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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Anderson Carvalho Santos,

Petitioner,

vs.

Gregory John Archambeault, San Diego Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE); Christopher J. LaRose, Senior Warden, Otay Mesa Detention Center; Kristi NOEM, Secretary, United States Department of Homeland Security; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, Attorney General of the United States; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR); Daren K. Margolin, Director, EOIR; OTAY MESA IMMIGRATION COURT,

Respondents.

Case No.: '25CV3009 RSH DDL

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR ADMINISTRATIVE PROCEDURE ACT RELIEF [IMMEDIATE BOND HEARING REQUESTED]

INTRODUCTION

1. Petitioner Anderson Carvalho Santos, born on [redacted] respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge the unlawful detention imposed by Respondents.

2. Petitioner entered the United States without inspection on or about July 25, 2022, and immediately turned himself in to immigration authorities.

3. On or around September 7, 2025, ICE officers arrested Anderson outside his home while seeking another individual. Since that date, Petitioner has been detained at Otay Mesa Detention Center without an individualized bond hearing before a neutral decision-maker, despite having no criminal history, posing no flight risk, and having deep family and community ties.

4. Respondents have relied on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), to argue that Petitioner is categorically ineligible for a bond hearing under 8 U.S.C. § 1226(a). That reliance is legally and constitutionally flawed: Yajure Hurtado improperly strips Immigration Judges of jurisdiction to review detention, conflicts with Ninth Circuit precedent, and has been rejected by multiple federal courts across several circuits.

5. Petitioner's detention is therefore governed by 8 U.S.C. § 1226(a), which entitles him to a prompt, individualized bond hearing. Respondents' continued detention without due process violates the Fifth Amendment and the Suspension

Clause.

6. Petitioner accordingly seeks a writ of habeas corpus under 28 U.S.C. § 2241; Declaratory relief confirming that he was not paroled into the United States and thus falls under the jurisdiction of the immigration court; Injunctive relief requiring Respondents to recognize his procedural and statutory rights; and Any other appropriate relief under the Administrative Procedure Act, as the reclassification or denial of jurisdiction constitutes final agency action that is arbitrary, capricious, an abuse of discretion, and contrary to law under 5 U.S.C. § 706(2).

7. Petitioner respectfully requests that this Court order his immediate release, or alternatively, require Respondents to provide a bond hearing within ten days, consistent with statutory and constitutional requirements.

JURISDICTION AND VENUE

8. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101–1538, and its implementing regulations; the Administrative Procedure Act (APA), 5 U.S.C. §§ 500–596, 701–706; and the U.S. Constitution.

9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All

Writs Act, 28 U.S.C. § 1651; Federal Rule of Civil Procedure 65; and the Court's inherent equitable powers.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because Respondents are U.S. agencies and officers of the United States acting in their official capacities or because they reside in this district. In addition, a substantial part of the events or omissions giving rise to the claims occurred in this District, Petitioner is detained in this District, and no real property is involved in this action.

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

13. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

PARTIES

14. Petitioner Anderson Carvalho Santos is a native and citizen of Brazil who entered the United States without inspection on or about July 25, 2022, and currently resides in California with his family. On or around September 7, 2025, ICE arrested Petitioner outside his home, and he has since been detained at Otay Mesa Detention Center.

15. Respondent Gregory John Archambeault is the Field Office Director for ICE Enforcement and Removal Operations (ERO) in San Diego, California. As the ERO Seattle Field Office Director, he is Petitioner's immediate custodian, responsible for her detention at Otay Mesa Detention Center (OMDC), and the person with the authority to authorize her detention or release. Respondent Archambeault is sued in his official capacity.

16. Respondent Christopher J. LaRose is the Senior Warden of the Otay Mesa Detention Center, oversees the day-to-day functioning of OMDC, and has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens. Mr. LaRose is sued in his official capacity as the Warden of a federal detention facility.

17. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. As Secretary, she oversees the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens. She is

sued in her official capacity.

18. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens.

19. Respondent Pamela Bondi is the Attorney General of the United States and head of the U.S. Department of Justice. In that capacity, she oversees EOIR and the immigration court system the agency administers. She is ultimately responsible for the agency's operation. She is sued in her official capacity.

20. Respondent EOIR is a component agency of the Department of Justice responsible for conducting removal and bond hearings of noncitizens. EOIR is comprised of a lower adjudicatory body administered by IJs and an appellate body known as the Board of Immigration Appeals. IJs issue initial decisions in bond hearings, which are then subject to appeal to the BIA.

21. Respondent Daren K. Margolin is the Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond hearings. He is sued in her official capacity.

22. The Otay Mesa Immigration Court is the adjudicatory body within EOIR with jurisdiction over the removal and bond cases of all individuals detained at the OMDC.

STATEMENT OF FACTS

23. Petitioner Anderson Carvalho Santos entered the United States without inspection on or about July 25, 2022, and immediately turned himself in to immigration authorities. He was 21 years old at the time of entry.

24. After processing, Petitioner was issued a Notice to Appear (NTA) and was released on his own recognizance. He was not detained, nor was she granted parole under INA § 212(d)(5).

25. Following his release, Petitioner has fully complied with all immigration requirements. He has no criminal history, poses no danger to the community, and has not been charged with any offenses.

26. On or around September 7, 2025, ICE officers arrested Petitioner outside his home while seeking another individual. He has since been detained at Otay Mesa Detention Center, where he remains in custody.

27. While in ICE custody, Petitioner requested a custody redetermination hearing under *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005) and applicable regulations. However, the Immigration Judge denied his request for bond, citing a lack of jurisdiction to redetermine custody on the grounds that Petitioner had been "paroled" and was therefore subject to *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). In *Q. Li*, the BIA held that noncitizens released on their own recognizance without parole remain "applicants for admission" and are not eligible for bond under INA §

236(a).

28. Petitioner has strong family and community ties to the United States. He resides with his parents, and his continued detention disrupts the family unit and prevents him from participating in their ongoing immigration proceedings.

29. Petitioner's detention severely impairs his ability to communicate with counsel and participate in his immigration case, creating a substantial risk of prejudice to his legal rights.

30. Conditions at Otay Mesa have further exacerbated his distress, including lack of adequate medical care, restricted communication with his family and counsel, and intimidation by certain facility staff. This mistreatment shows the urgent need for judicial intervention in his ongoing detention.

31. Investigations have also confirmed substantiated allegations of sexual abuse by correctional staff, overuse of solitary confinement, and unsafe conditions at the facility[1] [2] [3].

32. These conditions of confinement further show the urgency of Petitioner's

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[1] California Attorney General, *Completely Unacceptable: California Attorney General Report Finds Immigration Detention Centers Are Failing* (Feb. 1, 2024), https://www.10news.com/completely-unacceptable-california-attorney-general-report-finds-immigration-detention-centers-are-failing?utm_source=chatgpt.com

[2] KPBS, *Overcrowded Conditions Plague Otay Mesa and Other Immigrant Detention Facilities* (July 28, 2025), https://www.kpbs.org/news/local/2025/07/28/overcrowded-conditions-plague-otay-mesa-and-other-immigrant-detention-facilities?utm_source=chatgpt.com

[3] A federal press report revealed a **sexual misconduct case**, where a DHS case manager assigned to oversight duties at Otay Mesa allegedly had a sexual relationship with a detainee https://www.justice.gov/usao-sdca/pr/otay-mesa-detention-facility-case-manager-accused-having-sex-detainee?utm_source=chatgpt.com

release, as her continued detention not only subjects her to an unreasonable risk of harm but also serves no legitimate governmental purpose given her lack of dangerousness or flight risk.

33. Petitioner poses no danger or flight risk, and there has been no individualized determination of necessity for his continued detention. Under the current misapplication of *Matter of Q. Li*, Petitioner is effectively denied any meaningful opportunity to challenge his detention, in violation of the Fifth Amendment's Due Process Clause and the Administrative Procedure Act.

34. Petitioner remains in ICE custody with no available administrative mechanism to seek release. He seeks relief from this Court through a writ of habeas corpus under 28 U.S.C. § 2241 and declaratory relief under the Administrative Procedure Act, to remedy this ongoing unlawful detention.

LEGAL FRAMEWORK

Detention under 8 U.S.C. § 1226(a) and § 1225(b)(2)

35. The Immigration and Nationality Act ("INA") authorizes the detention of noncitizens in removal proceedings under three primary provisions: INA § 236(a) (8 U.S.C. § 1226(a)), INA § 235(b) (8 U.S.C. § 1225(b)), and 8 U.S.C. § 1231(a)–(b).

36. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals

in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

37. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

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

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

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

41. Following enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal

of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

42. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see* also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

43. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

44. 8 U.S.C. § 1225(b), by contrast, mandates detention of certain arriving aliens and applicants for admission during the pendency of expedited or full removal proceedings. However, this provision only applies to individuals who are "seeking admission" and who are either subject to expedited removal or placed into § 240

proceedings as applicants for admission.

45. A key distinction in this framework is "parole" under INA § 212(d)(5), which permits the Secretary of Homeland Security, in his discretion, to parole an individual into the United States temporarily for urgent humanitarian reasons or significant public benefit. Parole is an express legal status that must be granted affirmatively and documented by the issuance of Form I-94 or other evidence of parole.

46. The Board of Immigration Appeals' decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), held that individuals who have been formally "paroled" into the United States under § 212(d)(5) are not eligible for a bond hearing under INA § 236(a), because they are considered "arriving aliens" subject to § 235.

47. However, *Q. Li* does not apply to individuals who, like Petitioner, were never formally granted parole but were instead released on their own recognizance after being processed and issued an NTA. DHS cannot unilaterally designate an individual as "paroled" absent a formal parole determination under § 212(d)(5) and issuance of appropriate documentation.

48. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA extended this reasoning, holding that noncitizens who entered without inspection and were later apprehended in the interior are categorically ineligible for bond hearings under § 236(a), effectively stripping IJs of jurisdiction.

49. These decisions are recent, agency-specific interpretations. They are binding within EOIR but not controlling in federal courts. Following the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, courts now review statutes de novo without deference to agency interpretations.

50. Federal courts have increasingly recognized that reliance on *Q. Li* and *Yajure Hurtado* to deny bond hearings violates statutory and constitutional principles, particularly when the detainee:

- Entered without inspection but was never formally paroled;
- Has strong family or community ties;
- Poses no danger or flight risk; and
- Faces prolonged detention without an individualized custody determination

51. As courts in multiple circuits have found, including *Ponte-Guanare v. Archambeault*, No. 3:25-cv-02081 (S.D. Cal. Sep. 25, 2025), and *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK (D. Mass. Sept. 9, 2025), administrative exhaustion is futile when detention is based solely on these BIA precedents, making habeas review appropriate and ordering that: *"Respondents SHALL NOT deny Petitioner's bond on the basis that 8 U.S.C. § 1225(b)(2) requires mandatory detention"*.

52. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Prolonged detention without an individualized custody determination by a neutral arbiter violates due process. See *Zadvydas v. Davis*, 533

U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 131 (2018).

53. Where DHS has misclassified a person as paroled to avoid judicial review of custody under § 236(a), courts retain habeas jurisdiction to correct such errors and order a bond hearing. *See Padilla v. ICE*, 354 F. Supp. 3d 1218, 1228 (W.D. Wash. 2018); *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *7 (S.D.N.Y. May 23, 2018).

54. The Administrative Procedure Act, 5 U.S.C. §§ 701–706, provides a cause of action for individuals aggrieved by final agency action that is arbitrary, capricious, contrary to law, or in excess of statutory authority. DHS's and the Immigration Judge's reliance on *Q. Li* under the mistaken belief that Petitioner had been "paroled" constitutes final agency action that is contrary to law and subject to review under the APA.

The BIA's Practice of Delayed Decisions in Bond Proceedings

55. The BIA's appellate process does not offer a meaningful avenue to correct the Otay Mesa Immigration Court's errors.

56. According to the agency's own data, during FY 2024, the agency's average processing time for a bond appeal was 204 days, or nearly seven months.

57. The lengthy delays in bond appeal determinations do not affect only Mrs. Ponte-Guanare and similarly situated individuals subject to the Board of

Immigration Appeals' decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) described above. It also affects all noncitizens who are detained, who have a right to a bond hearing, and who have their request for a bond denied or cannot afford the bond they are provided.

58. This average of 204 days tells only part of the story. The data released by EOIR shows that in many cases, the BIA review takes far longer—in some cases, a year or more—to decide a person's bond appeal.

59. These processing times defy the Due Process Clause.

60. The Supreme Court and the Ninth Circuit have explained that appellate review is a critical component of a constitutional civil detention scheme, including in immigration cases. *See*, e.g., *Schall v. Martin*, 467 U.S. 253, 280 (1984); *Singh v. Holder*, 638 F.3d 1196, 1209 (9th Cir. 2011); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065–66 (9th Cir. 2008).

61. The Supreme Court has also made clear that *timely* appellate review is a key feature of any civil detention scheme. As the Court has explained, "[r]elief [when seeking review of detention] must be speedy if it is to be effective." *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

62. Most notably, the Court upheld the federal pretrial detention under the Bail Reform Act in part because the statute "provide[s] for immediate appellate review of the detention decision." *United States v. Salerno*, 481 U.S. 739, 752 (1987). As

the Ninth Circuit later elaborated, "[e]ffective review of pretrial detention orders necessarily entails a speedy review in order to prevent unnecessary and lengthy periods of incarceration on the basis of an incorrect magistrate's decision." *United States v. Fernandez-Alfonso*, 813 F.2d 1571, 1572 (9th Cir. 1987).

63. These principles derive from the federal pretrial context, where, by definition, individuals are subject to federal criminal proceedings. Yet here, where only civil proceedings are at issue, the BIA provides nothing like the speedy review federal district and appellate courts provide of magistrate judge detention decisions.

64. Without timely review, appellate review is meaningless. Indeed, the Supreme Court has explained that the opportunity to obtain "freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction." Stack, 342 U.S. at 4. Additionally, such detention "may imperil the [detained person's] job, interrupt his source of income, and impair his family relationships." *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).

65. During the many months the BIA takes to review a bond appeal, a detained noncitizen will be forced to defend themselves against their removal on the merits, depriving them of a meaningful chance to assemble evidence outside detention, coordinate with family, or communicate with potential witnesses in other countries.

66. Indeed, their very detention significantly reduces their likelihood of

obtaining legal representation. In removal proceedings, noncitizens have the right to be represented by legal counsel but "at no expense to the government." 8 U.S.C. § 1362. Those detained while in removal proceedings face significant challenges to accessing and communicating with counsel or other forms of legal assistance. *See*, e.g., ACLU, No Fighting Chance: ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers 6 (June 9, 2022). [4]

67. The lack of legal representation in turn dramatically reduces the potential for successful outcomes in their underlying removal proceedings. *Id.* at 12.

68. The months a noncitizen waits for appellate review also deprives them of time with their spouses, children, parents, and other family members. These individuals—who are often U.S. citizens or lawful permanent residents—are similarly deprived of the love, care, and financial support that the detained person provides.

69. Time in detention is also difficult in other ways. Detained persons are often incarcerated in jail-like settings, forced to sleep in communal spaces, receive inadequate medical care, and subjected to other degrading treatment.

70. While not all noncitizens succeed in their appeals, some do. The BIA's months-long appellate review means that for those individuals, they have spent

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[4] https://www.aclu.org/ publications/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-centers.

months of unnecessary time in detention and suffered the many harms outlined above.

71. Such review processing times violate the Due Process Clause and do not constitute a reasonable time as required by the APA.

Bia's Precedent in *Matter of Q.Li* and *Matter of Hurtato* Should Not Be Applied in This Matter

72. The Board of Immigration Appeals (BIA) decision in *Matter of Q. Li* and *Matter of Hurtado* should be viewed as an agency interpretation of a statute. The Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, which overturned the *Chevron deference*, fundamentally alters how courts should review such agency interpretations.

73. The Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo* (U.S. June 28, 2024) represents a significant shift in administrative law. The Court expressly abrogated the Chevron framework, which previously instructed courts to defer to an agency's reasonable interpretation of an ambiguous statute. The Court concluded that the Chevron doctrine was a misapplication of judicial power and that it improperly shifted the judicial function of interpreting the law to the executive branch. The judiciary's role is to say, "what the law is," as established in *Marbury v. Madison*. This means that courts must now interpret statutes *de novo*, or as if for the first time, without any special deference to an agency's interpretation.

74. The BIA, as part of the Department of Justice, is an administrative body charged with interpreting and applying the Immigration and Nationality Act (INA). Its decisions, such as *Matter of Q. Li* and *Yajure Hurtado*, are classic examples of agency interpretations of a statute. In this case, the BIA interpreted a specific provision of the INA to determine eligibility for a particular form of relief. Under the old *Chevron* framework, a court would have likely deferred to the BIA's interpretation as long as it was a reasonable construction of an ambiguous statute.

75. With *Loper Bright*, the legal landscape has changed. When a court now reviews BIA's decision in *Matter of Q.* and *Yajure Hurtado*, it cannot simply accept the BIA's interpretation. Instead, the court must undertake its own independent analysis of the statute. The court must use all traditional tools of statutory interpretation, such as the plain language of the statute, legislative history, and statutory context, to determine the correct meaning of the law. The BIA's interpretation is no longer entitled to deference. It is simply one possible reading of the statute, which the court can consider but is not bound by. This new approach restores the judiciary's power to serve as the ultimate arbiter of statutory meaning, ensuring a more uniform and consistent application of the law.

76. *Matter of Q. Li* (29 I&N Dec. 66 (BIA 2025)) and *Matter of Yajure Hurtado* (29 I&N Dec. 216 (BIA 2025)) contradict the plain language of the statute by expanding the scope of "arriving aliens" beyond the clear meaning of the law. The

decision's interpretation effectively erases the distinction between individuals apprehended at the border and those who have already entered the United States, which is a critical distinction in the Immigration and Nationality Act (INA). By doing so, it subjects a broader category of individuals to mandatory detention under § 235(b) of the INA, despite the fact that they would otherwise be eligible for a bond hearing under § 236(a).

77. The legal principle of statutory interpretation, specifically the "plain meaning" rule dictates that if the language of a statute is clear and unambiguous, a court must apply it as written, without looking at outside sources to interpret its meaning.

78. INA § 235(b) governs the processing of "arriving aliens" and those seeking admission to the United States. It mandates the detention of individuals who are "applicants for admission" and are found to be inadmissible. The plain language of this statute applies to individuals who are physically presenting themselves at a port of entry or are otherwise in the process of seeking admission.

79. INA § 236(a), in contrast, applies to a broader class of non-citizens who are in the United States and have been arrested for a removable offense. It explicitly allows for the release of these individuals on bond while their removal proceedings are pending.

80. The key legal distinction between these two sections is whether a non-citizen

is an "arriving alien" or has already "entered" the United States. Traditionally, an individual apprehended miles away from a port of entry has been considered to have already entered and, therefore, is eligible for a bond hearing under § 236(a).

81. The Board of Immigration Appeals (BIA) in *Matter of Q. Li* contradicts this established understanding by reclassifying a person apprehended several miles from the border as an "arriving alien." This classification is a direct expansion of the statutory language. The BIA's decision essentially holds that an individual is an "arriving alien" so long as they were apprehended "while arriving in the United States," regardless of their physical location or distance from a port of entry.

82. The BIA's ruling effectively renders the geographic distinction between "at a port of entry" and "in the United States" meaningless. The statute's structure, with its two separate detention provisions, clearly intended for these to be different categories.

83. By defining "arriving" so broadly, the BIA's decision expands the scope of mandatory detention under § 235(b) to encompass individuals who would have previously been subject to the bond-eligible detention provisions of § 236(a).

84. The purpose of § 236(a) is to provide a mechanism for releasing certain non-citizens on bond. By moving these individuals into a mandatory detention category, *Matter of Q. Li* and *Yajure Hurtado* bypasses the discretionary authority of immigration judges and thwarts the legislative intent to allow for bond hearings in

these cases.

85. Here, the petitioner was apprehended already in the United States, released on her own recognizance, and later re-apprehended when she was complying with mandatory inspection appointments before the Immigration and Customs Enforcement – ICE. This fact pattern differs entirely from the Congressional intent at the time § 235(b) was written.

86. Federal district courts across multiple circuits have consistently rejected the government's position that noncitizens who previously entered without inspection and were later apprehended in the interior are subject to mandatory detention under INA § 235(b)(2). These courts instead hold that INA § 236 governs detention for such individuals and preserves access to bond hearings before an Immigration Judge. The following decisions, grouped by circuit, illustrate the growing consensus against *Matter of Yajure Hurtado*.

A. First Circuit

87. District courts within the First Circuit have been particularly active in issuing habeas relief and rejecting the government's new interpretation of INA § 235(b)(2).

- *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)
- *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025)

- *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025)
- *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025)
- *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025)
- *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025)
- *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025)
- *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025)
- *Orellana Juarez v. Moniz*, 2025 WL 1698600 (D. Mass. June 11, 2025)

88. These cases uniformly hold that individuals arrested in the interior after living in the United States are detained under § 236(a) and are entitled to a bond hearing. In particular, *Sampiao* directly disagreed with the BIA's reasoning in *Yajure Hurtado*, finding that INA § 235(b)(2) does not apply in these circumstances.

B. Second Circuit

89. Courts within the Second Circuit have also struck down the government's expansive reading of § 235(b)(2).

- *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025)
- *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025)

C. Fourth Circuit

- *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025)

D. Fifth Circuit

- *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025)

E. Sixth Circuit

- *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)

F. Eighth Circuit

90. The District of Nebraska and District of Minnesota have issued numerous decisions rejecting *Yajure Hurtado*'s interpretation:

- *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025)
- *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025)
- *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025)
- *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025)
- *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025)
- *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025)
- *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025)
- *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025)
- *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025)

G. Ninth Circuit

91. Courts within the Ninth Circuit have not only rejected *Yajure Hurtado* but have also explicitly noted that its issuance makes BIA administrative exhaustion futile.

- *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025)
- *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025)
- *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025)
- *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025)
- *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025)
- *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025)

H. Key Ninth Circuit Trend:

92. In *Zaragoza Mosqueda*, the court expressly held that requiring prudential exhaustion of administrative remedies was **futile** given the binding nature of *Matter of Yajure Hurtado*. This supports our position that habeas review in district court is appropriate and necessary without first appealing to the BIA.

I. Summary

93. Across **seven circuits**, federal district courts have consistently:

- Rejected DHS's interpretation of INA § 235(b)(2) as applying to noncitizens apprehended in the interior after an unlawful entry.
- Affirmed that § 236(a) provides the statutory framework for discretionary detention and bond hearings.

- Found that *Matter of Yajure Hurtado* improperly strips immigration judges of jurisdiction and is contrary to the statutory scheme, Supreme Court precedent (*Jennings v. Rodriguez*), and decades of practice.

94. These decisions create a strong foundation for arguing that petitioner's detention is unlawful and that immediate habeas relief is warranted without exhausting BIA administrative remedies.

CAUSES OF ACTION

COUNT I
Violation of 8 U.S.C. § 1226(a) – Unlawful Denial of Bond Hearings

95. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

96. Under 8 U.S.C. § 1226(a), the Attorney General may detain an alien pending a decision on removal proceedings, but the statute expressly authorizes release on bond or conditional parole after a custody redetermination.

97. Petitioner was denied bond by the Immigration Judge on the sole basis of *Matter of Q–Li*, 29 I&N Dec. 66 (BIA 2025) and *Matter of Hurtado* (BIA 2025), under the erroneous finding that he had been "paroled" when he was, in fact, released on his own recognizance and he was not detained at a port-of-entry.

98. Under the clear language of the INA, § 235(b) governs the treatment of "applicants for admission" who present themselves at a port of entry or are

intercepted while seeking entry. Section 236(a) applies to noncitizens who have already entered the country and are awaiting removal proceedings.

99. The Immigration Judge's denial of bond without consideration of the statutory factors in § 1226(a) and applicable regulations deprived Petitioner of the individualized custody determination guaranteed by law.

100. Petitioner falls squarely within the latter category and is thus entitled to an individualized bond hearing under § 236(a). The IJ's denial of jurisdiction under *Matter of Q. Li* and *Matter of Hurtado* constitutes an error of law and a violation of the INA.

101. Following the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* (U.S. June 28, 2024), agency interpretations of ambiguous statutes are no longer entitled to Chevron deference. Courts must interpret statutory provisions *de novo*, using the traditional tools of statutory construction.

102. Because *Matter of Q. Li* and *Matter of Hurtado* constitute agency interpretations inconsistent with the INA's plain text, they are not entitled to deference and cannot lawfully strip Immigration Judges of jurisdiction to conduct bond hearings for individuals like Petitioner.

103. This constitutes an unlawful application of § 1226(a), warranting habeas relief.

COUNT II
Violation of the Administrative Procedure Act – Unlawful Denial of Bond

104. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

105. The APA, 5 U.S.C. §§ 701–706, prohibits agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

106. The denial of bond under an incorrect factual premise—that Petitioner was paroled—was arbitrary and capricious, contrary to the plain record of her release on her own recognizance.

107. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they originally entered the United States without inspection. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

108. The BIA's holdings in *Matter of Q. Li* and *Matter of Hurtado* are agency actions that reinterpret the INA to eliminate jurisdiction for Immigration Judges to hold bond hearings in cases governed by § 236(a).

109. These decisions are contrary to the plain text, structure, and legislative history of the INA and thus not in accordance with law.

110. Moreover, under *Loper Bright Enterprises v. Raimondo*, courts may not defer to such interpretations. Instead, the judiciary must independently construe the INA's statutory scheme. Upon such review, *Matter of Q. Li* and *Matter of Hurtado* constitute unlawful, ultra vires agency actions.

111. Respondents' bond decision was not in accordance with the INA, the APA, or due process, and therefore must be set aside under 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

1) Assume jurisdiction and proper venue over this matter;

2) Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Respondents to immediately release Petitioner from immigration detention or, in the alternative, order the immigration court to schedule a custody determination hearing without considering *Matter of Q.Li* and *Matter of Hurtado* within 10 days or any time this court deems reasonable.

3) Declare that Respondents' denial of bond under *Matter of Q–Li* and *Matter of Hurtado* was unlawful under 8 U.S.C. § 1226(a), the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment;

4) Declare that Respondents' prolonged delay in adjudicating Petitioner's bond appeal violates the Administrative Procedure Act and the Due Process Clause

of the Fifth Amendment;

5) Enjoin Respondents from further detaining Petitioner without providing a lawful and individualized custody determination;

6) Award Petitioner reasonable attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

7) Grant such other and further relief as this Court deems just and proper.

/s/ Marcelo Gondim

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

I represent Petitioner, Anderson Carvalho Santos, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

November 6, 2025.

/s/ Marcelo Gondim

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