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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
(PHOENIX DIVISION)

Juan De Dios Armenta Soto,

Petitioner,

v.

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

Respondents.

Case No. 2:25-cv-04178-MTL--MTM

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

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

2. Over 150 federal judges have already found the government's novel interpretation incompatible with the INA. *See infra* nn. i, ii. The provision on which the government relies states that noncitizens who are "seeking admission" are subject to mandatory detention while in removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Congress defined "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Thus, by its plain terms, the provision only applies to noncitizens who present themselves at a port of entry. And in addition to disregarding the plain text of § 1225(b)(2)(A), the government's contrary interpretation renders superfluous other provisions of the INA that require the mandatory detention of noncitizens who have engaged in criminal activity—including a provision, § 1226(c)(1)(E), enacted this year in the Laken Riley Act.

3. The government's argument also flouts the Justice Department's own regulations. Since 1997, the Justice Department has precluded immigration judges from granting bond to so-called "arriving aliens"—*i.e.*, those who seek admission at a port of entry—but not to those who

entered the country without inspection. This distinction was the result of a deliberate choice made by the Attorney General following the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, Div. C, 110 Stat. 3009-546. And under bedrock principles of administrative law, agencies cannot "overrule" by adjudication regulations that were promulgated after notice and comment. *Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980).

4. As a result of the government's new interpretation, every noncitizen who entered the country without being admitted is subject to mandatory detention for the duration of their removal proceedings. One of those noncitizens is Juan De Dios Armenta Soto, who has resided in the United States periodically since the 1980s, but has been here continuously since 2008. He has a United States citizen (USC) spouse and three USC children, including a son in the Navy. Petitioner was detained at a federal detention center in Arizona. Absent this Court's intervention, he will remain detained for the duration of his removal proceedings, over a hundred miles from his family and community.

JURISDICTION

5. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Eloy Detention Center in Eloy, Arizona.

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

7. 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.

8. The "zipper clause" at 8 U.S.C. § 1252(b)(9), which channels "[j]udicial review of all questions of law . . . including interpretation and application of constitutional and statutory

provisions, arising from any action taken . . . to remove an alien from the United States" to the appropriate federal court of appeals, does not apply because that section applies only to review of removal orders, and Petitioner does not seek review of orders of removal but of custody. *Maldonado Bautista et al. v. Santacruz, et al.,* No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 4-5.

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

10. Subsection 2 of 8 U.S.C. § 1252(a), titled "Judicial Review of Orders of Removal," contains four subsections, which outline categories of claims that are not subject to judicial review. § 1252(a)(2)(A)–(D). None of these subsections precluding judicial review apply to this matter, as the specified statutory provisions do not cite § 1225(b)(2)(A) or § 1226(a), which are the two provisions Petitioner challenges. Thus, no part of § 1252 deprives this Court of jurisdiction. *Maldonado Bautista et al. v. Santacruz, et al.,* No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28,

2025), Order Granting Temporary Restraining Order, Dkt. 14 at 6. As such, the Court has jurisdiction over Petitioner's challenge to his detention.

VENUE

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

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

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

PARTIES

15. Petitioner Juan De Dios Armenta Ramos is a 60-year-old resident of Arizona. He last entered the country in 2008 and has remained here ever since that date. ICE has charged

Petitioner with removability under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien in the United States without being admitted or paroled, and under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an alien who, at the time of his application for admission, was not in possession of the requisite immigration document. He is presently detained at the Eloy Detention Center in Eloy, Arizona.

16. Respondent ~~Unknown Individual #1~~John Cantu is the Director of the Phoenix Field Office of ICE's Enforcement and Removal Operations division, which oversees operations at the San Luis Regional Detention Center. As such, this individual is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. They are named in their official capacity.

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

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

19. ~~Respondent Unknown Individual #2~~ Christopher Howard is employed as the Warden of the Eloy Detention Center, where Petitioner is detained. They have immediate physical custody of Petitioner. He is sued in his official capacity.

20. Respondent Todd Lyons is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner.

LEGAL FRAMEWORK

Immigration and Nationality Act and Federal Regulations

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

22. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally 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 engaged in specified criminal and terrorist activity are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

26. 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 1225(b)(2)(A) states that if an "examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for [removal proceedings]." The IIRIRA also defined "admission" in 8 U.S.C. § 1101(a)(13)(A) as the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." § 301, 110 Stat. 3009-575.

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

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

29. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal

[1] This provision was originally promulgated as 8 C.F.R. § 236.1(c)(5)(i) and was later transferred to 8 C.F.R. § 1003.19(h)(2)(i)(B).

history rendered them ineligible. 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); 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)).

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

Exhaustion and Futility

31. Exhaustion of administrative remedies is required "[w]here Congress specifically mandates." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). But where, as here "Congress has not clearly required exhaustion, sound judicial discretion governs." *Id.* (citations omitted). Under these principles, prudential exhaustion is not required where a request for relief before the agency would be futile because the agency has "predetermined the issue before it." *Id.* at 148. Furthermore, "a court may waive the prudential exhaustion requirement if 'administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.'" *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

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

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

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

34. To date, over 150 federal district judges have either outright rejected the government's novel interpretation of § 1225(b)(2)(A),[i] or found that noncitizens challenging the government's interpretation were substantially likely to prevail on the merits.[ii] These judges have not been unsparing in their criticism of the government's newfound position. One called it a "nonstarter." *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 at *10 (D. Mass. Sept. 5, 2025). Another called it "willfully blind." *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 at *25 (D. Md. Aug. 24, 2025). Another called it "a policy argument, projected onto Congress."

[2] The Board's Decision in *Matter of Yajure Hurtado* is also not entitled to deference because it contravenes the statutory language and legislative history, and it deviates from longstanding agency practice and regulations.

Romero v. Hyde, No. 25-11631, __ F. Supp. 3d __, 2025 WL 2403827 at *28 (D. Mass. Aug. 19, 2025). And another noted that the government "could not identify any federal court that has adopted their novel reading of § 1225(b)(2)(A)." *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 at *20 (E.D. Mich Sept. 9, 2025).

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

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

37. Accordingly, § 1225(b) applies to people arriving at U.S. ports of entry. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States, and individuals who entered without inspection and have never affirmatively applied for admission or parole do not fit within that category. 8 U.S.C. § 1225(b)(2)(A); *see Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E..D. Mich. Sept. 9, 2025) (specifically rejecting the Board's analysis of the statute in *Matter of Yajure Hurtado* and concluding that it is "difficult to square a noncitizen's continued presence with "seeking admission" when that noncitizen never attempted to obtain lawful status"); *Vasquez-Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (rejecting DHS' contention that an individual who entered the United States without inspection "is automatically understood to be 'seeking admission'

within the meaning of § 1225(b)(2)(A), without need[ing] to affirmatively apply for admission or parole"); *see also Arrazola Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (concluding that habeas petitioner showed likelihood of success on the merits of argument that "[t]o ignore the 'seeking admission' language [in 8 U.S.C. § 1225(b)(2)(A) . . . would render the language purposeless and violate a key rule of statutory construction").

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

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

40. As importantly, § 1226(c) subjects numerous categories of inadmissible noncitizens to mandatory detention. If "the [BIA was] correct that § 1225(b)'s mandatory detention provisions apply to all persons who have not been admitted into the United States, that would render

superfluous those provisions of § 1226 that apply to certain categories of inadmissible aliens, such as § 1226(c)(1)(A), (D), and (E)." *Hasan v. Crawford*, __ F. Supp. 3d __, 2025 WL 268225 at *22 (E.D. Va. Sept. 19, 2025) (Brinkema, J.). Indeed, the BIA's interpretation would "render the Laken Riley Act a meaningless amendment, since it would have prescribed mandatory detention for noncitizens already subject to it." *Aceros v. Kaiser*, 2025 WL 2637503 at *28 (N.D. Cal. Sept. 12, 2025).

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

FACTS

42. Petitioner is a 60-year-old resident of Arizona. He has periodically lived in the United States since the 1980s but has continuously been here since 2008. He has a USC spouse and three USC children, including one child who is in the Navy. He also has two USC siblings here in the country. Though both are luckily in remission, Petitioner has prostate cancer, and his wife has breast cancer. Petitioner works as a self-employed handyman. [3]

43. Though Petitioner has some memory issues, he does remember previously having, as a child and young adult, a tourist visa to enter the United States. He believes that visa lapsed during the 1990s. He has since had some interactions with immigration authorities while attempting to enter the country but has been here continuously since 2008.

[3] Petitioner has a misdemeanor conviction from 2001 for Driving Under the Influence. For this conviction, he served 3-5 days in jail and completed all the terms of his unsupervised probation including rehabilitation classes. Petitioner has no other criminal record.

44. In August of 2019, Petitioner was detained by ICE and released on bond. He was placed in removal proceedings at that time, but those proceedings were dismissed because in April of 2024, Petitioner was issued Military Parole in Place, based on his son's military service.

45. Parole in Place (commonly called PIP or MPIP when applied to military families) is a discretionary form of immigration parole that lets certain undocumented immediate relatives of U.S. service members, veterans, and enlistees remain lawfully in the United States and obtain work authorization while they pursue adjustment of status. USCIS Parole-in-Place Memoranda (2013 and 2016) *available at* https://www.uscis.gov/sites/default/files/document/memos/2013-1115_Parole_in_Place_Memo_.pdf

46. Despite Petitioner's attempts to renew it, his PIP expired in April 2025. Petitioner applied for adjustment of status at that time through an attorney in Las Vegas, but neither he nor the attorney has ever received a decision on that application.

47. Petitioner was detained on September 19, 2025, and has been detained since that time. Petitioner is currently detained at the Eloy Detention Center.

48. On September 26, 2025, ICE charged Petitioner with removability under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien in the United States without being admitted or paroled, and on October 3, 2025, he was also charged with removability under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an alien who, at the time of his application for admission, was not in possession of the requisite immigration document. Exh. A (Notice to Appear and Form I-261 Additional Charges).

49. On October 27, 2025, Petitioner filed an Application for Cancellation of Removal. Exh. B (Application for Cancellation of Removal). That application sought the cancellation of Petitioner's removal based on the hardship it would cause his family. The application also

contained extensive documentation detailing Petitioner's marriage, his family ties, and his good moral character.

50. Petitioner sought a custody redetermination under 8 C.F.R. § 1236. On November 4, 2025, the Immigration Judge denied that bond request, citing *Matter of Yajure Hurtado.*

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

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

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

COUNT II

Violation of Federal Regulations

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

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

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

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

COUNT III
Violation of Due Process

58. Petitioner repeats, re-alleges, and incorporates by reference every allegation in the preceding paragraphs as if fully set forth herein.

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

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

61. The government's detention of Petitioner and its issuance of a precedential decision precluding his release violates his right to due process.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Set this matter for expedited consideration;

c. Declare that no statute or regulation prohibits an immigration judge from holding a custody redetermination hearing for Petitioner, and that Petitioner is properly detained, if at all, under 8 U.S.C. 1226(a);

d. Issue a Writ of Habeas Corpus and conduct a bond hearing within 15 days, or order Petitioner's release within 15 days unless Respondents provide him with a bond hearing before an immigration judge;

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: 11/19/2025

Respectfully Submitted

s/Jesse Evans-Schroeder
Jesse Evans-Schroeder
Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

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

Executed on this 19th day of November, 2025 in Tucson, Arizona.

/s/ Jesse Evans-Schroeder
Jesse Evans-Schroeder
Attorney for Petitioner

[i] *See, e.g., Castellanos Lopez v. Warden*, No. 25-2527 (S.D. Cal. Oct. 27, 2025) (Huie, J.); *Esquivel-Ipina v. Larose*, No. 25-2672 (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Benitez-Cornejo v. Cantu*, No. 25-3672 (D. Ariz. Oct. 17, 2025) (Tucci, J.); *Torres v. Wamsley*, 2025 WL 2855379 (W.D. Wash. Oct. 8, 2025) (Menendez, J.); *BDVS v. Forestal*, No. 25-1968 (S.D. Ind. Oct. 8, 2025) (Evans Barker, J.); *Eliseo v. Olson*, No. 25-3381, Oct. 8, 2025) (Blackwell, J.); *Buenrostro-Mendez v. Bondi*, No. 25-3726, (S.D. Tex. Oct. 7, 2025) (Rosenthal, J.); *Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025) (Joun, J.); *Belsai D.S. v. Bondi*, No. 25-3682 (D. Minn. Oct. 1, 2025) (Menendez, J.); *Santiago Santiago v. Noem*, No. 25-361 (W.D. Tex. Oct. 1, 2025) (Cardone, J.); *Quispe-Ardiles v. Noem*, No. 25-1382, 2025 WL 2783799 (E.D. Va. Sept. 30, 2025) (Nachmanoff, J.); *Rodriguez Vazquez v. Bostock*, No. 25-5240, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (Cartwright, J.); *Da Silva v. ICE*, No. 25-284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025) (McCafferty, J.); *Quispe v. Crawford*, No. 25-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025) (Trenga, J.); *Inlago Tocagon v. Moniz*, No. 25-12453, 2025 WL 2778023 (D. Mass. Sept. 29, 2025) (Joun, J.); *Barrios v. Shepley*, No. 25-406, 2025 WL 2772579 (D. Maine Sept. 29, 2025) (Woodcock, Jr.); *J.U. v. Maldonado*, No. 25-4836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Savane v. Francis*, No. 25-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.); *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (Hayden, J.); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tex. Sept 26, 2025) (Hittner, J.); *Gamez Lira v. Noem*, No. 25-855 (D.N.M. 25-855) (Johnson, J.); *Singh v. Lewis*, No. 25-96, 2025 LX 400065 (W.D. Ky. Sept. 22, 2025) (Jennings, J.); *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (Neumann, J.); *Hasan v. Crawford*, No. 25-1408, 2025 LX 499354 (E.D. Va. Sept. 19, 2025) (Brinkema, J.); *Barrera v. Tindall*, No. 25-451, 2025 LX 435572 (W.D. Ky. Sept. 19,

2025) (Jenning, J.); *Salazar v. Dedos*, No. 25-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (Urias, J.); *Garcia Cortes v. Noem*, No. 25-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (Sweeney, J.); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (White, J.); *Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX 360066 (D.N.H. Sept. 8, 2025) (McCafferty, J.); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (Talwani, J.); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Ho, J.); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (McMillion, J.); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025) (Kobick, J.); *Jose J.O.E. v. Bondi*, No. 25-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) (Tostrud, J.); *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (Rubin, J.); *Romero v. Hyde*, No. 25-11631, __ F.Supp.3d __, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Murphy, J.); *Samb v. Joyce*, No. 25-6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (Ho, J.); *dos Santos v. Noem*, No. 25-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Kobick, J.); *Diaz Martinez v. Hyde*, No. 25-11613, __ F.Supp.3d __, 2025 WL 2084238 (D. Mass. July 24, 2025) (Murphy, J.); *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299 (D. Mass. July 7, 2025) (Kobick, J.).

[ii] *See, e.g., Arce-Cervera v. Noem*, 25-1895 (D. Nev. Oct. 28, 2025); *Martinez Lopez v. Noem*, No. 3:25-2734 (S.D. Cal. Oct. 23, 2025) (Park, J.); *Sabi Polo v. Chestnut*, No. 25-1342 (E.D. Cal. Oct. 17, 2025) (Thurston, J.); *Menjivar Sanchez v. Wofford*, No. 25-1187 (E.D. Cal. Oct. 17, 2025) (Oberto, J.); *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025) (Boulware, J.); *Rico-Tapia v. Smith* No. 25-379 (D. Haw. Oct. 10, 2025) (Park, J.); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025) (Beeler, J.) *Flores v. Noem*, No. 25-2490, 2025 LX 444718 (C.D. Cal. Sept. 29, 2025) (Birotte, J.); *Roa v. Albarran*, No. 25-7802, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025) (*Seeborg*, J.); *Lopez v. Hardin*, No. 25-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025) (Dudek, J.); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163 (E.D. Cal. Sept. 23, 2025) (Sherriff, J.); *Aceros v. Kaiser*, No. 25-06924, 2025 LX 330524 (N.D. Cal. Sept. 12, 2025) (Chen, J.); *Guzman v. Andrews*, No. 25-01015, 2025 LX 354551 (E.D. Cal. Sept. 9, 2025) (Sherriff, J.); *Mosqueda v. Noem*, No. 25-2304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (Snyder, J.); *Nieves v. Kaiser*, No. 25-6921, 2025 LX 320701 (N.D. Cal. Sept. 3, 2025) (Beeler, J.); *Garcia v. Noem*, No. 25-2180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw. J.); *Garcia v. Kaiser*, No. 25-06916, 2025 LX 322337 (N.D. Cal. Aug. 29, 2025) (Gonzalez Rogers, J.); *Kostak v. Trump*, No. 25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Edwards, J.); *Benitez v. Noem*, No. 25-02190, 2025 LX 322897 (C.D. Cal. Aug. 26, 2025) (Klausner, J.); *Ramirez Clavijo v. Kaiser*, No. 25-06248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025) (Freeman, J.); *Arrazola-Gonzalez v. Noem*, No. 25-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (Wright, J.); *Maldonado v. Olson*, No. 25-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (Nelson, J.); *Maldonado Bautista v. Santacruz*, No. 25-01873, 2025 LX 341363 (C.D. Cal. July 28, 2025); *Vazquez v. Bostock*, No. 25-05240, 779 F. Supp. 3d 1239 (W.D. Wash. April 24, 2025) (Cartwright, J.). *But see Sixtos Chavez v. Noem*, No. 25-2325 (S.D. Cal. Sep. 24, 2025) (Bencivengo, J.) (denying temporary restraining order); *Villanueva v. Chestnut*, No. 25-2 (E.D. Cal. Oct. 24, 2025) (Sheriff, J.) (same).