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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 Sergio SOLIS-BECERRIL,

11 Petitioner,

12 v.

13 Kristi NOEM, Secretary, U.S. Department of
14 Homeland Security; Pamela BONDI, U.S.
15 Attorney General; Todd LYONS, Acting
16 Director, Immigration and Customs
17 Enforcement; Gregory J. ARCHAMBEAULT,
18 Director, San Diego Field Office, Immigration
19 and Customs Enforcement, Enforcement and
20 Removal Operations; Christopher J. LAROSE,
21 Warden, Otay Mesa Detention Center;
22 U.S. DEPARTMENT OF HOMELAND
23 SECURITY; IMMIGRATION AND
24 CUSTOMS ENFORCEMENT and
25 EXECUTIVE OFFICE FOR IMMIGRATION
26 REVIEW,

27 Respondents.
28

Case No. **'25CV3002 JES JLB**

**PETITION FOR WRIT
OF HABEAS CORPUS
PURSUANT TO
28 U.S.C. § 2241;
VERIFIED PETITION**

PETITIONER DHS NO:

A 

INTRODUCTION

1. Petitioner, Mr. Sergio Solis-Becerril, is in the physical custody of Respondents at the Otay Mesa Detention Center, in San Diego, California.

2. Petitioner is unlawfully detained pursuant mandatory detention policies recently adopted by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR). The DHS and EOIR have improperly concluded that the Petitioner, despite being physically present within the interior of and residing in the United States and being arrested in San Diego County, should be deemed to be seeking admission to the United States and therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

3. DHS has placed Petitioner in removal proceedings pursuant to 8 U.S.C. § 1229a and has charged him with being present in the United States without admission or parole and therefore removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). Petitioner is charged with having entered the United States without admission or parole in or about March 1997, over 28 years ago. Based on this allegation, DHS and EOIR deem Petitioner subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

4. DHS and EOIR each have nationwide policies mandating the detention of all persons who entered without admission or parole, regardless of whether that person was apprehended upon arrival. Most recently, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (BIA) held that all persons who have entered the United States without admission or parole are now subject to mandatory detention under § 1225(b)(2)(A).

5. Petitioner has sought a bond hearing before an immigration judge (IJ) and the IJ

1 denied bond for lack of jurisdiction pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216
2 (BIA 2025). The IJ concluded that, notwithstanding Petitioner's presence and residence in
3 the United States, Petitioner should be deemed an "arriving alien under 235 of the INA [8
4 U.S.C. § 1225]" and on this basis held that the immigration court lacked jurisdiction.
5

6 6. Petitioner's detention on this basis violates the plain language of the Immigration
7 and Nationality Act, 8 U.S.C. § 1101 *et seq.* Section 1225(b)(2)(A) does not apply to
8 individuals like Petitioner, who previously entered and is now residing in the United States.
9 Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on
10 conditional parole or bond. Indeed, § 1226(a) expressly applies to people who, like Petitioner,
11 are charged as inadmissible for having entered the United States without inspection and being
12 present without admission.
13

14 7. Respondents' new legal interpretation is also plainly contrary to the statutory
15 framework and contrary to decades of agency practice applying § 1226(a) to people like
16 Petitioner, who is present within the United States.

17 8. Respondents' new legal interpretation of the INA also violates Petitioner's right to
18 due process. All individuals within the United States have constitutional rights. "[T]he Due
19 Process Clause applies to all 'persons' within the United States, including aliens, whether their
20 presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678,
21 693 (2001).
22

23 9. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released
24 unless Respondents provide a bond hearing under § 1226(a).
25

26 JURISDICTION

27 10. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
Otay Mesa Detention Center in San Diego, California.

1 11. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. §
2 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of
3 sovereign immunity), and Article I, section 9, clause 2 of the United States Constitution (the
4 Suspension Clause).

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

8 VENUE

9 13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–
10 500 (1973), venue lies in the United States District Court for the Southern District of
11 California, the judicial district in which Petitioner is currently detained.

12 14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
13 Respondents are employees, officers, and agencies of the United States, and because a
14 substantial part of the events or omissions giving rise to the claim occurred in the Southern
15 District of California.
16

17 REQUIREMENTS OF 28 U.S.C. § 2243

18 15. The Court must grant the petition for writ of habeas corpus or order Respondents
19 to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If
20 an order to show cause is issued, the Respondents must file a return “within three days unless
21 for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
22

23 16. Habeas corpus is “perhaps the most important writ known to the constitutional law
24 . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
25 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for
26 the writ usurps the attention and displaces the calendar of the judge or justice who entertains
27 it and receives prompt action from him within the four corners of the application.” *Yong v.*

1 *I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

2 **PARTIES**

3 17. Petitioner Sergio Solis-Becerril was arrested by ICE agents on October 10, 2025
4 in San Diego, California, and has been in immigration detention since that date. After
5 arresting Petitioner, ICE did not set bond and Petitioner requested review of his custody by
6 an IJ. On October 24, 2025, Petitioner was denied bond by an IJ at the Otay Mesa
7 Immigration Court because the IJ concluded: "Respondent's Notice to Appear indicates
8 respondent is charged as entering the country without inspection and he concedes that fact,
9 so the court finds the respondent is an arriving alien under section 235 of the INA and the
10 court lack [sic] jurisdiction pursuant to *Yajure Hurtado*, 29 I&N Dec. 261 (BIA 2025)."

11 18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security.
12 She is responsible for the implementation and enforcement of the Immigration and
13 Nationality Act (INA), and oversees ICE, which is responsible for Petitioners' detention. Ms.
14 Noem has ultimate custodial authority over Petitioners and is sued in her official capacity.

15 19. Respondent Pamela Bondi is the Attorney General of the United States. She is
16 responsible for the Department of Justice, of which the Executive Office for Immigration
17 Review and the immigration court system it operates is a component agency. She is sued in
18 her official capacity.

19 20. Respondent Todd Lyons is the Acting Director of Immigration and Customs
20 Enforcement, a federal law enforcement agency within the Department of Homeland
21 Security. ICE's responsibilities include operating the immigration detention system. In his
22 capacity as ICE Acting Director, Respondent Lyons exercises control over and is custodian
23 of persons held in ICE facilities nationally. He is Petitioner's immediate custodian and is
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1 responsible for Petitioner's detention. At all times relevant to this Complaint, Respondent
2 Lyons was acting within the scope and course of his employment with ICE. He is sued in his
3 official capacity.

4 21. Respondent Gregory J. Archambeault is the Director of the San Diego Field Office
5 of ICE's Enforcement and Removal Operations division. As such, he is the custodian of all
6 persons held at the ICE facilities in the San Diego Field Office. He is Petitioner's immediate
7 custodian and is responsible for Petitioner's detention. He is sued in his official capacity.

8 22. Respondent Christopher J. LaRose is employed by CoreCivic, Inc., as Warden of
9 the Otay Mesa Detention Center in San Diego, California. He has immediate physical custody
10 of Petitioner. He is sued in his official capacity.

11 23. Respondent Department of Homeland Security (DHS) is the federal agency
12 responsible for implementing and enforcing the INA, including the detention and removal of
13 noncitizens.

14 24. Respondent Immigration and Customs Enforcement (ICE) is the agency within
15 DHS responsible for implementing and enforcing the INA, including the detention and removal
16 of noncitizens.

17 25. Respondent Executive Office for Immigration Review (EOIR) is the federal
18 agency responsible for implementing and enforcing the INA in removal proceedings,
19 including for custody redeterminations in bond hearings.

20 **LEGAL FRAMEWORK**

21 26. The INA prescribes three basic forms of detention for the vast majority of
22 noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a.

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

3 28. Second, the INA provides for mandatory detention of noncitizens subject to an
4 expedited removal order under 8 U.S.C. § 1225(b)(1) and for other noncitizen applicants for
5 admission to the U.S. who are deemed not clearly entitled to be admitted. *See* 8 U.S.C. §
6 1225(b)(2).

7
8 29. Last, the INA also provides for detention of noncitizens who have been ordered
9 removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a), (b).

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

11 31. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
12 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
13 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585.
14 Section 1226 was most recently amended in early 2025 by the Laken Riley Act, Pub. L.
15 No.119-1, 139 Stat. 3 (2025).

16
17 32. Following the enactment of the IIRIRA, EOIR drafted new regulations applicable
18 to proceedings before immigration judges explaining that, in general, people who entered the
19 country without inspection – also referred to as being “present without admission” – were not
20 considered detained under § 1225 and that they were instead detained under § 1226(a). *See*
21 *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of*
22 *Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

23
24 33. Thus, in the decades that followed, most people who entered without admission or
25 parole and were placed in standard § 1229a removal proceedings received bond hearings
26 before IJs, unless their criminal history rendered them ineligible. That practice was
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1 consistent with many more decades of prior practice, in which noncitizens who were not
 2 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See*
 3 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that §
 4 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

5
 6 34. This practice both pre- and post-enactment of IIRIRA is consistent with the fact that
 7 noncitizens present within the United States – as opposed to noncitizens present at a border
 8 seeking admission – have constitutional rights. “[T]he Due Process Clause applies to all
 9 ‘persons’ within the United States, including aliens, whether their presence here is lawful,
 10 unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

11 35. On July 8, 2025, ICE, “in coordination with” the Department of Justice,
 12 announced a new policy that rejected this well-established understanding of the statutory
 13 framework and reversed decades of practice.

14 36. The new policy, entitled “Interim Guidance Regarding Detention Authority for
 15 Applicants for Admission,”¹ claims that all noncitizens who entered the United States without
 16 inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and
 17 therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies
 18 regardless of when a person is apprehended, and affects those who have resided in the United
 19 States for months, years, and even decades.

20 37. On September 5, 2025, the BIA adopted this same position in a published
 21 decision, *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). There, the Board held
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 26 ¹ “Interim Guidance Regarding Detention Authority for Applicants for Admission,” ICE,
 27 July 8, 2025. Available at: <https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents>.

1 that all noncitizens who entered the United States without admission or parole are considered
2 applicants for admission who are seeking admission and are ineligible for IJ bond hearings.

3 38. Since the Respondent's adopted their new policies, dozens of federal courts have
4 rejected their new interpretation of the INA's detention authorities. Courts have likewise
5 rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.
6

7 39. For example, when IJs in the Tacoma, Washington immigration court stopped
8 providing bond hearings for persons who entered the United States without inspection and
9 who have since resided here, the U.S. District Court for the Western District of Washington
10 found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b),
11 applies to noncitizens who are not apprehended upon arrival to the United States; on
12 September 30, 2025, the U.S. District Court for the Western District of Washington issued a
13 partial summary judgement order concluding that such persons are subject to detention under
14 8 U.S.C. § 1226(a) and are not subject to mandatory detention under 8 U.S.C. 1225(b)(2)(A).
15 *Rodriguez-Vazquez v. Bostock*, No. 3:25-cv-0524-TMC (W.D. Wash. Sept. 30, 2025), Order
16 Granting Plaintiffs' Partial Motion for Summary Judgment and Denying Defendants' Motion to
17 Dismiss, Dkt. 65.
18

19 40. Court after court has adopted the same reading of the INA's detention authorities
20 and rejected ICE's new policy and EOIR's new interpretation, including many California.
21 *See Beltran v. Noem*, 3:25-cv-02650-LL-DEB (S.D. Cal. Nov. 4, 2025); *Alvarez Chavez v.*
22 *Kaiser*, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025); *J.S.H.M. v. Wofford*, 2025 WL 2938808
23 (E.D. Cal. Oct. 16, 2025); *Coc Tut v. Noem*, No. 5:25-cv-2701-DOC-AGR (C.D. Cal. Oct. 16
24 2025); *Menjivar Sanchez v. Wofford*, 2025 WL 2959274 (C.D. Cal. Oct. 17, 2025); *Gomez*
25 *Garcia v. Noem*, 2025 WL 2986672 (C.D. Cal. Oct. 22, 2025); *Martinez Lopez v. Noem*, No.
26
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1 3:25-cv-02734 (S.D. Cal. Oct. 23, 2025); *Esquivel-Ipina v. Larose*, 2025 WL 2998361 (S.D.
2 Cal. Oct.24, 2025); *Castellanos Lopez v. Warden Otay Mesa Det. Ctr.*, 2025 WL 3005346
3 (S.D. Cal. Oct. 27, 2025); *J.A.E.M. v. Wofford*, 2025 WL 3013377 (E.D. Cal. Oct. 27, 2025);
4 *J.A.C.P. v. Wofford*, 2025 WL 30133328 (E.D. Cal. Oct. 27, 2025); *Suy Tol v. Noem*, No.
5 5:25-cv-2806-JFW-AS (C.D. Cal. Oct. 29, 2025); *Portillo v. Noem*, No. 5:25-cv-2892-JFW-
6 PCVx (C.D. Oct. 31, 2025); *Lopez Pop v. Noem*, Case No. 5:25-cv-2589-SSS-SSC (C.D.
7 Cal, Oct. 3, 2025); *Santiago Flores v. Noem*, Case No. 5:25-cv-2490-AB-AJR (C.D. Cal.
8 Sept. 29, 2025); *Arreola Armenta v. Noem*, 5:25-cv-2416-JFW-SP (C.D. Cal. Sept. 16, 2025);
9 *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304-CAS-BFM, 2025 WL 2591530 (C.D. Cal.
10 Sept. 8, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431
11 (S.D. Cal. Sept. 3, 2025); *Benitez v. Noem*, 5:25-cv-2190-RGK-AS (C.D. Cal. Aug. 26,
12 2025); *Ceja Gonzalez v. Noem*, 5:25-cv-2054-ODW-BFM (C.D. Cal. Aug. 13, 2025);
13 *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (CD. Cal.
14 Aug. 15, 2025); and *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D.
15 Cal. July 28, 2025). *But see*, *Sixtos Chavez v. Noem*, No. 3:25-cv-2325-CAB-SBC (S.D. Cal.
16 Sept. 24, 2025) (denying TRO and accepting government's interpretation of § 1225(b)(2)).
17 And outside of California, *see also* *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
18 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F.
19 Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-
20 02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and
21 recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz.
22 Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588
23 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL
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2374411 (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), -- F. Supp. 3d --, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same). These courts have rejected DHS’s and EOIR’s new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

41. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].” *Rodriguez Vazquez*. *See also Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025) Order Granting Temporary Restraining Order, Dkt. 14 at 9 (“[T]he Court finds

1 that the potential for Petitioners' continued detention without an initial bond hearing would
2 cause immediate and irreparable injury, as this violates statutory rights afforded under §
3 1226(a)."); *Ceja Gonzalez*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August 13, 2025), Order
4 Granting Ex-Parte Application for TRO and OSC, Dkt. 12 at 7 (§ 1226 applies to aliens
5 present in the United States.)
6

7 42. The text of § 1226 also explicitly applies to people charged as being inadmissible,
8 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph
9 (E)'s reference to such persons makes clear that, by default, such persons are afforded a bond
10 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress
11 creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those
12 exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing
13 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).
14

15 43. Section 1226 therefore leaves no doubt that it applies to people who face charges
16 of being inadmissible to the United States, including those who are present without inspection
17 and who face charges in removal proceedings of being inadmissible to the United States.

18 44. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
19 recently entered the United States. The statute's entire framework is premised on inspections
20 at the border of people who are "seeking admission" to the United States. 8 U.S.C. §
21 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention
22 scheme applies "at the Nation's borders and ports of entry, where the Government must
23 determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v.*
24 *Rodriguez*, 583 U.S. 281, 287 (2018).
25

26 45. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to
27

1 persons like Petitioner, who has already entered and was residing in the United States at the
2 time he was apprehended.

3 FACTS

4 46. Petitioner Sergio Solis-Becerril resides in San Diego, California. He was
5 convicted of a misdemeanor DUI over thirteen years ago. The conviction does not trigger
6 mandatory detention pursuant to 8 U.S.C. § 1226(c).
7

8 47. Following his arrest for DUI in 2012, Petitioner was transferred to the custody of
9 ICE. ICE charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and
10 placed him in removal proceedings before the San Diego Immigration Court. ICE released
11 Petitioner on his own recognizance.
12

13 48. In December 2012, Petitioner's removal proceedings were administratively
14 closed. In July 2025, his removal proceedings were recalendared before San Diego
15 Immigration Court on a motion by the DHS.

16 49. On October 10, 2025, Petitioner attended a Master Calendar Hearing before the
17 San Diego Immigration Court in the recalendared proceedings. After the hearing, he reported
18 to ICE Enforcement and Removal Operations (ICE ERO) in compliance with a "call-in"
19 letter he had received in the mail. Petitioner was taken into custody by ICE. Petitioner is
20 now detained at the Otay Mesa Detention Center in San Diego, California.
21

22 50. Following Petitioner's arrest and transfer to the Otay Mesa Detention Center, ICE,
23 issued a custody determination to continue Petitioner's detention without an opportunity to
24 post bond or be released on other conditions.

25 51. Petitioner subsequently requested a bond redetermination hearing before an IJ.
26 On October 24, 2025, an IJ denied the request and issued a decision that the court lacked
27

jurisdiction to conduct a bond redetermination pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

52. Any appeal to the BIA by the Petitioner is futile. On September 5, 2025, the BIA held in a precedent decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A).

FIRST CLAIM FOR RELIEF

Petitioner's Detention is in Violation of 8 U.S.C. § 1226(a)

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

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

55. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention without a bond hearing and violates § 1226(a).

SECOND CLAIM FOR RELIEF

Petitioner's Detention is in Violation of DHS and EOIR Bond Regulations

56. Petitioner incorporates by reference the allegation of fact set forth in the preceding paragraphs.

1 57. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-
2 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.
3 Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],”
4 the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are
5 present without having been admitted or paroled (formerly referred to as [noncitizens] who
6 entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed.
7 Reg. at 10323. The agencies thus made clear that individuals who had entered without
8 inspection were eligible for consideration for bond and bond hearing before IJs under 18
9 U.S.C. § 1226 and its implementing regulations.
10

11 58. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and
12 practice of applying § 1225(b)(2) to individuals like Petitioner and, pursuant to the July 8,
13 2025 “Interim Guidance Regarding Detention Authority for Applicants for Admission,” DHS
14 policy and practice of applying § 1225(b)(2) to individuals like Petitioner.
15

16 59. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued
17 detention and violations 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.
18

19 **THIRD CLAIM FOR RELIEF**

20 **Petitioner’s Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2)**

21 60. Petitioner incorporates by reference the allegations of fact set forth in the
22 preceding paragraphs.

23 61. Under the Administrative Procedure Act, a court must “hold unlawful and set
24 aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in
25 accordance with the law,” that is “contrary to constitutional right [or] power,” or that is “in
26 excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C.
27

1 § 706(2)(A)-(C).

2 62. Respondents' detention of Petitioner pursuant to § 1225(b)(2) is arbitrary and
3 capricious; violates the INA and the Fifth Amendments; is not authorized under § 1225(b)(2),
4 and therefore is in violation of 5 U.S.C. § 706(2)

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6 **FOURTH CLAIM FOR RELIEF**

7 **Petitioner's Detention Violates His Fifth Amendment Rights to Due Process**

8 63. Petitioner incorporates by reference the allegations of fact set forth in the
9 preceding paragraphs.

10 64. 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
12 custody, detention, or other forms of physical restraint – lies at the hearing of the liberty that
13 the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

14
15 65. Petitioner has a fundamental interest in liberty and being free from official
16 restraint.

17 66. The Respondents' detention of Petitioner without providing a bond
18 redetermination hearing to determine whether he is a flight risk or a danger to others violates
19 his right to Due Process.
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PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully ask that this Court take jurisdiction over this matter and grant the following relief:

- a. Order that Petitioner shall not be transferred outside of the Southern District of California while this petition is pending;
- b. Issue an Order to Show Cause ordering Respondents to show cause within three days why this Petition should not be granted;
- c. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- d. Declare that Petitioner's detention is unlawful;
- e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- f. Grant any other further relief this Court deems just and proper.

DATED: November 5, 2025

s/ Jan Joseph Bejar
Jan Joseph Bejar, Esq.
For: JAN JOSEPH BEJAR,
A Professional Law Corp.

Attorneys for Petitioner

VERIFICATION

I, Jan Joseph Bejar, declare as follows:

I am an attorney admitted to practice law in the State of California.

Because many of the allegations of this Petition require a legal knowledge not possessed by Petitioner, I am making this verification on his behalf.

I have read the foregoing Petition for Writ of Habeas Corpus and know the contents thereof to be true to my knowledge, information, or belief.

I certify under penalty of perjury that the foregoing is true and correct and that this declaration was executed on November 5, 2025.

s/ Jan Joseph Bejar
JAN JOSEPH BEJAR
FOR: JAN JOSEPH BEJAR,
A PROFESSIONAL LAW CORP.

Attorney for Petitioner