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

10 Eleazar Esau AVALOS FLORES,
11 Petitioner,
12 v.

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

Respondents.

Case No. '25CV3011 BAS BLM

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

PETITIONER'S DHS NO:

A 

INTRODUCTION

1. Petitioner Eleazar Esau Avalos Flores is in the physical custody of Respondents at the Otay Mesa Detention Center in San Diego, California.

2. Petitioner is unlawfully detained. The Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have improperly concluded that Petitioner, despite being physically present within the interior of and residing in the United States when arrested in Los Angeles County, California, 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 Petitioner with being present in the United States without admission and therefore removable pursuant to *inter alia* 8 U.S.C. § 1182(a)(6)(A)(i).

4. Based on the allegations in Petitioner's removal proceedings, DHS has denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025,¹ instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) — i.e., those who entered without admission or inspection — to be

¹ “Interim Guidance Regarding Detention Authority for Applicants for Admission”, ICE, July 8, 2025. Available at: <https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents>.

1 an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject
2 to mandatory detention during the removal hearing process.
3

4 5. Similarly, on September 5, 2025, the Board of Immigration Appeals
5 (BIA or Board), a component of the EOIR, issued a precedent decision, binding on
6 all immigration judges, holding that an immigration judge has no authority to
7 consider bond requests for any person who entered the United States without
8 admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The
9 Board determined that such individuals are subject to mandatory detention under 8
10 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
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13 6. Petitioner’s detention on this basis violates the plain language of the
14 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.* Section
15 1225(b)(2)(A) does not apply to individuals like the Petitioner who previously
16 entered and is now present and residing in the United States. Instead, such
17 individuals are subject to a different statute, § 1226(a), that allows for release on
18 conditional parole or bond. That statute expressly applies to people who, like
19 Petitioner, are charged as removable for having entered the United States without
20 inspection and being present without admission.
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24 7. Respondents’ new legal interpretation of the INA is plainly contrary to
25 the statutory framework and contrary to decades of agency practice applying §
26 1226(a) to people, like Petitioner, who are present within the United States.
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8. Respondents' new legal interpretation of the INA also violates Petitioner's right to due process. All individuals within the United States have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

9. Accordingly, the Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

10. Petitioner also seeks a declaration that his detention is governed by 8 U.S.C. § 1226(a) and that detention under 8 U.S.C. § 1225(b)(2) is unlawful.

JURISDICTION

11. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of sovereign immunity), 28 U.S.C. § 2241 (habeas corpus jurisdiction), and Article I, Section 9, clause 2 of the United States Constitution (the Suspension Clause).

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

VENUE

13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.

1 484, 493- 500 (1973), venue lies in the United States District Court for the
2 Southern District of California, the judicial district in which Petitioner is currently
3 detained.
4

5 14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e)
6 because Respondents are employees, officers, and agencies of the United States,
7 and because a substantial part of the events or omissions giving rise to the claims
8 occurred in the Southern District of California.
9

10 **REQUIREMENTS OF 28 U.S.C. § 2243**
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12 15. The Court must grant a petition of writ of habeas corpus or order
13 Respondents to show cause “forthwith,” unless a petitioner is not entitled to relief.
14 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a
15 return “within three days unless for good cause additional time, not exceeding
16 twenty days is allowed.” *Id.*
17

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

Petitioner

17. Petitioner Eleazar Esau Avalos Flores was arrested by ICE agents on July 2, 2025 in Los Angeles, California. He has been in immigration detention since that date. After arresting Petitioner, ICE did not set bond. In light of the BIA's September 5, 2025 decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), Petitioner is unable to obtain a bond hearing before an IJ pursuant to 8 U.S.C. § 1226(a).

Respondents

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for the Petitioner's detention. Secretary Noem has ultimate custodial authority over the Petitioner. She is sued in her official capacity.

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

20. Todd Lyons is the Acting Director of Immigration and Customs Enforcement, a federal law enforcement agency within the Department of Homeland Security. ICE's responsibilities include operating the immigration

detention system. In his capacity as ICE Acting Director, Respondent Lyons exercises control over and is a custodian of persons held at ICE facilities nationally. He is Petitioner's immediate custodian and is responsible for Petitioner's detention. He is sued in his official capacity.

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

22. Respondent Christopher J. LaRose is the Senior Warden of the Otay Mesa Detention Center, Otay Mesa, California, where the Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

23. Respondent Executive Office for Immigration Review (EOIR) is the federal agency within the Department of Justice responsible for implementing the INA in removal proceedings, including for custody redeterminations and bond hearings.

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

²⁵ Respondent Immigration and Customs Enforcement (ICE) is the agency

1 within DHS responsible for implementing and enforcing the INA, including the
2 detention and removal of noncitizens.
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4 **LEGAL FRAMEWORK**

5 26. The INA prescribes three basic forms of detention for the vast majority
6 of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a.
7

8 27. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in § 1229a
9 removal proceedings before an IJ. Individuals covered by § 1226(a) detention are
10 generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§
11 1003.19(a), 1236.1(d), while certain noncitizens who have been arrested, charged
12 with, or convicted of certain crimes are subject to mandatory detention. *See* 8
13 U.S.C. § 1226(c).
14

16 28. Second, the INA provides for mandatory detention of noncitizens subject
17 to an Expedited Removal order imposed pursuant to 8 U.S.C. § 1225(b)(1) and for
18 other noncitizen applicants for admission to the U.S. who are deemed not clearly
19 entitled to be admitted. *See* 8 U.S.C. § 1225(b)(2).
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21 29. Last, the INA provides for detention of noncitizens who have been
22 ordered removed, including individuals in withholding-only proceedings. *See* 8
23 U.S.C. § 1231(a), (b).
24

25 30. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a) and
26 1225(b)(2).
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28 31. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as

1 part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)
2 of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582
3 to 3009-583, 3009-585. Section 1226(a) was most recently amended in early 2025
4 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

5 32. Following the enactment of the IIRIRA in 1996, EOIR drafted new
6 regulations applicable to proceedings before immigration judges explaining that, in
7 general, people who entered the country without inspection – also referred to as
8 being “present without admission” - were not considered detained under § 1225 and
9 that they were instead detained under § 1226(a). *See Inspection and Expedited*
10 *Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal*
11 *Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

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

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

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

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

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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). The Board
22 held that all noncitizens who entered the United States without admission or parole
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27 ² Available at: <https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents>.

1 are subject to mandatory detention under § 1225(b)(2)(A) and are ineligible for IJ
2 bond hearings.
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4 38. Since Respondents adopted their new policies, dozens of federal courts
5 have rejected their new interpretation of the INA's detention authorities. Courts
6 have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of
7 the statute as ICE.
8

9 39. Even before ICE or the BIA introduced these nationwide policies, IJs
10 in the Tacoma, Washington immigration court stopped providing bond hearings for
11 persons who entered the United States without inspection and who have since
12 resided here. On September 30, 2025, the U.S. District Court for the Western
13 District of Washington issued a partial summary judgment order concluding that
14 such persons are subject to detention under 8 U.S.C. § 1226(a) and are not subject
15 to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Rodriguez Vazquez v.*
16 *Bostock*, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (Partial Summary
17 Judgment Order).
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21 40. Court after court has adopted the same reading of the INA's detention
22 authorities and rejected ICE and EOIR's new interpretation, including many in the
23 Southern and Central Districts of California. *See Beltran v. Noem*, No. 3:25-cv-
24 2650-LL-DEB (S.D. Cal. Nov. 4, 2025); *Castellanos Lopez v. Warden, Otay Mesa*
25 *Det. Ctr.*, 2025 WL 3005346 (S.D. Cal. Oct. 27, 2025); *Esquivel-Ipina v. Larose*,
26 2025 WL 2998361 (S.D. Cal. Oct. 24, 2025); *Martinez Lopez v. Noem*, No. 3:25-
27 28

1 cv-02734 (S.D. Cal. Oct. 23, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-
2 DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Portillo v. Noem*, No.
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4 5:25-cv-2892-JFW-PVCx (C.D. Cal. Oct. 31, 2025); *Suy Tol v. Noem*, No. 5:25-cv-
5 2806-JFW-AS (C.D. Cal Oct. 29, 2025); *Gomez Garcia v. Noem*, No. 5:25-cv-
6 2772-ODW-PDx (C.D. Cal. Oct. 22, 2025); *Menjivar Sanchez v. Wofford*, 2025
7 WL 2959274 (C.D. Cal. Oct. 17, 2025); *Coc Tut v. Noem*, No. 5:25-cv-2701-DOC-
8 AGR (C.D. Cal. Oct. 16, 2025); *Lopez Pop v. Noem*, No. 5:25-cv-2589-SSS-SSC
9 (C.D. Cal. Oct. 3, 2025); *Santiago Flores v. Noem*, No. 5:25-cv-2490-AB-AJR
10 (C.D. Cal. Sept. 29, 2025); *Arreola Armenta v. Noem*, No. 5:25-cv-2416-JFW-SP
11 (C.D. Cal. Sept. 16, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304-
12 CAS-BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Benitez v. Noem*, No.
13 5:25-cv-2190-RGK-AS (C.D. Cal. Aug. 26, 2025); *Ceja Gonzalez v. Noem*, No.
14 5:25-cv-2054-ODW-BFM (C.D. Cal. Aug. 13, 2025); *Arrazola-Gonzalez v. Noem*,
15 No. 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); and
16 *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July
17 28, 2025).

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22 41. *But see, Sixtos Chavez v. Noem*, No. 3:25-cv-2325-CAB-SBC (S.D. Cal.
23 Sept. 24, 2025) (denying TRO and accepting government's interpretation of §
24 1225(b)(2)).

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27 42. In addition to at least eighteen Southern and Central District cases, over
28 forty other courts have rejected ICE and EOIR's new interpretation. *See Gomes v.*

1 *Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz*
2 *Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238
3 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR
4 (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation
5 adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug.
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7 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588
8 (S.D.N.Y. Aug. 13, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL
9 2370988 (D. Mass. Aug. 14, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-
10 03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Maldonado v.*
11 *Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15,
12 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug.
13 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y.
14 Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL
15 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-
16 JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-
17 01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v.*
18 *Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D.
19 Minn. Aug. 27, 2025); *Diaz Diaz v. Mattivelo*, No. 25-cv-12226, 2025 WL
20 2457610 (D. Mass. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-
21 12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez*
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23 *Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept.
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1 3, 2025); *Doe v. Moniz*, --- F.Supp.3d ----, No. 1:25-cv-12094-IT, 2025 WL
2 2576819 (D. Mass. Sept. 5, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546,
3 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-
4 11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Salcedo Aceros v. Polly*
5 *Kaiser et al.*, No. 25-cv-5624, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025);
6 *Lamidi v. FCI Berlin, Warden*, No. 1:25-cv-00297-LM-TSM (D.N.H. Sept. 15,
7 2025); *Garcia Cortes, v. Noem et al.*, No. 25-cv-02677, 2025 WL 2652880 (D.
8 Colo. Sept. 16, 2025); *Maldonado Vazquez v. Feeley et al.*, No. 25-cv-01542, 2025
9 WL 2676082 (D. Nev. Sept. 17, 2025); *Velasquez Salazar v. Dedos et al.*, No. 25-
10 cv-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Hasan v. Crawford*, ---
11 F.Supp.3d ----, No. 25-cv-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025);
12 *Yumbillo v. Stamper*, No. 25-cv-00479, 2025 WL 2688160 (D. Me. Sept. 19,
13 2025); *Barrera v. Tindall*, No. 25-cv-541, 2025 WL 2690565 (W.D. Ky. Sept. 19,
14 2025); *Chogollo Chafla v. Scott et al.*, No. 2:25-cv-00437-SDN, 2025 WL 2688541
15 (D. Me. Sept. 22, 2025); *Lepe v. Andrews*, --- F. Supp. 3d ----, No. 1:25-cv-01163-
16 KES-SKO, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, --
17 -F. Supp. 3d ----, No. 25-CV-4048, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025);
18 *Barrajas v. Noem et al.*, No. 25-cv-00322, 2025 WL 2717650 (S.D. Iowa Sept. 23,
19 2025); *Valencia Zapata v. Kaiser*, ---F. Supp. 3d ----, No. 25-cv-07492, 2025 WL
20 2741654 (N.D. Cal. Sept. 26, 2025); *Quispe v. Crawford, et al.*, No. 1:25-cv-1471-
21 AJT-LRV, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Belsai D.S. v. Bondi, et*

1 *al.*, No. 25-cv-3682, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Echevarria v.*
2 *Bondi, et al.*, No. cv-25-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3,
3 2025); *Guerrero Orellana v. Moniz*, ---F. Supp. 3d ----, No. 25-cv- 12664-PBS,
4 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Hyppolite v. Noem, et al.*, No. 25-cv-
5 4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025); *Contreras Cervantes v.*
6 *Raycraft*, No. 2:25-cv-13073-BRM-EAS (ED. Mich. Oct. 17, 2025); *Mendoza*
7 *Gutierrez v. Baltasar*, No. 1:25-cv-2720-RMR (D. Colo. Oct. 17, 2025); *see also*,
8 *e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb.
9 Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not §
10 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC,
11 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No.
12 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025)
13 (same).
14

15 43. The courts have rejected DHS’s and EOIR’s new interpretation because
16 it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the
17 plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b),
18 applies to people like Petitioner.

19 44. Section 1226(a) applies by default to all persons “pending a decision
20 on whether the [noncitizen] is to be removed from the United States.” Removal
21 hearings are held pursuant to § 1229a, to “decid[e] the inadmissibility or
22 deportability of a[] [noncitizen].”

1 45. The text of § 1226(a) also explicitly applies to individuals charged as
2 being inadmissible, including those who entered without inspection. See 8 U.S.C.
3
4 § 1226(c)(1)(E). Subparagraph (E)'s reference to inadmissible individuals makes
5 clear that, by default, such individuals are afforded a bond hearing under
6 subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress
7 creates “specific exceptions” to a statute’s applicability, it “proves” that absent
8 those exceptions, the statute generally applies. *Rodriguez Vazquez*, 779 F.Supp. 3d
9 at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S.
10 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

13 46. Section 1226 therefore leaves no doubt that it applies to noncitizens who
14 are present without admission and who face charges in removal proceedings of
15 being inadmissible to the United States.

17 47. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or
18 who recently entered the United States and are encountered at or near the border.
19
20 This statute’s entire framework is premised on inspection at the border of people
21 who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A).
22
23 Indeed, the Supreme Court has explained that this mandatory detention scheme
24 applies “at the Nation’s borders and ports of entry, where the Government must
25 determine whether a[] [noncitizen] seeking to enter the country is admissible.”
26
27 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

28 48. Accordingly, the mandatory detention provision of § 1225(b)(2) does not

1 apply to people like Petitioner who has already entered and was residing in the
2 United States at the time he was apprehended.
3

4 **FACTS**

5 49. Petitioner Eleazar Esau Avalos Flores resides in Los Angeles, California.
6 He has no criminal record and no previous contact with immigration authorities.
7

8 50. On July 2, 2025, Petitioner was arrested in Los Angeles, California.
9 Petitioner is now detained at the Otay Mesa Detention Center in San Diego,
10 California.
11

12 51. ICE placed Petitioner in removal proceedings before the Otay Mesa
13 Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with
14 being inadmissible under, *inter alia*, 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is
15 present without admission in the United States.
16

17 52. Upon information and belief, following Petitioner's arrest and transfer to
18 the Otay Mesa Detention Center, ICE issued a custody determination to continue
19 Petitioner's detention without an opportunity to post bond or be released on other
20 conditions.
21

22 53. In light of the BIA's September 5, 2025 decision in *Matter of Yajure*
23 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), Petitioner is unable to obtain a bond
24 hearing before an IJ pursuant to 8 U.S.C. § 1226(a).
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FIRST CLAIM FOR RELIEF

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

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

55. 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, *inter alia*, 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.

56. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).

SECOND CLAIM FOR RELIEF

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

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

58. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret

1 and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and
2 Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants
3 for admission, [noncitizens] who are present without having been admitted or
4 paroled (formerly referred to as [noncitizens] who entered without inspection) will
5 be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323. The
6 agencies thus made clear that individuals who had entered without inspection were
7 eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. §
8 1226 and its implementing regulations.

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

18 60. The application of § 1225(b)(2) to Petitioner unlawfully mandates his
19 continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

21 **THIRD CLAIM FOR RELIEF**

22 **Petitioner’s Detention Violates the Administrative Procedure Act,
23
24 5 U.S.C. § 706(2)**

25 61. Petitioner incorporates by reference the allegations of fact set forth in
26 the preceding paragraphs.

28 62. Under the Administrative Procedure Act, a court must “hold unlawful

1 and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or
2 otherwise not in accordance with the law," that is "contrary to constitutional right
3 [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations,
4 or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

5 63. Respondents' detention of Petitioner pursuant to § 1225(b)(2) is
6 arbitrary and capricious, violates the INA and the Fifth Amendment, is not
7 authorized under § 1225(b)(2), and therefore is in violation of 5 U.S.C. § 706(2).

10 **FOURTH CLAIM FOR RELIEF**

12 **Petitioner's Detention Violates His Fifth Amendment Right to Due Process**

13 64. Petitioner incorporates by reference the allegations of fact set forth in
14 the preceding paragraphs.

16 65. The Government may not deprive a person of life, liberty, or property
17 without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—
18 from government custody, detention, or other forms of physical restraint—lies at
19 the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678,
20 690 (2001).

22 66. Petitioner has a fundamental interest in liberty and being free from
23 official restraint.

25 67. The Respondents' detention of Petitioner without providing
26 Petitioner a bond redetermination hearing to determine whether he is a flight risk or
27 a danger to others violates his right to Due Process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully asks 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 governed by 8 U.S.C. § 1226(a) and that his detention under 8 U.S.C. § 1225(b)(2) 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 and further relief that this Court deems just and proper.

DATED: November 6, 2025.

s/ Niels W. Frenzen
NIELS W. FRENZEN
JEAN REISZ
USC GOULD SCHOOL OF LAW
IMMIGRATION CLINIC

Attorneys for Petitioner

VERIFICATION

I, Niels W. Frenzen, 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 6, 2025.

s/ Niels W. Frenzen
NIELS W. FRENZEN
USC GOULD SCHOOL OF LAW, IMMIGRATION CLINIC
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 6, 2025, I served a copy of this Petition for Writ of Habeas Corpus by email to the following individuals:

Janet Cabral, AUSA
Chief, Civil Division
U.S. Attorney's Office
Southern District of California
Janet.Cabral@usdoj.gov

s/ Niels W. Frenzen

Niels W. Frenzen

Counsel for Petitioner