

1 **GREEN | EVANS-SCHROEDER, PLLC**

2 130 W. Cushing Street

Tucson, AZ 85718

3 Ph: (520) 588-3430

4 Fax: (520) 882-8843

5 **Gregory P. Fay** | Arizona Bar No. 035534

Email: greg@arizonaimmigration.net

6 *Attorney for Petitioner*

7 Maria Alvarado Rodriguez

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9  
10 **IN THE UNITED STATES DISTRICT COURT**

11 **FOR THE DISTRICT OF ARIZONA**

12 Maria Alvarado Rodriguez,

13 Petitioner,

14 v.

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

20 Respondents.

Case No. CV-25-4180-PHX-JJT

**AMENDED PETITION FOR WRIT OF  
HABEAS CORPUS**

1 INTRODUCTION

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

11 2. Over 100 federal judges have already found the government’s novel interpretation  
12 incompatible with the INA. *See infra* nn. 3, 4. The provision on which the government relies states  
13 that noncitizens who are “seeking admission” are subject to mandatory detention while in removal  
14 proceedings. 8 U.S.C. § 1225(b)(2)(A). Congress defined “admission” as “the lawful entry of the  
15 alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C.  
16 § 1101(a)(13)(A). By its plain terms, however, the provision only applies to noncitizens who  
17 present themselves at a port of entry for inspection. In addition to disregarding the plain text of  
18 § 1225(b)(2)(A), the government’s contrary interpretation renders superfluous other provisions of  
19 the INA that require the mandatory detention of certain noncitizens who have entered the U.S.  
20 without inspection and have engaged in criminal activity—including a provision, § 1226(c)(1)(E),  
21 enacted just this year in the Laken Riley Act.

22 3. The government’s argument also flouts the Justice Department’s own regulations.  
23 Since 1997, the Justice Department has precluded immigration judges from granting bond to so-

1 called “arriving aliens”—*i.e.*, those who seek admission at a port of entry—but not to those who  
2 entered the country without inspection. This distinction was the result of a deliberate choice made  
3 by the Attorney General following the passage of the Illegal Immigration Reform and Immigrant  
4 Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, Div. C, 110 Stat. 3009-546. And under  
5 bedrock principles of administrative law, agencies cannot “overrule” by adjudication regulations  
6 that were promulgated after notice and comment. *Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980).

7 4. As a result of the government’s new interpretation, every noncitizen who entered  
8 the country without being admitted is subject to mandatory detention for the duration of their  
9 removal proceedings. One of those noncitizens is Petitioner Maria Alvarado Rodriguez (“Ms.  
10 Alvarado”), who entered the United States in August 2022, fleeing targeted political violence in  
11 Peru. In the three years since she arrived in the United States, Ms. Alvarado applied for asylum,  
12 and has established a life in Northern California, where she resides with and provides essential  
13 support to her U.S. citizen cousin and her family. She has no criminal record and had been dutifully  
14 complying with ICE’s reporting requirements when she was unexpectedly detained upon being  
15 called into an ICE contractor office on September 24, 2025. She was later transferred to a detention  
16 center in Eloy, Arizona. Absent this Court’s intervention, she will remain detained for the duration  
17 of her removal proceedings, nearly 800 hundred miles from her family and community.

#### 18 JURISDICTION

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

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

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

3           8.       The “zipper clause” at 8 U.S.C. § 1252(b)(9), which channels “[j]udicial review of  
4 all questions of law . . . including interpretation and application of constitutional and statutory  
5 provisions, arising from any action taken . . . to remove an alien from the United States” to the  
6 appropriate federal court of appeals, does not apply because that section applies only to review of  
7 removal orders, and Petitioners do not seek review of orders of removal but of custody. *Maldonado*  
8 *Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 2670875, (C.D. Cal.  
9 July 28, 2025) at \*4–5 (granting Temporary Restraining Order).

10          9.       The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to hear “any  
11 cause or claim by or on behalf of any alien arising from the decision or action by the Attorney  
12 General to commence proceedings, adjudicate cases, or execute removal orders against any alien  
13 under this chapter.” The Supreme Court previously characterized § 1252(g) as a narrow provision,  
14 applying “only to three discrete actions that the Attorney General may take: her ‘decision or action’  
15 to ‘commence proceedings, *adjudicate* cases, or *execute* removal orders.’” *Reno v. Am.-Arab Anti-*  
16 *Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). In doing so, the Supreme  
17 Court found it “implausible that the mention of *three discrete events* along the road to deportation  
18 was a shorthand way to referring to *all claims arising from* deportation proceedings.” *Id.* (emphasis  
19 added). Petitioner’s challenge to her detention does not fall within these discrete actions.  
20 *Maldonado Bautista et al.*, 2025 WL 2670875, at \*5.

21          10.       Subsection 2 of 8 U.S.C. § 1252(a), titled “Judicial Review of Orders of Removal,”  
22 contains four subsections, which outline categories of claims that are not subject to judicial review.  
23 § 1252(a)(2)(A)–(D). None of these subsections precluding judicial review apply to this matter, as  
24

1 the specified statutory provisions do not cite § 1225(b)(2)(A) or § 1226(a), which are the two  
2 provisions Petitioner challenges. Thus, no part of § 1252 deprives this Court of jurisdiction.  
3 *Maldonado Bautista et al.*, 2025 WL 2670875 at \*6. As such, the Court has jurisdiction over  
4 Petitioner’s challenge to her detention.

5  
6 **VENUE**

7 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–  
8 500 (1973), venue lies in the United States District Court for Arizona, the judicial district in which  
9 Petitioner currently is detained.

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

13 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

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

PARTIES

1  
2 15. Petitioner Maria ALVARADO RODRIGUEZ is a 41-year-old resident of  
3 California who fled political violence in her home country of Peru. She entered the country in 2022  
4 and has remained here ever since that date. ICE has charged Petitioner with removability under 8  
5 U.S.C. § 1182(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled  
6 and § 1182(a)(7)(A)(i)(I) as an immigrant who is not in possession of a valid document permitting  
7 entry. She is presently detained at the Eloy Detention Center in Eloy, Arizona.

8 16. ~~Unknown Individual #1~~, John Cantu, is the Director of the Phoenix Field Office of  
9 ICE's Enforcement and Removal Operations division, which oversees operations at the Eloy  
10 Detention Center. As such, ~~Unknown Individual~~ John Cantu is Petitioner's immediate custodian  
11 and is responsible for Petitioner's detention and removal. He or she is named in their official  
12 capacity.

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

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



1           26.     The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
2 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–  
3 208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section  
4 1225(b)(2)(A) states that if an “examining immigration officer determines that an alien seeking  
5 admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for  
6 [removal proceedings].” The IIRIRA also defined “admission” in 8 U.S.C. § 1101(a)(13)(A) as  
7 the “lawful entry of the alien into the United States after inspection and authorization by an  
8 immigration officer.” 110 Stat. 3009-575, § 301.

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

16           28.     As the regulations were initially proposed, all “[i]nadmissible aliens in removal  
17 proceedings,” regardless of their manner of entry, would have been ineligible for bond. *Inspection*  
18 *and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal*, 62 Fed.  
19 Reg. 444, 483 (Jan. 3, 1997). After receiving comments, however, the Attorney General deleted  
20 the proposed provision and replaced it with one that would apply only to “[a]rriving aliens.”<sup>1</sup>

21 *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of*  
22

23 \_\_\_\_\_  
24 <sup>1</sup> This provision was originally promulgated as 8 C.F.R. § 236.1(c)(5)(i) and was later transferred  
to 8 C.F.R. § 1003.19(h)(2)(i)(B).

1 *Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10361 (March 6, 1997). As the  
2 Attorney General explained, “[t]he effect of this change [was] that inadmissible aliens, except for  
3 arriving aliens, have available to them bond redetermination hearings before an immigration judge,  
4 while arriving aliens do not.” *Id.* at 10323. In other words, “aliens who are present without having  
5 been admitted or paroled (formerly referred to as aliens who entered without inspection) will be  
6 eligible for bond and bond redetermination.” *Id.*

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

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

#### 20 **Exhaustion and Futility**

21 31. Exhaustion of administrative remedies is required “[w]here Congress specifically  
22 mandates.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). But where, as here “Congress has  
23 not clearly required exhaustion, sound judicial discretion governs.” *Id.* (citations omitted). Under  
24

1 these principles, prudential exhaustion is not required where a request for relief before the agency  
2 would be futile because the agency has “predetermined the issue before it.” *Id.* at 148. Furthermore,  
3 “a court may waive the prudential exhaustion requirement if ‘administrative remedies are  
4 inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture,  
5 irreparable injury will result, or the administrative proceedings would be void.’” *Hernandez v.*  
6 *Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th  
7 Cir. 2004)).

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

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

16 33. To date, over 100 federal district judges—including judges in this district—have  
17 either outright rejected the government’s novel interpretation of § 1225(b)(2)(A),<sup>2</sup> or found that

18 \_\_\_\_\_  
19 <sup>2</sup> *Lopez v. Warden, Otay Mesa Det. Ctr.*, No. 25-cv-2527-RSH-SBC, 2025 LX 211493, at \*11  
20 (S.D. Cal. Oct. 27, 2025) (Huie, J.); *Benitez-Cornejo v. Cantu*, No. 25-3672, 2025 LX 485778 (D.  
21 Ariz. Oct. 17, 2025) (Tuchi, J.); *Contreras-Cervantes v. Raycraft*, No. 2:25-cv-13073, 2025 LX  
22 205416 at \*24 (E.D. Mich. Oct. 17, 2025) (McMillion, J.); *Torres v. Wamsley*, 2025 WL 2855379  
23 (W.D. Wash. Oct. 8, 2025) (Menendez, J.); *BDVS v. Forestal*, No. 25-1968 (S.D. Ind. Oct. 8, 2025)  
24 (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.

1 noncitizens challenging the government's interpretation were substantially likely to prevail on the  
2 merits.<sup>3</sup> These judges have been forthright in their dismissal of the government's novel  
3

4 29, 2025) (McCafferty, J.); *Quispe v. Crawford*, No. 25-1471, 2025 WL 2783799 (E.D. Va. Sept.  
5 29, 2025) (Trenga, J.); *Inlago Tocagon v. Moniz*, No. 25-12453, 2025 WL 2778023 (D. Mass. Sept.  
6 29, 2025) (Joun, J.); *Barrios v. Shepley*, No. 25-406, 2025 WL 2772579 (D. Maine Sept. 29, 2025)  
7 (Woodcock, Jr.); *J.U. v. Maldonado*, No. 25-4836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025)  
8 (Merchant, J.); *Savane v. Francis*, No. 25-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025)  
9 (Woods, J.); *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (Hayden,  
10 J.); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tex. Sept. 26, 2025) (Hittner, J.); *Gamez Lira*  
11 *v. Noem*, No. 25-855 (D.N.M. 25-855) (Johnson, J.); *Singh v. Lewis*, No. 25-96, 2025 LX 400065  
12 (W.D. Ky. Sept. 22, 2025) (Jennings, J.); *Chafra v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine  
13 Sept. 21, 2025) (Neumann, J.); *Hasan v. Crawford*, No. 25-1408, 2025 LX 499354 (E.D. Va. Sept.  
14 19, 2025) (Brinkema, J.); *Barrera v. Tindall*, No. 25-451, 2025 LX 435572 (W.D. Ky. Sept. 19,  
15 2025) (Jenning, J.); *Salazar v. Dedos*, No. 25-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025)  
16 (Urias, J.); *Garcia Cortes v. Noem*, No. 25-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025)  
17 (Sweeney, J.); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9,  
18 2025) (White, J.); *Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)  
19 (Kobick, J.); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX 360066 (D.N.H. Sept. 8, 2025)  
20 (McCafferty, J.); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025)  
21 (Talwani, J.); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025)  
22 (Ho, J.); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)  
23 (McMillion, J.); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025)  
24 (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.).

<sup>3</sup> *J.S.H.M v. Wofford*, No. 1:25-CV-01309 JLT SKO, 2025 LX 204422, at \*40 (E.D. Cal. Oct.  
16, 2025); *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025) (Boulware, J.); *Rico-Tapia*  
*v. Smith* No. 25-379 (D. Haw. Oct. 10, 2025) (Park, J.); *Alvarez Chavez v. Kaiser*, 2025 WL  
2909526 (N.D. Cal. Oct. 9, 2025) (Beeler, J.) *Flores v. Noem*, No. 25-2490, 2025 LX 444718  
(C.D. Cal. Sept. 29, 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.);

1 interpretation of a decades-old statute. One called it a “nonstarter.” *Doe v. Moniz*, No. 25-12094,  
2 2025 WL 2576819 at \*10 (D. Mass. Sept. 5, 2025). Another deemed it “willfully blind.” *Leal-*  
3 *Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 at \*25 (D. Md. Aug. 24, 2025). Yet another  
4 called it “a policy argument, projected onto Congress.” *Romero v. Hyde*, No. 25-11631, \_\_\_ F. Supp.  
5 3d \_\_\_, 2025 WL 2403827 at \*28 (D. Mass. Aug. 19, 2025). Indeed, one Court noted that the  
6 government “could not identify any federal court that has adopted their novel reading of  
7 § 1225(b)(2)(A).” *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 at \*20 (E.D. Mich  
8 Sept. 9, 2025).

9 34. It is not difficult to understand why federal district courts have rejected the  
10 government’s novel interpretation, as the plain text of the statutory provisions demonstrates that  
11 § 1226(a), not § 1225(b), applies to people like Petitioner.<sup>4</sup>

12 35. By its terms, § 1225(b)(2)(A) only applies to noncitizens who are “seeking  
13 admission,” and Congress defined “admission” as the “lawful entry of the alien into the United  
14 States after inspection and authorization by an immigration officer.” § 1101(a)(13)(A).  
15 Accordingly, “[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the  
16

17 *Garcia v. Kaiser*, No. 25-06916, 2025 LX 322337 (N.D. Cal. Aug. 29, 2025) (Gonzalez Rogers,  
18 J.); *Kostak v. Trump*, No. 25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Edwards, J.);  
19 *Benitez v. Noem*, No. 25-02190, 2025 LX 322897 (C.D. Cal. Aug. 26, 2025) (Klausner, J.);  
20 *Ramirez Clavijo v. Kaiser*, No. 25-06248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025)  
21 (Freeman, J.); *Arrazola-Gonzalez v. Noem*, No. 25-01789, 2025 WL 2379285 (C.D. Cal. Aug.  
22 15, 2025) (Wright, J.); *Maldonado v. Olson*, No. 25-3142, 2025 WL 2374411 (D. Minn. Aug.  
23 15, 2025) (Nelson, J.); *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-  
24 BFM, 2025 WL 2670875, (C.D. Cal. July 28, 2025); *Vazquez v. Bostock*, No. 25-05240, 779 F.  
Supp. 3d 1239 (W.D. Wash. April 24, 2025) (Cartwright, J.). *But see Sixtos Chavez v. Noem*, No.  
3:25-cv-02325-CAB-SBC (S.D. Cal. Sep. 24, 2025) (denying temporary restraining order).

<sup>4</sup> The Board’s Decision in *Matter of Yajure Hurtado*—an agency interpretation of a statute—is  
not entitled to deference by this Court. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413  
(2024). It is not otherwise entitled to deference because it contravenes the statutory language and  
legislative history, and it deviates from longstanding agency practice and regulations.

1 country would read the word ‘entry’ out of the definitions of ‘admitted’ and ‘admission.’” *Chafila*  
2 *v. Scott*, No. 25-437, 2025 WL 2688541 (D. Maine Sept. 21, 2025).

3 36. Accordingly, § 1225(b) applies to people arriving at U.S. ports of entry. The  
4 statute’s entire framework is premised on inspections at the border of people who are “seeking  
5 admission” to the United States; individuals who entered without inspection and have never  
6 affirmatively applied for admission do not fit within that category. 8 U.S.C. § 1225(b)(2)(A); *see*  
7 *Contreras-Cervantes v. Raycraft*, No. 2:25-cv-13073, 2025 LX 205416 at \*24 (E.D. Mich. Oct.  
8 17, 2025) (“There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A),  
9 applies to a noncitizen who has resided in this country, irrespective of the length of time, having  
10 been apprehended and arrested within the border of the United States”); *see also Vasquez-Garcia*  
11 *et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (rejecting DHS’ contention that an  
12 individual who entered the United States without inspection “is automatically understood to be  
13 ‘seeking admission’ within the meaning of § 1225(b)(2)(A), without need[ing] to affirmatively  
14 apply for admission or parole”); *see also Arrazola Gonzalez v. Noem*, 2025 WL 2379285 (C.D.  
15 Cal. Aug. 15, 2025) (concluding that habeas petitioner showed likelihood of success on the merits  
16 of argument that “[t]o ignore the ‘seeking admission’ language [in 8 U.S.C. § 1225(b)(2)(A) . . .  
17 would render the language purposeless and violate a key rule of statutory construction”).

18 37. Throughout its text, 8 U.S.C. § 1225 defines its scope by reference to  
19 “inspections”—a term not defined in the INA, but which typically connotes an examination upon  
20 or soon after physical entry. *See* 8 U.S.C. § 1225 (titled “Inspection by immigration officers;  
21 expedited removal of inadmissible arriving [noncitizens]; referral for hearing”); §§ 1225(b)(1)–(2)  
22 (referring to “inspections” in their titles); § 1225(d)(1) (authorizing immigration officials to search  
23 certain conveyances in order to conduct “inspections” where noncitizens “are being brought into  
24

1 the United States”); *see Contreras-Cervantes*, 2025 LX 419218, at \*10-11. Many statutory  
2 provisions, various regulations and agency precedent discuss “inspection” in the context of  
3 admission processes at ports of entry, further supporting the conclusion that § 1225(b) has a limited  
4 temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§ 1187(h)(2)(B)(i), 1225A; 8 U.S.C. § 1752a;  
5 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I. & N. Dec. 285 (BIA 2010)).

6 38. Indeed, the Supreme Court has explained that the § 1225 mandatory detention  
7 scheme applies to noncitizens who are “arriving in the United States,” *Clark v. Martinez*, 543 U.S.  
8 371 (2005), “at the Nation’s borders and ports of entry, where the Government must determine  
9 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583  
10 U.S. 281, 287 (2018).

11 39. Section 1226(c) already contains carve-outs for inadmissible noncitizens who  
12 would be otherwise subject to discretionary detention under § 1226(a). If a noncitizen falls under  
13 a category of § 1226(c), they are subject to mandatory, not discretionary detention. In other words,  
14 the statutory structure of § 1226 distinguishes between those noncitizens who have entered without  
15 inspection who are eligible for bond and those who are ineligible for bond. If “the [BIA was]  
16 correct that § 1225(b)’s mandatory detention provisions apply to all persons who have not been  
17 admitted into the United States, that would render superfluous those provisions of § 1226 that  
18 apply to certain categories of inadmissible aliens, such as § 1226(c)(1)(A), (D), and (E).” *Hasan*  
19 *v. Crawford*, \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 268225 at \*22 (E.D. Va. Sept. 19, 2025) (Brinkema, J.).  
20 Indeed, the BIA’s interpretation would “render the [newly passed] Laken Riley Act a meaningless  
21 amendment, since it would have prescribed mandatory detention for noncitizens already subject to  
22 it.” *Aceros v. Kaiser*, 2025 WL 2637503 at \*28 (N.D. Cal. Sept. 12, 2025).

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

4  
5 **FACTS**

6 41. Ms. Alvarado Rodriguez is a 41-year-old who fled political violence in her native  
7 Peru. Since her arrival in August 2022, Ms. Alvarado has established a life in Northern California,  
8 residing with her U.S. citizen cousin, Sara Solis, and caring for Sara's two young children, ages 6  
9 and 10, as well as for Sara's mother. Exh. D (Solis Dec.). Ms. Alvarado reported to ICE via a  
10 telephone application whenever required.

11 42. At home, she lent a hand with her Sara's cleaning business whenever needed,  
12 accompanied the family members to doctors' appointments and mad sure that her Sara's mother  
13 takes her blood pressure medication. *Id.*

14 43. Since arriving in the United States, Ms. Alvarado has followed every legal  
15 procedure possible: she timely filed an application for asylum, has no criminal history whatsoever,  
16 and on information and belief, has complied with all reporting requirements that ICE has dictated.

17 44. Despite this demonstrated record of compliance—including voluntarily reporting  
18 to an ICE contractor office when she was unexpectedly called to appear—ICE arrested and  
19 detained her on September 24, 2025, three years after her entry into the United States. She was  
20 placed in "full restraints," before being subject to a more thorough interview. Exh. A (I-213).

21 45. Petitioner was then transferred to the Eloy Detention Center in Arizona, where she  
22 remains. With each additional day in detention, Ms. Alvarado's mental health and formerly  
23 positive spirit continue to decline. She doesn't sleep and reports feeling depressed.

1 46. The young girls frequently ask when Ms. Alvarado will return and insist on saving  
2 celebrations until she comes home. Ms. Alvarado's absence has caused immense stress on her  
3 cousin and cousin's mother, each of whom has had to seek medical treatment for stress-induced  
4 complications since Ms. Alvarado was detained. *Id.*

5 47. On September 29, 2025, ICE issued Petitioner a Notice to Appear before an  
6 Immigration Judge, charging her with removability under 8 U.S.C. §1182(a)(6)(A)(i) as an alien  
7 in the United States without being admitted or paroled, and § 1182(a)(7)(A)(i)(I) as an immigrant  
8 not in possession of a valid visa or other entry document. Exh. B (NTA).

9 48. On October 24, 2025, an Immigration Judge found it lacked jurisdiction to entertain  
10 Petitioner's request for a bond pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA  
11 2025), but stated "should the Court be later determined to have jurisdiction, the Court would grant  
12 bond in this case in the amount of \$1500, or any other alternatives to detention as designated by  
13 the Department of Homeland Security." Exh. C (Bond Order).

14 **CLAIMS FOR RELIEF**

15 **COUNT I**

16 **Violation of the INA**

17 1. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
18 paragraphs.

19 2. The mandatory detention provision at 8 U.S.C. § 1225(b)(2)(A) does not apply to  
20 noncitizens residing in the United States who entered the country without presenting themselves  
21 for admission. By its terms, § 1225(b)(2)(A) only applies to noncitizens who are "seeking  
22 admission." The term "admission" is defined to require a "lawful entry" following "inspection and  
23 authorization by an immigration officer." § 1101(a)(13)(A). Accordingly, § 1225(b)(2)(A) does  
24

1 not apply to noncitizens like Petitioner who evade inspection and are apprehended outside a port  
2 of entry. Such noncitizens are instead detained under § 1226 while in removal proceedings and are  
3 thus eligible for release on bond under § 1226(a) unless they are subject to mandatory detention  
4 under § 1226(c).

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

## 7 **COUNT II**

### 8 **Violation of Federal Regulations**

9 4. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
10 paragraphs.

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

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

1 7. Notwithstanding these regulations, the BIA held in *Matter of Yajure Hurtado* that  
2 all noncitizens who are present without admission are ineligible to receive a bond from  
3 immigration judges. Application of this decision to Petitioner unlawfully mandates her continued  
4 detention without a bond hearing in violation of 8 C.F.R. §§ 1236.1 and 1003.19.

5  
6 **COUNT III**  
**Violation of Due Process**

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

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

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

14 11. The government’s detention of Petitioner and its issuance of a precedential decision  
15 precluding her release violates her right to due process.

16 12. The government’s detention of Petitioner without notice, individualized assessment  
17 or an opportunity to be heard violates her right to due process.

18  
19 **PRAYER FOR RELIEF**

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

- 21 a. Assume jurisdiction over this matter;
- 22 b. Set this matter for expedited consideration;
- 23 c. Declare that no statute or regulation prohibits an immigration judge from holding a  
24 custody redetermination hearing for Petitioner, that Petitioner’s current detention

1 violates the due process clause of the Fifth Amendment and that Petitioner is  
2 properly detained, if at all, under 8 U.S.C. 1226(a);

3 d. Issue a Writ of Habeas Corpus and order Respondents to release Petitioner within  
4 15 days; alternatively, order Petitioner's release pursuant to the conditions  
5 previously set by the Immigration Judge;

6 e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act  
7 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under  
8 law; and

9 f. Grant any other and further relief that this Court deems just and proper.

10 DATED this 18<sup>th</sup> day of November, 2025.

11 *s/Gregory P. Fay*

12 \_\_\_\_\_  
13 Gregory P. Fay  
AZ Bar: 035534

14 Green Evans-Schroeder, PLLC  
15 130 W. Cushing Street  
Tucson, Arizona 85701  
16 Ph: (520) 588-3430  
greg@arizonaimmigration.net

17 *Attorney for Petitioner*

