 the country without being admitted is subject to mandatory detention for the duration of their  
8 removal proceedings. One of those noncitizens is Cesar Millan-Osuna, who entered the United  
9 States in January of 2001 and has a partner and one U.S. citizen child,  . His child has  
10 anxiety which has worsened since his father’s detention. A resident of California, he works as a  
11 painter and supports his family and community. Petitioner was detained after he was targeted by  
12 ICE’s fugitive operations team, even though he has no criminal record, and he was transferred to  
13 a federal detention center in Arizona. Absent this Court’s intervention, he will remain detained for  
14 the duration of his removal proceedings, over a hundred miles from his family and community.

#### 15 JURISDICTION

16 5. Petitioner is in the physical custody of Respondents. Petitioner is detained at the  
17 San Luis Regional Detention Center in San Luis, Arizona.

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

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

1 8. The “zipper clause” at 8 U.S.C. § 1252(b)(9), which channels “[j]udicial review of  
2 all questions of law . . . including interpretation and application of constitutional and statutory  
3 provisions, arising from any action taken . . . to remove an alien from the United States” to the  
4 appropriate federal court of appeals, does not apply because that section applies only to review of  
5 removal orders, and Petitioners do not seek review of orders of removal but of custody. *Maldonado*  
6 *Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Order  
7 Granting Temporary Restraining Order, Dkt. 14 at 4-5.

8 9. The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to hear “any  
9 cause or claim by or on behalf of any alien arising from the decision or action by the Attorney  
10 General to commence proceedings, adjudicate cases, or execute removal orders against any alien  
11 under this chapter.” The Supreme Court previously characterized § 1252(g) as a narrow provision,  
12 applying “only to three discrete actions that the Attorney General may take: her ‘decision or action’  
13 to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab Anti-*  
14 *Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). In doing so, the Supreme  
15 Court found it “implausible that the mention of *three discrete events* along the road to deportation  
16 was a shorthand way to referring to *all claims arising from* deportation proceedings.” *Id.* (emphasis  
17 added). Petitioner’s challenge to his detention does not fall within these discrete actions.  
18 *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28,  
19 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 5.

20 10. Subsection 2 of 8 U.S.C. § 1252(a), titled “Judicial Review of Orders of Removal,”  
21 contains four subsections, which outline categories of claims that are not subject to judicial review.  
22 § 1252(a)(2)(A)–(D). None of these subsections precluding judicial review apply to this matter, as  
23 the specified statutory provisions do not cite § 1225(b)(2)(A) or § 1226(a), which are the two  
24

1 provisions Petitioner challenges. Thus, no part of § 1252 deprives this Court of jurisdiction.  
2 *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28,  
3 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 6. As such, the Court has  
4 jurisdiction over Petitioner's challenge to his detention.

#### 5 VENUE

6 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-  
7 500 (1973), venue lies in the United States District Court for Arizona, the judicial district in which  
8 Petitioner currently is detained.

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

#### 12 REQUIREMENTS OF 28 U.S.C. § 2243

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

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

**PARTIES**

1  
2 15. Petitioner Cesar Millan-Osuna is a 45-year-old resident of California. He entered  
3 the country in 2001 and has remained here ever since that date. ICE has charged Petitioner with  
4 removability under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien in the United States without being  
5 admitted or paroled. He is presently detained at the San Luis Regional Detention Center in San  
6 Luis, Arizona.

7 16. Respondent John CANTU is the Director of the Phoenix Field Office of ICE's  
8 Enforcement and Removal Operations division, which oversees operations at the San Luis  
9 Regional Detention Center. As such, Mr. Cantú is Petitioner's immediate custodian and is  
10 responsible for Petitioner's detention and removal. He is named in his official capacity.

11 17. Respondent Kristi NOEM is the Secretary of the Department of Homeland Security.  
12 She is responsible for the implementation and enforcement of the INA, and oversees ICE, which  
13 is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner  
14 and is sued in her official capacity.

15 18. Respondent Pamela BONDI is the United States Attorney General. She is  
16 responsible for the Executive Office for Immigration Review (EOIR), which is the component of  
17 the U.S. Department of Justice that is responsible for implementing and enforcing the INA in  
18 removal proceedings, including for custody redetermination in bond hearings.

19 19. Respondent David R. Rivas is employed as the Warden of the San Luis Regional  
20 Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner.  
21 He is sued in his official capacity.

22 20. Respondent Todd LYONS is the Acting Director of ICE and is named in his  
23 official capacity. Among other things, ICE is responsible for the administration and enforcement  
24

1 of the immigration laws, including the removal of noncitizens. In his official capacity as head of  
2 ICE, he is the legal custodian of Petitioner.

### 3 LEGAL FRAMEWORK

#### 4 Immigration and Nationality Act and Federal Regulations

5 21. The INA prescribes three basic forms of detention for the vast majority of  
6 noncitizens who are alleged or found to be removable from the United States.

7 22. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal  
8 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally  
9 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),  
10 while noncitizens who have engaged in specified criminal and terrorist activity are subject to  
11 mandatory detention, *see* 8 U.S.C. § 1226(c).

12 23. Second, the INA provides for mandatory detention of noncitizens subject to  
13 expedited removal under 8 U.S.C. § 1225(b)(1) and for other noncitizens seeking admission under  
14 § 1225(b)(2).

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

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

18 26. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
19 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-  
20 208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section  
21 1225(b)(2)(A) states that if an “examining immigration officer determines that an alien seeking  
22 admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for  
23 [removal proceedings].” The IIRIRA also defined “admission” in 8 U.S.C. § 1101(a)(13)(A) as  
24

1 the “lawful entry of the alien into the United States after inspection and authorization by an  
2 immigration officer.” § 301, 110 Stat. 3009-575.

3 27. Consistent with these statutory provisions, federal regulations preclude  
4 immigration judges from granting bond to “arriving aliens,” 8 C.F.R. § 1003.19(h)(1)(B)(ii), a  
5 phrase defined in relevant part as “applicant[s] for admission coming or attempting to come into  
6 the United States at a port-of-entry.” 8 C.F.R. § 1001.1(q). The decision to preclude immigration  
7 judges from granting bond to arriving aliens—as distinct from all noncitizens who entered without  
8 admission—was the product of notice and comment rulemaking in early 1997 following the  
9 enactment of the IIRIRA.

10 28. As the regulations were initially proposed, all “[i]nadmissible aliens in removal  
11 proceedings” would have been ineligible for bond. *Inspection and Expedited Removal of Aliens;*  
12 *Detention and Removal of Aliens; Conduct of Removal*, 62 Fed. Reg. 444, 483 (Jan. 3, 1997). After  
13 receiving comments, however, the Attorney General deleted the proposed provision and replaced  
14 it with one that would apply only to “[a]rriving aliens.”<sup>1</sup> *Inspection and Expedited Removal of*  
15 *Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*,  
16 62 Fed. Reg. 10312, 10361 (March 6, 1997). As the Attorney General explained, “[t]he effect of  
17 this change [was] that inadmissible aliens, except for arriving aliens, have available to them bond  
18 redetermination hearings before an immigration judge, while arriving aliens do not.” *Id.* at 10323.  
19 In other words, “aliens who are present without having been admitted or paroled (formerly referred  
20 to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”

21 *Id.*

22  
23 \_\_\_\_\_  
24 <sup>1</sup> This provision was originally promulgated as 8 C.F.R. § 236.1(c)(5)(i) and was later transferred  
to 8 C.F.R. § 1003.19(h)(2)(i)(B).

1 29. Thus, in the decades that followed, most people who entered without inspection  
2 and were placed in standard removal proceedings received bond hearings, unless their criminal  
3 history rendered them ineligible. That practice was consistent with many more decades of prior  
4 practice in which noncitizens who were not deemed “arriving” were entitled to a custody hearing  
5 before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-  
6 469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously  
7 found at § 1252(a)).

8 30. Section 1226 was most recently amended earlier this year by the Laken Riley Act,  
9 Pub. L. No. 119-1, 139 Stat. 3 (2025). Congress provided that noncitizens who entered the country  
10 without being admitted are subject to mandatory detention if they were thereafter charged with,  
11 arrested for, convicted of, or admitted committing various offenses. § 1226(c)(1)(E). As may be  
12 apparent, this provision would be superfluous if all noncitizens who were present without  
13 admission were already subject to mandatory detention under § 1225(b)(2)(A).

#### 14 Exhaustion and Futility

15 31. Exhaustion of administrative remedies is required “[w]here Congress specifically  
16 mandates.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). But where, as here “Congress has  
17 not clearly required exhaustion, sound judicial discretion governs.” *Id.* (citations omitted). Under  
18 these principles, prudential exhaustion is not required where a request for relief before the agency  
19 would be futile because the agency has “predetermined the issue before it.” *Id.* at 148. Furthermore,  
20 “a court may waive the prudential exhaustion requirement if ‘administrative remedies are  
21 inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture,  
22 irreparable injury will result, or the administrative proceedings would be void.’” *Hernandez v.*

1 Sessions, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th  
2 Cir. 2004)).

3 32. The BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, renders  
4 prudential exhaustion futile in bond cases involving individuals who entered the United States  
5 without inspection. *Zaragoza Mosqueda, et al. v. Noem*, 2025 WL 2591530, at \*7 (C.D. Cal. Sept.  
6 8, 2025). Although Petitioner has a pending appeal at the BIA, *Matter of Yajure Hurtado*  
7 "predetermine[s]" the outcome of that appeal. *McCarthy*, 503 U.S. at 148. Prudential exhaustion  
8 is therefore unnecessary, and the Court should take jurisdiction over Petitioner's case.

9 33. A motion to reconsider has been filed in *Matter of Yajure Hurtado*. The motion  
10 challenges the Board's statutory analysis and asks it to withdraw its decision because (a) the  
11 underlying removal proceedings had concluded by the time the Board issued its decision, making  
12 the case moot, and (b) the decision conflicts with longstanding regulations issued by the Attorney  
13 General.<sup>2</sup>

#### 14 **Federal Court Decisions Regarding Detention of** 15 **Individuals Who Are Present Without Admission**

16 34. To date, over 100 federal district judges have either outright rejected the  
17 government's novel interpretation of § 1225(b)(2)(A),<sup>3</sup> or found that noncitizens challenging the

18 \_\_\_\_\_  
19 <sup>2</sup> The Board's Decision in *Matter of Yajure Hurtado* is also not entitled to deference because it  
20 contravenes the statutory language and legislative history, and it deviates from longstanding  
21 agency practice and regulations.

22 <sup>3</sup> *Benitez-Cornejo v. Cantu*, No. 25-3672 (D. Ariz. Oct. 17, 2025) (Tuchi, J.); *Torres v. Wamsley*,  
23 2025 WL 2855379 (W.D. Wash. Oct. 8, 2025) (Menendez, J.); *BDVS v. Forestal*, No. 25-1968  
24 (S.D. Ind. Oct. 8, 2025) (Evans Barker, J.); *Eliseo v. Olson*, No. 25-3381, Oct. 8, 2025) (Blackwell,  
J.); *Buenrostro-Mendez v. Bondi*, No. 25-3726, (S.D. Tex. Oct. 7, 2025) (Rosenthal, J.);  
*Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025) (Joun, J.); *Belsai D.S.*  
*v. Bondi*, No. 25-3682 (D. Minn. Oct. 1, 2025) (Menendez, J.); *Santiago Santiago v. Noem*, No.  
25-361 (W.D. Tex. Oct. 1, 2025) (Cardone, J.); *Quispe-Ardiles v. Noem*, No. 25-1382, 2025 WL  
2783799 (E.D. Va. Sept. 30, 2025) (Nachmanoff, J.); *Rodriguez Vazquez v. Bostock*, No. 25-5240,  
2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (Cartwright, J.); *Da Silva v. ICE*, No. 25-284,

1 government's interpretation were substantially likely to prevail on the merits.<sup>4</sup> These judges have  
 2 not been unsparing in their criticism of the government's newfound position. One called it a  
 3

4 2025 WL 2778083 (D.N.H. Sept. 29, 2025) (McCafferty, J.); *Quispe v. Crawford*, No. 25-1471,  
 5 2025 WL 2783799 (E.D. Va. Sept. 29, 2025) (Trenga, J.); *Inlago Tocagon v. Moniz*, No. 25-12453,  
 6 2025 WL 2778023 (D. Mass. Sept. 29, 2025) (Joun, J.); *Barrios v. Shepley*, No. 25-406, 2025 WL  
 7 2772579 (D. Maine Sept. 29, 2025) (Woodcock, Jr.); *J.U. v. Maldonado*, No. 25-4836, 2025 WL  
 8 2772765 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Savane v. Francis*, No. 25-6666, 2025 WL  
 9 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.); *Zumba v. Bondi*, No. 25-14626, 2025 WL  
 10 2753496 (D.N.J. Sept. 26, 2025) (Hayden, J.); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tex.  
 11 Sept. 26, 2025) (Hittner, J.); *Gamez Lira v. Noem*, No. 25-855 (D.N.M. 25-855) (Johnson, J.); *Singh*  
 12 *v. Lewis*, No. 25-96, 2025 LX 400065 (W.D. Ky. Sept. 22, 2025) (Jennings, J.); *Chafla v. Scott*,  
 13 No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (Neumann, J.); *Hasan v. Crawford*, No.  
 14 25-1408, 2025 LX 499354 (E.D. Va. Sept. 19, 2025) (Brinkema, J.); *Barrera v. Tindall*, No. 25-  
 15 451, 2025 LX 435572 (W.D. Ky. Sept. 19, 2025) (Jenning, J.); *Salazar v. Dedos*, No. 25-835,  
 16 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (Urias, J.); *Garcia Cortes v. Noem*, No. 25-2677, 2025  
 17 WL 2652880 (D. Colo. Sept. 16, 2025) (Sweeney, J.); *Pizarro Reyes v. Raycraft*, No. 25-12546,  
 18 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (White, J.); *Sampiao v. Hyde*, No. 25-11981, 2025  
 19 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX  
 20 360066 (D.N.H. Sept. 8, 2025) (McCafferty, J.); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819  
 21 (D. Mass. Sept. 5, 2025) (Talwani, J.); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803  
 22 (S.D.N.Y. Aug. 8, 2025) (Ho, J.); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379  
 23 (E.D. Mich. Aug. 29, 2025) (McMillion, J.); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610  
 24 (D. Mass. Aug. 27, 2025) (Kobick, J.); *Jose J.O.E. v. Bondi*, No. 25-3051, 2025 WL 2466670 (D.  
 Minn. Aug. 27, 2025) (Tostrud, J.); *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 (D.  
 Md. Aug. 24, 2025) (Rubin, J.); *Romero v. Hyde*, No. 25-11631, \_\_ F.Supp.3d \_\_, 2025 WL  
 2403827 (D. Mass. Aug. 19, 2025) (Murphy, J.); *Samb v. Joyce*, No. 25-6373, 2025 WL 2398831  
 (S.D.N.Y. Aug. 19, 2025) (Ho, J.); *dos Santos v. Noem*, No. 25-12052, 2025 WL 2370988 (D.  
 Mass. Aug. 14, 2025) (Kobick, J.); *Diaz Martinez v. Hyde*, No. 25-11613, \_\_ F.Supp.3d \_\_, 2025  
 WL 2084238 (D. Mass. July 24, 2025) (Murphy, J.); *Gomes v. Hyde*, No. 25-11571, 2025 WL  
 1869299 (D. Mass. July 7, 2025) (Kobick, J.).

18 <sup>4</sup> *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025) (Boulware, J.); *Rico-Tapia v. Smith*  
 19 No. 25-379 (D. Haw. Oct. 10, 2025) (Park, J.); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D.  
 20 Cal. Oct. 9, 2025) (Beeler, J.); *Flores v. Noem*, No. 25-2490, 2025 LX 444718 (C.D. Cal. Sept. 29,  
 21 2025) (Birotte, J.); *Roa v. Albarran*, No. 25-7802, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025)  
 22 (*Seeborg*, J.); *Lopez v. Hardin*, No. 25-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025) (Dudek,  
 23 J.); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163 (E.D. Cal. Sept. 23, 2025) (Sherriff, J.); *Aceros*  
 24 *v. Kaiser*, No. 25-06924, 2025 LX 330524 (N.D. Cal. Sept. 12, 2025) (Chen, J.); *Guzman v.*  
*Andrews*, No. 25-01015, 2025 LX 354551 (E.D. Cal. Sept. 9, 2025) (Sherriff, J.); *Mosqueda v.*  
*Noem*, No. 25-2304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (Snyder, J.); *Nieves v. Kaiser*,  
 No. 25-6921, 2025 LX 320701 (N.D. Cal. Sept. 3, 2025) (Beeler, J.); *Garcia v. Noem*, No. 25-  
 2180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.); *Garcia v. Kaiser*, No. 25-06916,  
 2025 LX 322337 (N.D. Cal. Aug. 29, 2025) (Gonzalez Rogers, J.); *Kostak v. Trump*, No. 25-1093,  
 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Edwards, J.); *Benitez v. Noem*, No. 25-02190, 2025

1 “nonstarter.” *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 at \*10 (D. Mass. Sept. 5, 2025).  
2 Another called it “willfully blind.” *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 at  
3 \*25 (D. Md. Aug. 24, 2025). Another called it “a policy argument, projected onto Congress.”  
4 *Romero v. Hyde*, No. 25-11631, \_\_ F. Supp. 3d \_\_, 2025 WL 2403827 at \*28 (D. Mass. Aug. 19,  
5 2025). And another noted that the government “could not identify any federal court that has  
6 adopted their novel reading of § 1225(b)(2)(A).” *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025  
7 WL 2609425 at \*20 (E.D. Mich Sept. 9, 2025).

8 35. It is not difficult to understand why federal district courts have rejected the  
9 government’s novel interpretation, as the plain text of the statutory provisions demonstrates that  
10 § 1226(a), not § 1225(b), applies to people like Petitioner.

11 36. By its terms, § 1225(b)(2)(A) only applies to noncitizens who are “seeking  
12 admission,” and Congress defined “admission” as the “lawful entry of the alien into the United  
13 States after inspection and authorization by an immigration officer.” § 1101(a)(13)(A).  
14 Accordingly, “[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the  
15 country would read the word ‘entry’ out of the definitions of ‘admitted’ and ‘admission.’” *Chafila*  
16 *v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025).

17 37. Accordingly, § 1225(b) applies to people arriving at U.S. ports of entry. The  
18 statute’s entire framework is premised on inspections at the border of people who are “seeking  
19 admission” to the United States, and individuals who entered without inspection and have never  
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21 LX 322897 (C.D. Cal. Aug. 26, 2025) (Klausner, J.); *Ramirez Clavijo v. Kaiser*, No. 25-06248,  
22 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025) (Freeman, J.); *Arrazola-Gonzalez v. Noem*, No. 25-  
01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (Wright, J.); *Maldonado v. Olson*, No. 25-  
3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (Nelson, J.); *Maldonado Bautista v. Santacruz*,  
23 No. 25-01873, 2025 LX 341363 (C.D. Cal. July 28, 2025); *Vazquez v. Bostock*, No. 25-05240, 779  
24 F. Supp. 3d 1239 (W.D. Wash. April 24, 2025) (Cartwright, J.). *But see Sixtos Chavez v. Noem*,  
No. 3:25-cv-02325-CAB-SBC (S.D. Cal. Sep. 24, 2025) (denying temporary restraining order).

1 affirmatively applied for admission or parole do not fit within that category. 8 U.S.C. §  
2 1225(b)(2)(A); *see Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025)  
3 (specifically rejecting the Board’s analysis of the statute in *Matter of Yajure Hurtado* and  
4 concluding that it is “difficult to square a noncitizen’s continued presence with “seeking admission”  
5 when that noncitizen never attempted to obtain lawful status”); *Vasquez-Garcia et al. v. Noem*,  
6 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (rejecting DHS’ contention that an individual who  
7 entered the United States without inspection “is automatically understood to be ‘seeking admission’  
8 within the meaning of § 1225(b)(2)(A), without need[ing] to affirmatively apply for admission or  
9 parole”); *see also Arrazola Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025)  
10 (concluding that habeas petitioner showed likelihood of success on the merits of argument that  
11 “[t]o ignore the ‘seeking admission’ language [in 8 U.S.C. § 1225(b)(2)(A) . . . would render  
12 the language purposeless and violate a key rule of statutory construction”).

13 38. Throughout its text, 8 U.S.C. § 1225 defines its scope by reference to  
14 “inspections”—a term not defined in the INA, but which typically connotes an examination upon  
15 or soon after physical entry. *See* 8 U.S.C. § 1225 (titled “Inspection by immigration officers;  
16 expedited removal of inadmissible arriving [noncitizens]; referral for hearing”); §§ 1225(b)(1)–(2)  
17 (referring to “inspections” in their titles); § 1225(d)(1) (authorizing immigration officials to search  
18 certain conveyances in order to conduct “inspections” where noncitizens “are being brought into  
19 the United States”). Many statutory provisions, various regulations and agency precedent discuss  
20 “inspection” in the context of admission processes at ports of entry, further supporting the  
21 conclusion that § 1225(b) has a limited temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§  
22 1187(h)(2)(B)(i), 1225A; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec.  
23 285 (BIA 2010)).

1 39. Indeed, the Supreme Court has explained that this mandatory detention scheme  
2 applies to noncitizens who are “arriving in the United States,” *Clark v. Martinez*, 543 U.S. 371  
3 (2005), “at the Nation’s borders and ports of entry, where the Government must determine whether  
4 a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281,  
5 287 (2018).

6 40. As importantly, § 1226(c) subjects numerous categories of inadmissible noncitizens  
7 to mandatory detention. If “the [BIA was] correct that § 1225(b)’s mandatory detention provisions  
8 apply to all persons who have not been admitted into the United States, that would render  
9 superfluous those provisions of § 1226 that apply to certain categories of inadmissible aliens, such  
10 as § 1226(c)(1)(A), (D), and (E).” *Hasan v. Crawford*, \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 268225 at \*22  
11 (E.D. Va. Sept. 19, 2025) (Brinkema, J.). Indeed, the BIA’s interpretation would “render the Laken  
12 Riley Act a meaningless amendment, since it would have prescribed mandatory detention for  
13 noncitizens already subject to it.” *Aceros v. Kaiser*, 2025 WL 2637503 at \*28 (N.D. Cal. Sept. 12,  
14 2025).

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

## 18 **FACTS**

19 42. Petitioner is a 45-year-old resident of California. He entered the country without  
20 being admitted in January of 2001. He has one U.S. citizen child, and lives with a partner who has  
21 two children from a previous relationship. Petitioner’s U.S. citizen child suffers from anxiety,  
22 which has worsened since Petitioner’s detention. Petitioner provides for his family by working as  
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1 a painter, and has no criminal history. Petitioner also supports his community by providing low or  
2 no cost painting services to low-income families.

3 43. Despite ICE admitting that Petitioner has no criminal history, ICE's Fugitive  
4 Operations Unit carried out an investigation of Petitioner.<sup>5</sup> Exh. A (Form I-213). The relevant I-  
5 213 in this case states that Petitioner came to ICE's Fugitive Operations Team's attention when  
6 the ICE command center sent them a referral packet. However, Petitioner believes that he came to  
7 the attention of ICE when an individual he knows gave ICE an anonymous tip.

8 44. During this investigation, ICE became aware of Petitioner's address and the make,  
9 model and color of his vehicle. Id.

10 45. On September 7, 2025, at approximately 5:00 a.m., DHS agents began surveilling  
11 Petitioner's home in unmarked vehicles. Id. At approximately 7:55 a.m., Petitioner left his home  
12 by vehicle and the agents followed. Petitioner drove to a veteran's thrift store, purchased some  
13 items, and was apprehended by agents as he was leaving the store. Petitioner was then detained  
14 and has been detained since that date.

15 46. Petitioner was initially detained at the Otay Mesa Detention Facility in California,  
16 and has since been moved to the San Luis Regional Detention Center.

17 47. On September 7, 2025, ICE issued Petitioner a Notice to Appear before an  
18 Immigration Judge, charging him with removability under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien  
19 in the United States without being admitted or paroled. Exh. B (NTA).

20 48. On October 8, 2025, an Immigration Judge denied Petitioner's request for a bond  
21 pursuant to Matter of Yahure Hurtado, 29 I&N Dec. 216 (BIA 2025).

22 **CLAIMS FOR RELIEF**

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24 <sup>5</sup> Although explicitly stating in the I-213 that Petitioner has no criminal history, there is  
reference, without explanation, to Petitioner having a "FBI number." Exh. A.

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**COUNT I**

**Violation of the INA**

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

50. The mandatory detention provision at 8 U.S.C. § 1225(b)(2)(A) does not apply to all noncitizens residing in the United States who entered the country without being admitted. By its terms, § 1225(b)(2)(A) only applies to noncitizens who are “seeking admission.” The term “admission” is defined to require a “lawful entry” following “inspection and authorization by an immigration officer.” § 1101(a)(13)(A). Accordingly, § 1225(b)(2)(A) does not apply to noncitizens like Petitioner who evade inspection and are apprehended outside a port of entry. Such noncitizens are instead detained under § 1226 while in removal proceedings and are thus eligible for release on bond under § 1226(a) unless they are subject to mandatory detention under § 1226(c).

51. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued detention without a bond hearing and violates the INA.

**COUNT II**

**Violation of Federal Regulations**

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

53. Under 8 C.F.R. § 1236.1(d)(1), immigration judges may grant bond to any noncitizen in removal proceedings who is not subject to a final order or to any of the exceptions in 8 C.F.R. § 1003.19. None of the exceptions in § 1003.19 preclude immigration judges from granting bond to noncitizens simply for being present without admission.

1 54. As relevant here, the regulations only preclude immigration judges from granting  
2 bond to noncitizens who qualify as “arriving aliens,” § 1003.19(h)(1)(B)(ii), *i.e.*, those who  
3 presented themselves for inspection at a port of entry. When these regulations were initially  
4 promulgated, the Justice Department explained that “inadmissible aliens, except for arriving aliens,  
5 have available to them bond redetermination hearings before an immigration judge.” 62 Fed. Reg.  
6 10312, 10323 (March 6, 1997). The Justice Department thus made clear that individuals who had  
7 entered without inspection were eligible for consideration for bond and bond hearings before IJs  
8 under 8 U.S.C. 1226 and its implementing regulations.

9 55. Notwithstanding these regulations, the BIA held in *Matter of Yajure Hurtado* that  
10 all noncitizens who are present without admission are ineligible to receive a bond from  
11 immigration judges. Application of this decision to Petitioner unlawfully mandates his continued  
12 detention without a bond hearing in violation of §§ 1236.1 and 1003.19

13 **COUNT III**  
14 **Violation of Due Process**

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

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

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

22 59. The government’s detention of Petitioner and its issuance of a precedential decision  
23 precluding his release violates his right to due process.

1 **PRAYER FOR RELIEF**

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

- 3 a. Assume jurisdiction over this matter;
- 4 b. Set this matter for expedited consideration;
- 5 c. Declare that no statute or regulation prohibits an immigration judge from holding a  
6 custody redetermination hearing for Petitioner, and that Petitioner is properly  
7 detained, if at all, under 8 U.S.C. 1226(a);
- 8 d. Issue a Writ of Habeas Corpus and conduct a bond hearing within 15 days, or order  
9 Petitioner's release within 15 days unless Respondents provide him with a bond  
10 hearing before an immigration judge;
- 11 e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act  
12 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under  
13 law; and
- 14 f. Grant any other and further relief that this Court deems just and proper.

15 DATED this 28th day of September, 2025.

16 *s/Jesse Evans-Schroeder*

17 \_\_\_\_\_  
18 Jesse Evans-Schroeder  
AZ Bar: 027434

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21 Tel: (520) 882-8852  
Email: jesse@arizonaimmigration.net

22 *Attorney for Petitioner*

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

2 I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's  
3 attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those  
4 discussions, I hereby verify that the factual statements made in the attached Petition for Writ of  
5 Habeas Corpus are true and correct to the best of my knowledge.

6  
7 Executed on this 28<sup>th</sup> day of October, 2025 in Tucson, Arizona.

8 *s/Jesse Evans-Schroeder*

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10 \_\_\_\_\_  
11 Jesse Evans-Schroeder  
12 Attorney for Petitioner  
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