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Aldo Sanchez Chavez

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

Aldo Sanchez Chavez,

Petitioner,

v.

Unknown Individual #1, Field Office Director
of Enforcement and Removal Operations,
Phoenix Field Office, Immigration and Customs
Enforcement; Kristi Noem, Secretary, U.S.
Department of Homeland Security; Pamela
Bondi, U.S. Attorney General; Unknown
Individual #2, Warden of Eloy Detention
Center; Todd Lyons, Acting Director,
Immigration and Customs Enforcement and
Removal Operations.

Respondents.

Case No. TBD

**PETITION FOR WRIT OF
HABEAS CORPUS**

1 INTRODUCTION

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
24

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 Aldo Sanchez Chavez, who entered the United
9 States in August of 2009, when he was only eight years old. Petitioner is a 24-year-old resident of
10 Oregon. He entered the country in August 2009 at the age of eight, after a woman he did not know
11 brought him across the southwest border and sent him to live with his aunt. *See* Exhibit A
12 (Declaration of Petitioner). Petitioner is engaged to be married to a United States citizen, and he
13 has two United States-citizen siblings and four United States-citizen cousins. *See id.* Petitioner
14 also has the support of his uncle, a United States citizen who has served as a father figure for Mr.
15 Sanchez Chavez and would provide for him if he were released from immigration custody. *See id.*;
16 *see also* Exhibit B (Letter of Support from Petitioner’s Uncle). Petitioner also filed a U visa petition
17 with United States Citizenship and Immigration Services (USCIS) on April 17, 2017, and he
18 obtained employment authorization on the basis of this pending petition in May 2022. Exhibit C
19 (Written Pleadings submitted to Immigration Court on September 15, 2025), Exhibit D (Copy of
20 Employment Authorization Document for Petitioner). If approved, Mr. Sanchez Chavez’s U visa
21 petition, which has been pending for over 8 years and is likely to be decided in the near future,
22 would provide him with a means of obtaining lawful permanent residence in the United States. *See*
23 8 U.S.C. 1101(a)(15)(U), 1255(m).

1 *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28,
2 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 4-5.

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

15 11. Subsection 2 of 8 U.S.C. § 1252(a), titled “Judicial Review of Orders of Removal,”
16 contains four subsections, which outline categories of claims that are not subject to judicial review.
17 § 1252(a)(2)(A)–(D). None of these subsections precluding judicial review apply to this matter, as
18 the specified statutory provisions do not cite § 1225(b)(2)(A) or § 1226(a), which are the two
19 provisions Petitioner challenges. Thus, no part of § 1252 deprives this Court of jurisdiction.
20 *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28,
21 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 6. As such, the Court has
22 jurisdiction over Petitioner’s challenge to his detention.

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VENUE

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

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

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

PARTIES

16. Petitioner Aldo Sanchez Chavez is a 24-year-old resident of Oregon. He entered the country in August 2009 at the age of eight, after a woman he did not know brought him across the southwest border and sent him to live with his aunt in Oregon. Exhibit A. ICE has charged Petitioner with removability under 8 U.S.C. § 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I) as a noncitizen

1 present in the United States without being admitted or paroled, and as an immigrant who, at the
2 time of application for admission, was not in possession of a valid visa or entry document. Exhibit
3 G (Notice to Appear). Mr. Sanchez Chavez is presently detained at the Eloy Detention Center in
4 Eloy, Arizona.

5 17. Respondent Unknown Individual #1 is the Director of the Phoenix Field Office of
6 ICE's Enforcement and Removal Operations (ERO) division, which oversees operations at the
7 Eloy Detention Center.¹ As such, Unknown Individual #1 is Petitioner's immediate custodian and
8 is responsible for Petitioner's detention and removal. He or she is named in their official capacity.

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

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

17 20. Respondent Unknown Individual #2 is employed as the Warden of the Eloy
18 Detention Center, where Petitioner is detained.² He or she has immediate physical custody of
19 Petitioner. He or she is sued in their official capacity.

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21 _____
22 ¹ As of today's date, there is no public information available regarding the unknown individual
appointed to this position. The ICE ERO Phoenix Field Office Director is therefore named as
Unknown Individual #1.

23 ² As of today's date, there is no public information available regarding the unknown individual
24 hired for this position. The Eloy Detention Center warden is therefore named as Unknown
Individual #2.

1 admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for
2 [removal proceedings].” The IIRIRA also defined “admission” in 8 U.S.C. § 1101(a)(13)(A) as
3 the “lawful entry of the alien into the United States after inspection and authorization by an
4 immigration officer.” § 301, 110 Stat. 3009-575.

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

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

2 *Id.*

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

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

16 Exhaustion and Futility

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

1 irreparable injury will result, or the administrative proceedings would be void.” *Hernandez v.*
2 *Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th
3 Cir. 2004)).

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

10 34. A motion to reconsider has been filed in *Matter of Yajure Hurtado*. The motion
11 challenges the Board’s statutory analysis and asks it to withdraw its decision because (a) the
12 underlying removal proceedings had concluded by the time the Board issued its decision, making
13 the case moot, and (b) the decision conflicts with longstanding regulations issued by the Attorney
14 General.⁴

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

17 35. To date, over 100 federal district judges have either outright rejected the
18 government’s novel interpretation of § 1225(b)(2)(A),⁵ or found that noncitizens challenging the

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20 ⁴ The Board’s Decision in *Matter of Yajure Hurtado* is also not entitled to deference because it
21 contravenes the statutory language and legislative history, and it deviates from longstanding
22 agency practice and regulations. *Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D. Ariz.
23 Oct. 3, 2025).

24 ⁵ *Elias v. Hyde*, No. 25-540, 2025 LX 210971 (D. R.I. Oct. 27, 2025); *Carmona v. Noem*, No. 25-
1131, 2025 LX 209629 (W.D. Mich. Oct. 23, 2025) (Maloney, J.); *Del Cid v. Bondi*, No. 25-0304,
2025 LX 209136 (W.D. Pa. Oct. 23, 2025) (Haines, J.); *Avila v. Bondi*, No. 25-3741, 2025 LX
206789 (D. Minn. Oct. 21, 2025) (Tunheim, J.); *Miguel v. Noem*, No. 25-C-11137, 2025 LX
206990 (N.D. Ill. Oct. 21, 2025) (Alonso, J.); *Maldonado de Leon v. Baker*, No. 25-3084, 2025
LX 207581 (D. Md. Oct. 21, 2025) (Chuang, J.); *Buestan v. Cory Chu*, No. 225-16034, 2025 LX

1 government's interpretation were substantially likely to prevail on the merits.⁶ These judges have
 2 been unsparing in their criticism of the government's newfound position. One called it a
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4 211879 (D. N.J. Oct. 21, 2025) (Fabiarz, J.); *Benitez-Cornejo v. Cantu*, No. 25-3672 (D. Ariz. Oct.
 5 17, 2025) (Tuchi, J.); *Torres v. Wamsley*, 2025 WL 2855379 (W.D. Wash. Oct. 8, 2025)
 6 (Menendez, J.); *BDVS v. Forestal*, No. 25-1968 (S.D. Ind. Oct. 8, 2025) (Evans Barker, J.); *Eliseo*
 7 *v. Olson*, No. 25-3381, Oct. 8, 2025) (Blackwell, J.); *Buenrostro-Mendez v. Bondi*, No. 25-3726,
 8 (S.D. Tex. Oct. 7, 2025) (Rosenthal, J.); *Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D.
 9 Ariz. Oct. 3, 2025) (Joun, J.); *Belsai D.S. v. Bondi*, No. 25-3682 (D. Minn. Oct. 1, 2025) (Menendez,
 10 J.); *Santiago Santiago v. Noem*, No. 25-361 (W.D. Tex. Oct. 1, 2025) (Cardone, J.); *Quispe-Ardiles*
 11 *v. Noem*, No. 25-1382, 2025 WL 2783799 (E.D. Va. Sept. 30, 2025) (Nachmanoff, J.); *Rodriguez*
 12 *Vazquez v. Bostock*, No. 25-5240, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (Cartwright,
 13 J.); *Da Silva v. ICE*, No. 25-284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025) (McCafferty, J.);
 14 *Quispe v. Crawford*, No. 25-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025) (Trenka, J.);
 15 *Inlago Tocagon v. Moniz*, No. 25-12453, 2025 WL 2778023 (D. Mass. Sept. 29, 2025) (Joun, J.);
 16 *Barrios v. Shepley*, No. 25-406, 2025 WL 2772579 (D. Maine Sept. 29, 2025) (Woodcock, Jr.);
 17 *J.U. v. Maldonado*, No. 25-4836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.);
 18 *Savane v. Francis*, No. 25-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.); *Zumba*
 19 *v. Bondi*, No. 25-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (Hayden, J.); *Villanueva*
 20 *Herrera v. Tate*, No. 25-3364 (S.D. Tex. Sept 26, 2025) (Hittner, J.); *Gamez Lira v. Noem*, No.
 21 25-855 (D.N.M. 25-855) (Johnson, J.); *Singh v. Lewis*, No. 25-96, 2025 LX 400065 (W.D. Ky.
 22 Sept. 22, 2025) (Jennings, J.); *Chafra v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21,
 23 2025) (Neumann, J.); *Hasan v. Crawford*, No. 25-1408, 2025 LX 499354 (E.D. Va. Sept. 19, 2025)
 24 (Brinkema, J.); *Barrera v. Tindall*, No. 25-451, 2025 LX 435572 (W.D. Ky. Sept. 19, 2025)
 (Jenning, J.); *Salazar v. Dedos*, No. 25-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (Urias,
 J.); *Garcia Cortes v. Noem*, No. 25-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (Sweeney,
 J.); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (White,
 J.); *Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.);
Jimenez v. FCI Berlin, No. 25-326, 2025 LX 360066 (D.N.H. Sept. 8, 2025) (McCafferty, J.); *Doe*
v. Moniz, No. 25-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (Talwani, J.); *Lopez Benitez*
v. Francis, No. 25-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Ho, J.); *Lopez-Campos v.*
Raycraft, No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (McMillion, J.); *Diaz v.*
Mattivelo, No. 25-12226, 2025 WL 2457610 (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.).

⁶ *Mendoza Gutierrez v. Baltasar*, No. 25-CV-02720, 2025 LX 208448 (D. Colo. Oct. 17, 2025);
E.C. v. Noem, 2025 WL 2916264 (D. Nev. Oct. 14, 2025) (Boulware, J.); *Rico-Tapia v. Smith* No.
 25-379 (D. Haw. Oct. 10, 2025) (Park, J.); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D.
 Cal. Oct. 9, 2025) (Beeler, J.) *Flores v. Noem*, No. 25-2490, 2025 LX 444718 (C.D. Cal. Sept. 29,

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 36. 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 37. 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

16 2025) (Birotte, J.); *Roa v. Albarran*, No. 25-7802, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025)
17 (*Seeborg*, J.); *Lopez v. Hardin*, No. 25-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025) (Dudek,
18 J.); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163 (E.D. Cal. Sept. 23, 2025) (Sherriff, J.); *Aceros*
19 *v. Kaiser*, No. 25-06924, 2025 LX 330524 (N.D. Cal. Sept. 12, 2025) (Chen, J.); *Guzman v.*
20 *Andrews*, No. 25-01015, 2025 LX 354551 (E.D. Cal. Sept. 9, 2025) (Sherriff, J.); *Mosqueda v.*
21 *Noem*, No. 25-2304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (Snyder, J.); *Nieves v. Kaiser*,
22 No. 25-6921, 2025 LX 320701 (N.D. Cal. Sept. 3, 2025) (Beeler, J.); *Garcia v. Noem*, No. 25-
23 2180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.); *Garcia v. Kaiser*, No. 25-06916,
24 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
LX 322897 (C.D. Cal. Aug. 26, 2025) (Klausner, J.); *Ramirez Clavijo v. Kaiser*, No. 25-06248,
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*,
No. 25-01873, 2025 LX 341363 (C.D. Cal. July 28, 2025); *Vazquez v. Bostock*, No. 25-05240, 779
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 country would read the word ‘entry’ out of the definitions of ‘admitted’ and ‘admission.’” *Chafla*
2 *v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025).

3 38. Accordingly, § 1225(b) applies to people arriving at U.S. ports of entry. The
4 statute’s entire framework is premised on inspections at the border of people who are “seeking
5 admission” to the United States, and individuals who entered without inspection and have never
6 affirmatively applied for admission or parole do not fit within that category. 8 U.S.C. §
7 1225(b)(2)(A); *see Benitez-Cornejo v. Cantu, et al.*, 2:25-CV-03672-JJT-ESW, 2025 LX (D. Ariz.
8 Oct. 17, 2025) (rejecting argument that all “individuals who have never been admitted are ‘seeking
9 admission’”); *Echevarria v. Bondi, et al.*, 2:25-CV-03252-DWL-ESW, 2025 WL 2821282 (D.
10 Ariz. Oct. 3, 2025) (reasoning that to argue all applicants for admission “are necessarily (and
11 continuously) ‘seeking admission,’ so long as they continue to exist in the United States” is “an
12 obvious violation of the rule against surplusage” and “goes against the plain, ordinary meaning of
13 the words ‘seeking’ and ‘admission’”); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich.
14 Sept. 9, 2025) (specifically rejecting the Board’s analysis of the statute in *Matter of Yajure Hurtado*
15 and concluding that it is “difficult to square a noncitizen’s continued presence with “seeking
16 admission” when that noncitizen never attempted to obtain lawful status”); *Vasquez-Garcia et al.*
17 *v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (rejecting DHS’ contention that an individual
18 who entered the United States without inspection “is automatically understood to be ‘seeking
19 admission’ within the meaning of § 1225(b)(2)(A), without need[ing] to affirmatively apply for
20 admission or parole”); *see also Arrazola Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug.
21 15, 2025) (concluding that habeas petitioner showed likelihood of success on the merits of
22 argument that “[t]o ignore the ‘seeking admission’ language [in 8 U.S.C. § 1225(b)(2)(A) . . .
23 would render the language purposeless and violate a key rule of statutory construction”).
24

1 39. Throughout its text, 8 U.S.C. § 1225 defines its scope by reference to
2 “inspections”—a term not defined in the INA, but which typically connotes an examination upon
3 or soon after physical entry. *See* 8 U.S.C. § 1225 (titled “Inspection by immigration officers;
4 expedited removal of inadmissible arriving [noncitizens]; referral for hearing”); §§ 1225(b)(1)–(2)
5 (referring to “inspections” in their titles); § 1225(d)(1) (authorizing immigration officials to search
6 certain conveyances in order to conduct “inspections” where noncitizens “are being brought into
7 the United States”). Many statutory provisions, various regulations and agency precedent discuss
8 “inspection” in the context of admission processes at ports of entry, further supporting the
9 conclusion that § 1225(b) has a limited temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§
10 1187(h)(2)(B)(i), 1225A; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec.
11 285 (BIA 2010)).

12 40. Indeed, the Supreme Court has explained that this mandatory detention scheme
13 applies to noncitizens who are “arriving in the United States,” *Clark v. Martinez*, 543 U.S. 371
14 (2005), “at the Nation’s borders and ports of entry, where the Government must determine whether
15 a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281,
16 287 (2018).

17 41. As importantly, § 1226(c) subjects numerous categories of inadmissible noncitizens
18 to mandatory detention. If “the [BIA was] correct that § 1225(b)’s mandatory detention provisions
19 apply to all persons who have not been admitted into the United States, that would render
20 superfluous those provisions of § 1226 that apply to certain categories of inadmissible aliens, such
21 as § 1226(c)(1)(A), (D), and (E).” *Hasan v. Crawford*, __ F. Supp. 3d __, 2025 WL 268225 at *22
22 (E.D. Va. Sept. 19, 2025) (Brinkema, J.). Indeed, the BIA’s interpretation would “render the Laken
23 Riley Act a meaningless amendment, since it would have prescribed mandatory detention for
24

1 noncitizens already subject to it.” *Aceros v. Kaiser*, 2025 WL 2637503 at *28 (N.D. Cal. Sept. 12,
2 2025).

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

6 **FACTS**

7 43. Petitioner is a 24-year-old resident of Oregon. He entered the country in August
8 2009 at the age of eight, after a woman he did not know brought him across the southwest border
9 and sent him to live with his aunt. Petitioner is engaged to be married to a United States citizen,
10 and he has two United States-citizen siblings and four United States-citizen cousins. Exhibit A.
11 Petitioner also has the support of his uncle, a United States citizen who has served as a father figure
12 for Mr. Sanchez Chavez and would provide for him if he were released from immigration custody.
13 Exhibits A, B.

14 44. Petitioner filed a U visa petition with USCIS on April 17, 2017, and he obtained
15 employment authorization on the basis of this pending petition in May 2022. Exhibits C, D. If
16 approved, Mr. Sanchez Chavez’s U visa petition, which has been pending for over 8 years, would
17 provide him with a means of obtaining lawful permanent residence in the United States.

18 45. Petitioner was detained on July 18, 2025, and thereafter convicted of accessory after
19 the fact to smuggling of noncitizens. Exhibit E. He came into immigration custody at the Eloy
20 Detention Center in Eloy, Arizona, on August 15, 2025, after his release from criminal custody.

21 46. Petitioner sought release from immigration custody, but an immigration judge
22 found he had no jurisdiction to grant bond, pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec.
23
24

1 216 (BIA 2025). Exhibit F. However, the immigration judge concluded that if he had jurisdiction,
2 he would grant bond in the amount of \$10,000.00. *Id.*

3 47. ICE has charged Petitioner with removability under 8 U.S.C. § 1182(a)(6)(A)(i)
4 and (a)(7)(A)(i)(I), as an alien present in the United States without being admitted or paroled, and
5 as an immigrant who, at the time of application for admission, was not in possession of a valid
6 visa or entry document. Exhibit G. Mr. Sanchez Chavez has denied the charges and is presently
7 detained at the Eloy Detention Center in Eloy, Arizona. His removal proceedings remain pending
8 before the immigration judge.

9 **CLAIMS FOR RELIEF**

10 **COUNT I**

11 **Violation of the INA**

12 48. Petitioner incorporates by reference the allegations of fact set forth in the preceding
13 paragraphs.

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

1 50. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued
2 detention by precluding him from securing release based on the bond set in the alternative by the
3 immigration judge, and violates the INA.

4 51. Because the immigration judge determined that release on bond would be
5 appropriate if he had jurisdiction, any re-detention of Petitioner following submission of the bond
6 would similarly violate the INA, absent a showing by Respondents that circumstances had changed
7 such that Petitioner posed a danger or flight risk.

8 COUNT II

9 Violation of Federal Regulations

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

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

16 54. As relevant here, the regulations only preclude immigration judges from granting
17 bond to noncitizens who qualify as “arriving aliens,” § 1003.19(h)(1)(B)(ii), *i.e.*, those who
18 presented themselves for inspection at a port of entry. When these regulations were initially
19 promulgated, the Justice Department explained that “inadmissible aliens, except for arriving aliens,
20 have available to them bond redetermination hearings before an immigration judge.” 62 Fed. Reg.
21 10312, 10323 (March 6, 1997). The Justice Department thus made clear that individuals who had
22 entered without inspection were eligible for consideration for bond and bond hearings before IJs
23 under 8 U.S.C. 1226 and its implementing regulations.

1 55. Notwithstanding these regulations, the BIA held in *Matter of Yajure Hurtado* that
2 all noncitizens who are present without admission are ineligible to receive a bond from
3 immigration judges. Application of this decision to Petitioner unlawfully mandates his continued
4 detention without permitting him to secure release through submission of the bond set by the
5 immigration judge in the alternative, in violation of §§ 1236.1 and 1003.19

6 **COUNT III**
7 **Violation of Due Process**

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

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

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

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

17 **PRAYER FOR RELIEF**

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

- 19 a. Assume jurisdiction over this matter;
- 20 b. Set this matter for expedited consideration;
- 21 c. Declare that no statute or regulation prohibits an immigration judge from holding a
22 custody redetermination hearing for Petitioner, and that Petitioner is properly
23 detained, if at all, under 8 U.S.C. 1226(a);
- 24

- 1 d. Issue a Writ of Habeas Corpus and order Petitioner's release upon submission of a
2 bond payment pursuant to the alternative \$10,000.00 amount set by the immigration
3 judge;
- 4 e. Order that, prior to any future re-detention, Petitioner must be provided a hearing
5 before an Immigration Judge where DHS bears the burden of justifying Petitioner's
6 re-detention, and that the Immigration Judge must further consider whether, in lieu
7 of detention, alternatives to detention exist to mitigate any risk that DHS may
8 establish;
- 9 f. Order that Respondents be prohibited from transferring Petitioner outside the
10 Court's District or otherwise changing his immediate custodian without prior leave
11 of Court while this action is pending, and that Respondents not prevent Petitioner
12 from traveling within the United States following his release;
- 13 g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
14 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
15 law; and
- 16 h. Grant any other and further relief that this Court deems just and proper.

17 DATED this 4th day of November, 2025.

18 *s/ Gregory Fay*

19 _____
Gregory Fay
AZ Bar: 035534

20
21 Green Evans-Schroeder, PLLC
22 130 W. Cushing Street
23 Tucson, Arizona 85701
Tel: (520) 882-8852
Email: greg@arizonaimmigration.net

24 *Attorney for Petitioner*

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 4th day of November, 2025 in Phoenix, Arizona.

8 *s/ Gregory Fay*

9
10 _____
Gregory Fay
Attorney for Petitioner

Civil Cover Sheet

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

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

Plaintiff(s): **Aldo Sanchez Chavez , ;**

Unknown Individual #1 , Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement; Kristi Noem , Secretary, U.S. Department of Homeland Security; Pamela Bondi , U.S. Attorney General; Unknown Individual #2 , Warden of Eloy Detention Center; Todd Lyons , Acting Director, Immigration and Customs Enforcement and Removal Operations;

County of Residence: Pinal

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Pinal

Plaintiff's Atty(s):

Defendant's Atty(s):

Gregory Fay ,
Green Evans Schroeder
130 West Cushing St.
Tucson, Arizona 85701
480-588-3430

IFP REQUESTED

REMOVAL FROM COUNTY, CASE #

II. Basis of Jurisdiction: **2. U.S. Government Defendant**

III. Citizenship of Principal Parties(Diversity Cases Only)

Plaintiff:- **N/A**

Defendant:- **N/A**

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **463 Alien Detainee**

VI. Cause of Action: **Petitioner's detention on the basis the Department of Homeland Security's Interim Guidance as well as the recent Board of Immigration Appeals decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), violates the plain language of the Immigration and Nationality Act ("INA"). Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who like Petitioner, are charged as inadmissible for having entered the United States without inspection.**

VII. Requested in Complaint

Dollar Demand:

Jury Demand: **No**

VIII. This case is not related to another case.

Signature: Gregory Fay

Date: 11/4/2025

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

Revised: 01/2014