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8 Attorney for Petitioner ANGEL BOLANOS-SUAREZ

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 ANGEL BOLANOS-SUAREZ,  
12  
13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE, Senior  
16 Warden, Otay Mesa Detention Center, San  
17 Diego, California in his official capacity;  
18 JOSEPH FREDEN, Field Office Director  
19 of San Diego Office of Detention and  
20 Removal, U.S. Immigration and Customs  
21 Enforcement; U.S. Department of  
22 Homeland Security;  
23 TODD M. LYONS, Acting Director, U.S.  
24 Immigration and Customs Enforcement,  
25 U.S. Department of Homeland Security, in  
26 his official capacity;  
27 DAREN K. MARGOLIN, Director for  
28 Executive Office for Immigration Review,  
in his official capacity;  
KRISTI NOEM, Secretary of U.S.  
Department of Homeland Security, in her  
official capacity;  
and  
PAMELA BONDI, Attorney General of  
the United States, in her official capacity,  
Respondents.

Case No.: '25CV3075 DMS KSC

**PETITION FOR WRIT OF HABEAS  
CORPUS AND ORDER TO SHOW  
CAUSE WITHIN THREE DAYS;  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Challenge to Unlawful Incarceration  
Under Color of Immigration Detention  
Statutes; Request for Declaratory and  
Injunctive Relief

Agency Doc. No.



1 Petitioner Angel BOLANOS-SUAREZ (“Petitioner” or “Mr. BOLANOS-  
2 SUAREZ”), by and through his attorney, David Schlesinger, petitions this Court for a  
3 writ of habeas corpus under 28 U.S.C. §§ 2241 to remedy Respondents’ detaining him  
4 unlawfully, and states as follows:

5 **INTRODUCTION**

6 1. Petitioner Angel BOLANOS-SUAREZ (“Mr. BOLANOS-SUAREZ” or  
7 “Petitioner”), by and through his undersigned counsel, files this petition for writ of habeas  
8 corpus and complaint for declaratory and injunctive relief to compel his immediate release  
9 from immigration detention where he has been held by the U.S. Department of Homeland  
10 Security (“DHS”) since being detained on October 9, 2025. Mr. BOLANOS-SUAREZ is  
11 in the physical custody of Respondents at the Otay Mesa Detention Center in San Diego,  
12 California.  
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15 2. Mr. BOLANOS-SUAREZ is unlawfully detained. DHS and the Executive Office  
16 for Immigration Review (“EOIR”) have improperly concluded that Mr. BOLANOS-  
17 SUAREZ, despite being physically present within the interior of and residing in the U.S.,  
18 and being arrested at his ICE check-in in San Diego, California, should be deemed to be  
19 seeking admission to the U.S. and therefore subject to mandatory detention under 8 U.S.C.  
20 § 1225(b)(2)(A).  
21

22 3. DHS has placed Mr. BOLANOS-SUAREZ in removal proceedings under 8 U.S.C.  
23 § 1229a and has charged Mr. BOLANOS-SUAREZ with being present in the United States  
24 without admission and therefore removable under 8 U.S.C. § 1182(a)(6)(A)(i).  
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1 4. Based on the charge of removability, DHS has denied Mr. BOLANOS-SUAREZ’s  
2 release from immigration custody. This denial is largely based upon a new DHS policy  
3 issued on July 8, 2025,<sup>1</sup> instructing all Immigration and Customs Enforcement (ICE)  
4 employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—i.e.,  
5 present without admission—to be an “applicant for admission” under 8 U.S.C.  
6 § 1225(b)(2)(A) and therefore subject to mandatory detention during the removal hearing  
7  
8 process.  
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10 5. Mr. BOLANOS-SUAREZ has not sought a bond hearing before an immigration  
11 judge (“IJ”) because requesting bond is futile.  
12

13 6. On September 5, 2025, the Board of Immigration Appeals (“BIA”) issued *Matter of*  
14 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which defies decades of precedent and  
15 practice by Respondents, stating that the plain language of 8 U.S.C. § 1225(b)(2)(A)  
16 divests jurisdiction from immigration judges to redetermine the custody of noncitizens who  
17 are present in the United States without admission.  
18

19 7. Both before and since the issuance of *Matter of Yajure Hurtado*, judges in other  
20 district courts have overwhelmingly concluded that persons similarly situated to Mr.  
21 BOLANOS-SUAREZ, present and residing within the United States, are not “applicants  
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27 <sup>1</sup> “Interim Guidance Regarding Detention Authority for Applicants for Admission”,  
28 ICE, July 8, 2025. Available at: <https://immpolicytracking.org/policies/ice-issuesmemo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policydocuments>.

1 for admission” who are “seeking admission” and subject to mandatory detention under  
2 § 1225(b)(2)(A).

3  
4 8. Mr. BOLANOS-SUAREZ’s detention on this basis violates the plain language of  
5 the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq. Section  
6 1225(b)(2)(A) does not apply to persons like Mr. BOLANOS-SUAREZ who previously  
7 entered and are now present and residing in the United States. Instead, such persons are  
8 subject to a different statute or provision, § 1226(a), that allows for release on conditional  
9 parole or bond. That provision expressly applies to people like Mr. BOLANOS-SUAREZ,  
10 who are charged as removable for having entered the United States without inspection and  
11 being present without admission.  
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14 9. The BIA’s and Respondents’ new legal interpretation of the INA is plainly contrary  
15 to the statutory framework and decades of agency practice applying § 1226(a) to persons  
16 like Mr. BOLANOS-SUAREZ who are present within the United States. The new  
17 interpretation also conflicts with Ninth Circuit and U.S. Supreme Court precedent. *See*  
18 *Jennings v. Rodriguez*, 583 U.S. 281, 288, 301 (2018); *United States v. Gambino-Ruiz*, 91  
19 F.4th 981, 989 (9th Cir. 2024); and *Torres v. Barr*, 976 F.3d 918, 926 (9th Cir. 2020).  
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21  
22 10. In addition to Mr. BOLANOS-SUAREZ’s statutory right to a bond hearing under  
23 § 1226(a), persons within the United States have constitutional rights. “[T]he Due Process  
24 Clause applies to all ‘persons’ within the United States, including aliens, whether their  
25 presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*,  
26 533 U.S. 678, 693 (2001).  
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1 11. Accordingly, Mr. BOLANOS-SUAREZ seeks a writ of habeas corpus requiring that  
2 he be released, or, at a minimum, an order that an IJ conduct a bond hearing and that  
3 Respondents adhere to any bond that may be granted.  
4

5 **JURISDICTION**

6 12. Jurisdiction is proper and relief is available under 28 U.S.C. § 1331 (federal  
7 question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of sovereign  
8 immunity), 28 U.S.C. § 2241 (habeas corpus jurisdiction), and Article I, Section 9, clause  
9 2 of the U.S. Constitution (the Suspension Clause).  
10

11 13. This Court may grant relief under 28 U.S.C. § 2241, the Declaratory Judgment Act,  
12 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.  
13

14 **VENUE**

15 14. Under *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500  
16 (1973), venue lies in this judicial district, the one in which Mr. BOLANOS-SUAREZ is  
17 currently detained.  
18

19 15. Venue is also properly in this Court under 28 U.S.C. § 1391(e) because Respondents  
20 are employees, officers, and agents of the United States, and a substantial part of the events  
21 or omissions giving rise to the claims occurred in the Southern District of California.  
22

23 **PARTIES**

24 16. Petitioner Angel Bolanos-Suarez is a 37-year-old-Mexican national who most  
25 recently entered the U.S. in 2007 without inspection. *Exhibit A*. He was detained placed in  
26 removal proceedings with a Notice to Appear dated September 29, 2014. *Exhibits A, B*.  
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1 DHS released him from detention on his own recognizance that same day on September  
2 29, 2014. *Exhibits C, D*. His proceedings were administratively closed on November 9,  
3 2016, through a joint motion to administratively close his case. *Exhibit E*.

4  
5 17. Almost nine years after his removal proceedings were administratively closed, Mr.  
6 BOLANOS-SUAREZ's removal proceedings were re-calendared, and per a hearing notice  
7 dated September 5, 2025, he was scheduled to attend a Master Calendar Hearing at the San  
8 Diego Immigration Court on December 10, 2025. *Exhibits F, G*. Subsequently, Mr.  
9 BOLANOS-SUAREZ received a Call-In Letter dated September 26, 2025, requiring him  
10 to check in with an ICE agent on October 9, 2025. *Exhibit H*. Mr. BOLANOS-SUAREZ  
11 was arrested by ICE agents on October 9, 2025, at his ICE check-in at 880 Front Street,  
12 San Diego, California 92101. He was held in the basement of the Federal Building until  
13 Sunday, October 12, when he was transferred to Otay Mesa Detention Center. Mr.  
14 BOLANOS-SUAREZ has been in immigration detention since that date. After arresting  
15 Mr. BOLANOS-SUAREZ, ICE did not set a bond. Under *Matter of Yajure Hurtado*, it  
16 would be futile for Mr. BOLANOS-SUAREZ to request a bond before the IJ. Mr.  
17 BOLANOS-SUAREZ is currently in Respondents' legal and physical custody at the Otay  
18 Mesa Detention Center in San Diego, California. That facility is operated by CoreCivic,  
19 Inc., a Maryland corporation.

20  
21 18. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention Center  
22 where Mr. BOLANOS-SUAREZ is being held. He oversees the day-to-day operations of  
23 the Otay Mesa Detention Center and acts at the Direction of Respondents FREDEN,  
24

1 LYONS, and NOEM. Respondent LAROSE is a custodian of Mr. BOLANOS-SUAREZ  
2 and is named in his official capacity.

3  
4 19. Respondent Joseph FREDEN is the Acting Field Office Director of ICE in San  
5 Diego, California, and is named in his official capacity. ICE is the component of DHS that  
6 is responsible for detaining and removing noncitizens according to immigration law and  
7 oversees custody determinations. In his official capacity, he is Mr. BOLANOS-SUAREZ's  
8 legal custodian.  
9

10 20. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his  
11 official capacity. Among other things, ICE is responsible for the administration and  
12 enforcement of the immigration laws, including the removal of noncitizens. In his official  
13 capacity as head of ICE, he is the legal custodian of Mr. BOLANOS-SUAREZ.  
14

15 21. Respondent Daren K. MARGOLIN is the Director of EOIR and has ultimate  
16 responsibility for overseeing the operation of the immigration courts and the Board of  
17 Immigration Appeals, including bond hearings. EOIR is the federal agency responsible for  
18 implementing and enforcing the INA in removal proceedings, including for custody  
19 redeterminations in bond hearings. He is sued in his official capacity.  
20

21 22. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official  
22 capacity. DHS is the federal agency encompassing ICE, which is responsible for the  
23 administration and enforcement of the INA and all other laws relating to the immigration  
24 of noncitizens. In her capacity as Secretary, Respondent NOEM has responsibility for the  
25 administration and enforcement of the immigration and naturalization laws under section  
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1 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25,  
2 2002); *see also* 8 U.S.C. § 1103(a). Respondent NOEM is the ultimate legal custodian of  
3  
4 Mr. BOLANOS-SUAREZ.

5 23. Respondent Pamela BONDI is the Attorney General of the United States and the  
6 most senior official in the U.S. Department of Justice (“DOJ”) and is named in her official  
7  
8 capacity. She has the authority to interpret immigration laws and adjudicate removal cases.  
9 The Attorney General delegates this responsibility to the Executive Office for Immigration  
10 Review (“EOIR”), which administers the immigration courts and the BIA.

### 11 LEGAL FRAMEWORK

12  
13 24. The INA prescribes three basic forms of detention for the vast majority of  
14 noncitizens in removal proceedings conducted under 8 U.S.C. § 1229a.

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

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22 26. Second, the INA provides for mandatory detention of noncitizens subject to an  
23 Expedited Removal order imposed under 8 U.S.C. § 1225(b)(1) and for other noncitizen  
24 applicants for admission to the U.S. who are deemed not clearly entitled to be admitted.  
25  
26 *See* 8 U.S.C. § 1225(b)(2).

1 27. Lastly, the INA provides for detention of noncitizens who have been ordered  
2 removed, including persons in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

3  
4 28. This case concerns the detention provisions in 8 U.S.C. §§ 1225(b)(2) and 1226(a).

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

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

17 31. Thus, in the decades that followed, most people who entered without inspection and  
18 were placed in standard § 1229a removal proceedings received bond hearings before IJs,  
19 unless their criminal history rendered them ineligible. That practice was consistent with  
20 many decades of earlier practice, in which noncitizens who were not deemed “arriving”  
21 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C.  
22 § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that  
23 § 1226(a) simply “restates” the detention authority previously located in § 1252(a)).  
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1 32. This practice both pre- and post-enactment of IIRIRA is consistent with the truism  
2 that noncitizens present within the United States – instead of noncitizens present at a border  
3 and seeking admission – have constitutional rights. “[T]he Due Process Clause applies to  
4 all ‘persons’ within the United States, including aliens, whether their presence here is  
5 lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.  
6

7  
8 33. On July 8, 2025, ICE “in coordination with” the Department of Justice announced a  
9 new policy that rejected the well-established understanding of the statutory framework and  
10 reversed decades of practice.  
11

12 34. The new policy, entitled “Interim Guidance Regarding Detention Authority for  
13 Applicants for Admission,”<sup>2</sup> claims that all noncitizens present within the United States  
14 who entered without inspection shall now be deemed “applicants for admission” under  
15 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A).  
16 The policy applies regardless of when a person is apprehended and affects those who have  
17 resided in the United States for months, years, and even decades.  
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20 35. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure*  
21 *Hurtado*, stating that all persons who entered without inspection are applicants for  
22 admission and are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). The BIA  
23 stated that “[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and  
24 Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to  
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28 <sup>2</sup> Available at: <https://immpolicytracking.org/policies/ice-issues-memoeliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents>.

1 hear bond requests or to grant bond to aliens who are present in the United States without  
2 admission.”

3  
4 36. The overwhelming majority of district judges to consider this question across the  
5 country (including this District), however, have rejected the ICE policy memo and the  
6 BIA’s decision in *Matter of Yajure Hurtado*. District judges have instead held that Section  
7 1225 governs detention of noncitizens outside the country who are “seeking admission” to  
8 the United States, while Section 1226 concerns those living in the United States who  
9 entered without inspection. *See Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 U.S.  
10 Dist. LEXIS 171714 (S.D. Cal. Sep. 3, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-  
11 cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 171364, at \*16, (C.D. Cal. July 28, 2025)  
12 (“[T]he Court finds that the potential for Petitioners’ continued detention without an initial  
13 bond hearing would cause immediate and irreparable injury, as this violates statutory rights  
14 afforded under § 1226(a.)”); *Ceja Gonzalez v. Noem*, No. 5:25-cv-02054-ODW (ADSx),  
15 2025 U.S. Dist. LEXIS 206688 (C.D. Cal. Aug. 13, 2025); *Benitez v. Francis*, 2025 U.S.  
16 Dist. LEXIS 157214 (S.D.N.Y. Aug. 8, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX  
17 DLR (CDB), 2025 U.S. Dist. LEXIS 156344 (D. Ariz. Aug. 11, 2025), *report and*  
18 *recommendation adopted without objection*, *Rosado v. Figueroa*, No. CV-25-02157-PHX-  
19 DLR (CDB), 2025 U.S. Dist. LEXIS 156336 (D. Ariz. Aug. 13, 2025); *Martinez v. Hyde*,  
20 Civil Action No. 25-11613-BEM, 2025 U.S. Dist. LEXIS 141724 (D. Mass. July 24, 2025);  
21 *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS 128085 (D. Mass. July  
22 7, 2025); *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 U.S. Dist. LEXIS 206523 (S.D.  
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1 Tex. Oct. 8, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash.  
2 2025); *Diosdado A.V. v. Bondi*, No. 25-cv-3162 (KMM/ECW), Doc. No. 16 (D. Minn.  
3 Aug. 19, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 U.S. Dist. LEXIS  
4 169423 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-1093, 2025 U.S. Dist.  
5 LEXIS 167280, at \*7 (W.D. La. Aug. 27, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-  
6 RGK-AS, 2025 U.S. Dist. LEXIS 171945, at \*8, (C.D. Cal. Aug. 26, 2025); *Leal-*  
7  
8 *Hernandez v. Noem*, No. 1:25-cv-02428, 2025 U.S. Dist. LEXIS 165015, at \*24, (D. Md.  
9 Aug. 24, 2025); *Romero v. Hyde*, Civil Action No. 25-11631-BEM, 2025 U.S. Dist. LEXIS  
10 160622, at \*30, (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789,  
11 2025 U.S. Dist. LEXIS 158808, at \*4, (C.D. Cal. Aug. 15, 2025); *dos Santos v. Noem*, No.  
12 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488, at \*19-20, (D. Mass. Aug. 14, 2025);  
13 *Belsai D.S. v. Bondi*, No. 25-cv-3682 (KMM/EMB), 2025 U.S. Dist. LEXIS 194262, at  
14 \*12-14, (D. Minn. Oct. 1, 2025); *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 U.S.  
15 Dist. LEXIS 201967 (S.D. Tex. Oct. 7, 2025); *Reyes v. Raycraft*, No. 25-cv-12546, 2025  
16 U.S. Dist. LEXIS 175767, at \*14-15, (E.D. Mich. Sep. 9, 2025); *Lopez-Arevelo v. Ripa*,  
17 No. EP-25-CV-337-KC, 2025 U.S. Dist. LEXIS 188232, at \*18-20, (W.D. Tex. Sep. 21,  
18 2025); *Chogllo Chafila v. Scott*, No. 2:25-cv-00437-SDN, 2025 U.S. Dist. LEXIS 184909,  
19 at \*14-15, (D. Me. Sep. 21, 2025); *Eliseo A.A. v. Olson*, No. 25-3381 (JWB/DJF), 2025  
20 U.S. Dist. LEXIS 201993 (D. Minn. Oct. 8, 2025).

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26 37. As the district judge in *Rodriguez Vazquez* explained, the plain text of the statutory  
27 provisions demonstrates that § 1226(a), not § 1225(b), applies to persons like Mr.  
28

1 BOLANOS-SUAREZ. Section 1226(a) applies by default to all persons “pending a  
2 decision on whether the [noncitizen] is to be removed from the United States.” *Rodriguez*  
3 *Vazquez*, 2025 U.S. Dist. LEXIS 193611, at \*6.  
4

5 38. Other portions of § 1226 also explicitly apply to persons charged as being  
6 inadmissible, including those who entered without inspection. See 8 U.S.C.  
7 § 1226(c)(1)(E). Subparagraph (E)’s reference to inadmissible persons makes clear that,  
8 by default, inadmissible persons not subject to subparagraph (E)(ii) are afforded a bond  
9 hearing under subsection (a). As *Rodriguez Vazquez* explained, “[w]hen Congress creates  
10 ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions,  
11 the statute generally applies.” *Rodriguez Vazquez*, 2025 U.S. Dist. LEXIS 193611, at \*52  
12 (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400  
13 (2010)).  
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17 39. On September 19, 2025, a district judge in the Western District of Kentucky,  
18 Louisville Division, reached the same conclusion after taking notice of the recent  
19 congressional amendments, via the Laken Riley Act, to Section 1226. See *Barrera v.*  
20 *Tindall*, Civil Action No. 3:25-cv-541-RGJ, 2025 U.S. Dist. LEXIS 184356 (W.D. Ky.  
21 Sep. 19, 2025). The Laken Riley Act added new a new subsection under Section 1226(c)  
22 for certain persons who would have otherwise fallen under Section 1226(a). *Barrera* noted  
23 that if § 1225(b)(2) already mandated detention of any person who has not been admitted,  
24 regardless of how long they have been here, then “adding § 1226(c)(1)(E) to the statutory  
25 scheme was pointless and this Court, too, will not find that Congress passed the Laken  
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1 Riley Act to 'perform the same work' that was already covered by § 1225(b)(2)." *See*  
2 *Barrera*, at \*9-10.

3  
4 40. In its further analysis of the text, *Barrera* observed, "Respondents 'completely  
5 ignore,' or even read out, the term 'seeking' from 'seeking admission.'" (*citing Lopez-*  
6 *Campos*, 2025 U.S. Dist. LEXIS 169423, at \*16). The term "seeking" "implies action." *Id.*  
7  
8 Noncitizens who have been present in the country for years, like *Barrera* who has been here  
9 20 years, are not actively "seeking admission." *Id.* Since the plain language of Section 1225  
10 requires someone to be "seeking admission" to be subject to mandatory detention, Mr.  
11 BOLANOS-SUAREZ, like *Barrera*, is not subject to it.

12  
13 41. Relying on the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281  
14 (2018), the district judge in *Lopez Santos v. Noem*, No. 3:25-CV-01193 SEC P, 2025 U.S.  
15 Dist. LEXIS 183412 (W.D. La. Sep. 11, 2025), also reached the same conclusion. *Lopez*  
16 *Santos* noted that the Supreme Court in *Jennings* held that Section 1225(b), the provision  
17 at issue in this petition, "applies primarily to aliens seeking entry into the United States"  
18 (583 U.S. at 297), and that Section 1226 "applies to aliens already present in the United  
19 States." *Id.* at 303. As such, *Lopez Santos* determined that a noncitizen residing in the U.S.  
20 is entitled to a bond hearing. *Lopez Santos*, at \*11.

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22  
23 42. Considering the foregoing, and the plain language of Sections 1225 and 1226,  
24 Section 1226 applies to noncitizens who are present without admission and who face  
25 charges in removal proceedings of being inadmissible to the United States.  
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1 43. By contrast, § 1225(b) applies to persons arriving at U.S. ports of entry or who  
2 recently entered the United States and are encountered at or near the border. The statute’s  
3 entire framework is premised on inspections at the border of people who are “seeking  
4 admission” to the United States. 8 U.S.C. § 1225(b)(2)(A).

6 44. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to  
7 persons like Mr. BOLANOS-SUAREZ who have already entered and were residing in the  
8 United States at the time they were apprehended.

10 **FACTS**

11 45. Mr. BOLANOS-SUAREZ is a 37-year-old devoted husband and father who has  
12 been residing in San Diego, California, since approximately 2007, when he most recently  
13 entered the United States without inspection. *Exhibit A*. Although he is a landscaper by  
14 trade, he recently cared for his three U.S. citizen children as a stay-at-home parent while  
15 his U.S. citizen wife works full time. He provides crucial emotional support and daily  
16 stability for his wife and children. His wife and kids have been experiencing significant  
17 anxiety since his detention on October 9, 2025.

18 46. Mr. BOLANOS-SUAREZ’s wife is a U.S. citizen, and they have been married since  
19 June 2011. *Exhibit I*. Mr. BOLANOS-SUAREZ is the beneficiary of an approved I-130  
20 petition that his wife filed on his behalf in 2016. *Exhibit J*.

21 47. Mr. BOLANOS-SUAREZ has a single vehicle code violation under California  
22 Vehicle Code § 20002(a) (Hit and Run), in September 2014. *Exhibit K*. He was in a  
23 collision with another vehicle while driving, and then drove home immediately thereafter  
24

1 without communicating with the other driver. *Exhibit K*. The vehicles sustained damage,  
2 but no person occupying them was injured. *Exhibit K*. He was sentenced to 6 months'  
3 probation, which was suspended, was required to pay a fine, and successfully completed  
4 the required 8 days of Public Service Work as the Superior Court directed. *Exhibit K*.

6 48. Following his arrest, Mr. BOLANOS-SUAREZ was detained by ICE, issued a  
7 Notice to Appear, and released the same day on his own recognizance. *Exhibits B, A, C, D*.  
8 DHS issued him a formal Order of Release on Recognizance (“ORR”) on September 29,  
9 2014, stating the terms of his release. *Exhibit C*. He complied with all the terms of his ORR.

11 49. On November 9, 2016, Mr. BOLANOS-SUAREZ’s removal proceedings were  
12 administratively closed. *Exhibit E*.

14 50. Mr. BOLANOS-SUAREZ was not required to report to ICE throughout the time his  
15 case was administratively closed. *Exhibit C*. That said, he complied with all the terms of  
16 his ORR.

18 51. In July 2025, DHS filed a motion to recalendar his removal proceedings. *Exhibit F*.  
19 Mr. BOLANOS-SUAREZ received notice that he had a Master Calendar Hearing  
20 scheduled for December 10, 2025. *Exhibit G*. In September 2025, he received a Call-In  
21 letter to appear before an ICE agent in San Diego, California on October 9, 2025. *Exhibit*  
22 *H*. He dutifully appeared at the San Diego ICE office on October 9, 2025. *Exhibit H*.

25 52. Mr. BOLANOS-SUAREZ was detained by ICE officials at his check-in on October  
26 9, 2025, despite his having previously been released on his own recognizance, dutifully  
27 appearing as requested, and planning to appear at his next hearing on the non-detained  
28

1 docket on December 10, 2025. *Exhibits C, G, H*. Mr. BOLANOS-SUAREZ has not  
2 requested a bond hearing before an immigration judge because doing so is futile based on  
3 recent BIA case law.  
4

5 53. Considering ICE and EOIR’s compliance with *Matter of Yajure Hurtado*, Mr.  
6 BOLANOS-SUAREZ will continue to be detained unlawfully for the foreseeable future.  
7

### 8 EXHAUSTION

9 54. Exhaustion in this case is futile. ICE’s new policy was issued “in coordination with  
10 DOJ,” which oversees the immigration courts. Moreover, as noted, the most recent  
11 published BIA precedent decision on this issue (*Matter of Yajure Hurtado*) states that  
12 persons like Mr. BOLANOS-SUAREZ are subject to mandatory detention as applicants  
13 for admission. Therefore, even if Mr. BOLANOS-SUAREZ seeks a custody  
14 redetermination before the IJ and the IJ grants his release on bond, the government will  
15 reserve appeal and the BIA will reverse the IJ’s order under *Matter of Yajure Hurtado*.  
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18 55. Further, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General  
19 are defendants, the DOJ has affirmed its position that persons like Petitioner are applicants  
20 for admission and subject to detention under § 1225(b)(2)(A). *Exhibit L* (Mot. to Dismiss,  
21 *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt.  
22 49 at 27–31).  
23  
24

25 56. The DOJ has taken the same position in the *Maldonado Bautista* litigation, *see*  
26 *Maldonado Bautista*, 2025 U.S. Dist. LEXIS 171364 at \*14 (C.D. Cal. July 28, 2025)  
27 (referencing Opp. to Ex Parte TRO Application, *Maldonado Bautista*, No. 5:25-cv-01873-  
28

1 SSS-BFM, (C.D. Cal. July 24, 2025), Dkt. 8), and in the *Ceja Gonzalez* litigation. *Exhibit*  
2 *M* (Opp. to Ex Parte TRO Application and OSC, *Ceja Gonzalez*, No. 5:25-cv-02054-ODW-  
3 BFM (C.D. Cal. August 8, 2025), Dkt. 7 at 17-21).

57. As such, for the reasons discussed above, exhaustion is futile.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **Mr. BOLANOS-SUAREZ's Detention is in Violation of 8 U.S.C. § 1226(a)**

9  
10 58. Mr. BOLANOS-SUAREZ incorporates by reference the factual allegations set forth  
11 in the preceding paragraphs.

12 59. The mandatory detention provision in 8 U.S.C. § 1225(b)(2) does not apply to Mr.  
13 BOLANOS-SUAREZ, who is present and residing in the United States and has been placed  
14 in § 1229a removal proceedings and charged with inadmissibility under 8 U.S.C.  
15 § 1182(a)(6)(A)(i). As relevant here, § 1225(b)(2) does not apply to those who previously  
16 entered the country and have been present and residing in the United States before being  
17 apprehended and placed in removal proceedings by Respondents. Such noncitizens may  
18 only be detained under § 1226(a), unless subject to § 1226(c), or § 1231.

19  
20  
21  
22 60. The application of § 1225(b)(2) to Mr. BOLANOS-SUAREZ unlawfully mandates  
23 his continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).

**SECOND CAUSE OF ACTION**

**Mr. BOLANOS-SUAREZ’s Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2)**

61. Mr. BOLANOS-SUAREZ incorporates by reference the factual allegations set forth in the preceding paragraphs.

62. Under the Administrative Procedure Act, a court must “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law,” that is “contrary to constitutional right [or] power,” or that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).

63. Respondents’ detention of Mr. BOLANOS-SUAREZ under § 1225(b)(2) is arbitrary and capricious. Respondents’ detention of Mr. BOLANOS-SUAREZ violates the INA and the Fifth Amendment. Respondents do not have statutory authority under § 1225(b)(2) to detain Mr. BOLANOS-SUAREZ.

64. Mr. BOLANOS-SUAREZ’s detention is arbitrary, capricious, an abuse of discretion, violates the Constitution, and without statutory authority, therefore violating 5 U.S.C. § 706(2).

**THIRD CAUSE OF ACTION**

**Mr. BOLANOS-SUAREZ’s Detention Violates His Fifth Amendment Right to Due Process**

65. Mr. BOLANOS-SUAREZ incorporates by reference the factual allegations set forth in the preceding paragraphs.

1 66. The government may not deprive a person of life, liberty, or property without due  
2 process of law. U.S. Const. amend. V. “Freedom from imprisonment— from government  
3 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that  
4 the Clause protects.” *Zadvydas*, 533 U.S. at 690 (2001).

6 67. Mr. BOLANOS-SUAREZ has a fundamental interest in liberty and being free from  
7 official restraint.

9 68. The Respondents’ continued detention of Mr. BOLANOS-SUAREZ without  
10 allowing Mr. BOLANOS-SUAREZ to have a fair bond hearing before an IJ, and most  
11 importantly, without the assurance of knowing that Respondents will honor the bond that  
12 an IJ is likely to grant considering Mr. BOLANOS-SUAREZ’s longstanding community  
13 ties and lack of recent criminal history (which indicate he is neither a flight risk nor a  
14 danger to the community) violates his right to due process.  
15  
16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Mr. BOLANOS-SUAREZ respectfully asks that this Court take  
19 jurisdiction over this matter and grant the following relief:  
20

- 21 a. Issue an Order to Show Cause ordering Respondents to show cause why this  
22 Petition should not be granted within three days;
- 23 b. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner, or  
24 in the alternative, issue an order that requires an IJ to conduct a bond hearing  
25 for Petitioner, and that Respondents’ must honor any bond that an IJ may set  
26  
27  
28

1 and to thereafter release Petitioner from their custody upon the payment of the  
2 bond;

3  
4 c. Award Petitioner attorney’s fees and costs under the Equal Access to Justice  
5 Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified  
6 under law; and

7  
8 d. Grant any other and further relief that this Court deems just and proper.

9 Dated: November 10, 2025

Respectfully submitted

10 By: /s David A. Schlesinger  
11 David A. Schlesinger  
12 Attorney for Petitioner  
13 E-mail: david@jsslegal.com  
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**VERIFICATION PURSUANT TO 28 U.S.C. 2242**

1  
2 I represent Petitioner Angel BOLANOS-SUAREZ in these habeas corpus  
3  
4 proceedings. Mr. BOLANOS-SUAREZ is currently being held in detention at the Otay  
5 Mesa Detention Center and is not able to appear in my office to sign this Verification. I  
6 have reviewed his attached declaration and the documents annexed to the petition, and  
7  
8 discussed his case with colleagues from my office who have worked closely with him,  
9 but they are not eligible to be admitted to this Court’s Bar and therefore cannot sign this  
10 Verification. Based on their representations to me, I verify that the information  
11 contained in the foregoing petition is true and correct to the best of my knowledge and  
12  
13 belief.

14 Executed on this November 10, 2025, in San Diego, California.

15  
16 By: /s David A. Schlesinger  
17 David A. Schlesinger  
18 Attorney for Petitioner  
19 E-mail: david@jsslegal.com  
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