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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX, ARIZONA**

Marco Antonio Solorzano Zepeda

Petitioner,

v.

Kristi Noem, Secretary, U.S. Department
of Homeland Security; Pamela Bondi,
Attorney General of the United States,
Executive Office for Immigration Review
(EOIR); Corina Almeida, Chief Counsel,
Immigration and Customs Enforcement
(ICE), Office of Principal Legal Advisor,
Florence; John Cantu, Field Office
Director, ICE Enforcement and Removal
Operations, Phoenix; Luis Rosa, Jr.,
Warden, Florence Correctional Center,

Respondents.

Case No. 2:25-cv-4236

Immigration Number: A 

**PETITIONER'S REPLY IN
SUPPORT FOR PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

I. INTRODUCTION

Respondents' opposition confirms that Petitioner's continued mandatory detention rests on a single legal premise: that any noncitizen present in the United States who has never been "admitted" is forever an "applicant for admission" detained under 8 U.S.C. § 1225(b)(2), regardless of how, when, or where he is apprehended. That reading is

1 incompatible with the statutory text, Ninth Circuit precedent, decades of agency practice,
2 and now a detailed district-court decision invalidating the very DHS policy at issue here.
3 *See Maldonado Bautista v. Santacruz Jr.*, No. 5:25-cv-01879-SSS-BFM (C.D. Cal. Nov 20,
4 2025).

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6 Petitioner is a 45-year-old father of three US Citizen children who has lived in Arizona
7 for over 23 years, was arrested in the interior, and has never been inspected at a port of entry
8 or placed in expedited removal. The Immigration Judge explicitly found he is not a danger,
9 that any flight risk can be addressed by a \$2,500 bond, and that the only barrier to his release
10 is EOIR's conclusion- compelled by *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA
11 2025) – that it lacks jurisdiction because DHS now claims § 1225(b)(2) applies.
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14 Under the plain text of the Immigration and Nationality Act (“INA”), as interpreted
15 by the Ninth Circuit, long-term residents like Petitioner arrested in the interior are detained
16 under 8 U.S.C. § 1226(a), not § 1225(b)(2). Section 2243 requires this Court to grant the
17 writ where the detention category is unlawful as a matter of law. The Court should therefore
18 issue a writ forthwith and order Respondents accept the payment of the \$2,500 bond and
19 release Petitioner within 48 hours of the order.
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24 **II. THE INA’S TEXT AND STRUCTURE FORCLOSE RESPONDENT’S
READING OF § 1225.**

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26 A. Section 1226(a) is the default detention authority for noncitizens already in
the United States.

27 The Supreme Court has already drawn the basic line: § 1225(b) governs “certain
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1 [noncitizens] seeking admission,” while § 1226 “authorizes the Government to detain
2 certain [noncitizens] already in the country pending the outcome of removal proceedings.”
3 *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Petitioner has been “already in the
4 country” since 2002; his detention therefore falls within § 1226(a) unless some more
5 specific provision displaces that default.
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8 Section 1226(a) authorizes the arrest and detention of “an alien” “pending a decision
9 on whether the alien is to be removed from the United States,” and expressly contemplates
10 release on bond or conditional parole. 8 U.S.C. § 1226(a)(1)- (2). Nothing in § 1226
11 excludes inadmissible noncitizens; to the contrary, § 1226(c)(1)(E) specifically references
12 noncitizens inadmissible under § 1182(a)(6)(A)(i). That express reference only makes
13 sense if such noncitizens are otherwise detained under § 1226.
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16 As *Maldonado Bautista* explains, the INA’s definitional section and cross-references
17 make clear that § 1226(a) is the “governing authority” for noncitizens apprehended in the
18 interior and placed in standard removal proceedings, including those charged under §
19 1182(a)(6)(A)(i). Slip. Op. at 22-25.
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21 B. “Applicants for admission” under § 1225(b)(2) are those actually inspected
22 by an immigration officer.

23 Respondents’ entire theory turns on § 1225(a)(1), which states that a noncitizen
24 present in the United States who has not been admitted “shall be deemed... an applicant
25 for admission.” They insist this clause automatically drags all never-admitted noncitizens
26 into § 1225(b)(2) mandatory detention.
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28 But § 1225 must be read in light of the INA’s definitions. “Admission” means

1 “lawful entry ... after inspection and authorization by an immigration officer.” 8 U.S.C. §
2 1101(a)(13)(A). An “application for admission” is the application “for admission into the
3 United States.” *Id.* § 1101(a)(4). As the Ninth Circuit has emphasized, an “applicant for
4 admission” and an “application for admission” are not interchangeable, and the deeming
5 clause in § 1225(a)(1) “merely determines [a non-citizen’s] legal status for purposes of
6 removal proceedings.” *Torres v. Barr*, 976 F.3d 918, 926-29 (9th Cir. 2020) (en banc).
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9 Section 1225(b)(2)(A) applies “in the case of an alien who is an applicant for
10 admission, if the examining immigration officer determines that an alien seeking
11 admission is not clearly and beyond a reasonable doubt entitled to be admitted.” (emphasis
12 added). The statute presupposes a contemporaneous inspection by an “examining
13 immigration officer” and a “determin[ation]” regarding a noncitizen “seeking admission.”
14 A person arrested in the Phoenix metro area 23 years after an entry without inspection has
15 not been inspected by an immigration officer and is not presently “seeking admission” in
16 that sense.
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19 *Maldonado Bautista* squarely rejects Respondents’ attempt to stretch “applicants for
20 admission” to cover all never-admitted noncitizens regardless of when and where they are
21 arrested. The court held that the statutory text is “unambiguous” and that “applicants for
22 admission” do not include noncitizens like the petitioners who were already inside the
23 United States and were never determined inadmissible by an examining officer; those
24 individuals fall under § 1226(a). Slip. op. at 23-25.
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27 Petitioner is identically situated: he was arrested years after entry, in the interior, on
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1 a warrant, and then placed during into § 1229a proceedings. No one claims he was
2 processed under expedited removal or inspected at a port of entry. Section 1225(b)(2)
3 therefore does not apply.
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5 C. Respondents' reading renders § 1226(a) largely meaningless, contrary to
6 basis canons.

7 If every never-admitted noncitizen is always an “applicant for admission” detained
8 under § 1225(b)(2) until removal proceedings conclude, then § 1226(a) has virtually no
9 role to play, despite Congress recently amending it in the Laken Riley Act. *See* Pub. L.
10 119-1, 139 Stat. 3 (2025). As *Maldonado Bautista* notes, Respondents' position would
11 “effectively nullify” § 1226(a) for inadmissible noncitizens and cannot be reconciled with
12 the rule against surplusage. Slip op. at 26-28.
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14 The Ninth Circuit has likewise cautioned that “permissive and mandatory
15 descriptions are in harmony, as they apply to different situations. *Fifty-Six Hope Rd.*
16 *Music, Ltd. v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1081 (9th Cir. 2015). Section 1226(a)
17 (permissive, bond-eligible detention) applies to noncitizens already in the country; §
18 1225(b) (mandatory detention) applies at the border and in expedited-removal contexts.
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21 Respondents, in their response, try to avoid this problem by characterizing § 1226 as
22 a “redundancy” or belt- and suspenders measure. But “Congress presumably does not
23 enact useless laws.” *United States v. Castleman*, 572 U.S. 157, 178 (2014) (Scalia, J.,
24 concurring). *Maldonado Bautista* correctly recognizes that there must be a “meaningful
25 distinction” between §§ 1225 and 1226, and that distinction tracks the border/ interior line.
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27 Slip op. at 26-28.
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1 **III. NINTH CIRCUIT PRECEDENT REJECTS PERPETUAL “SEEKING**
2 **ADMISSION” STATUS**

3 In *Torres*, the Ninth Circuit interpreted “seeking admission” as a temporally limited
4 concept, tied to the act of presenting for entry. 976 F.3d at 923-26. The court explained
5 that inadmissibility must be measured at “the point in time” when an individual actually
6 seeks entry, not decades later while residing in the interior United States. *Id.* at 926. The
7 government’s proposal that Petitioner has been “seeking admission” continuously since
8 2002 is precisely the “perpetual state” *Torres* rejected.

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10 Respondents’ reliance on out-of-circuit district court cases (e.g. *Vargas Lopez*,
11 *Chavez, Rojas*) cannot overcome binding Ninth Circuit precedent on the meaning of
12 “seeking admission,” nor can it displace the detailed statutory analysis in *Maldonado*
13 *Bautista and Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 2782499
14 (W.D. Wash. Sept. 30, 2025), which both hold that § 1226(a) governs noncitizens arrested
15 in the interior and charged under § 1182(a)(6)(A)(i).
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20 **IV. HURTADO AND DHS’S POLICY ARE NOT ENTITLED TO**
21 **DEFERENCE AFTER *LOPER BRIGHT*.**

22 Respondents lean heavily on *Matter of Yajure Hurtado* and *Matter of Li*, but those
23 decisions misinterpret unambiguous statutory text, contradict long-standing regulations
24 and practice, and are not entitled to any deference after *Loper Bright Enters v. Raimondo*,
25 603 U.S. 369 (2024).
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27 *Loper Bright* makes clear that courts may not defer to agency interpretations simply
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1 because a statute is complex; the “views of the Executive Branch ... do no supersede” the
2 Judiciary’s duty to say what the law is. *Id.* at 386. *Maldonado Bautista* applies that
3 principle directly, holding that DHS “Interim Guidance Regarding Detention Authority for
4 Applicants for Admission” and EOIR’s adoption of it through *Hurtado* cannot override the
5 INA’s plain text. Slip op. at 26-28.
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8 Moreover, EOIR’s own regulations and DHS’s contemporaneous implementation of
9 IIRIRA recognized that people who entered without inspection but were later arrested in
10 the interior of the United States were detained under § 1226 and eligible for bond. *See* 62
11 Fed. Reg. 10,312,10,323 (Mar. 6, 1997) (explaining that noncitizens “present without
12 having been admitted or paroled” would be “eligible for bond and bond redetermination”).
13 DHS’s 2025 policy is an abrupt reversal of nearly three decades of consistent practice,
14 undertaken without rulemaking and in a manner that trenches on serious constitutional
15 concerns. That is quintessentially arbitrary and capricious agency action under the APA.
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20 **V. MALDONADO BAUTISTA PROVIDES POWERFUL, ON-POINT
PERSUASIVE AUTHORITY**

21 The C.D. California decision in *Maldonado Bautista* involves the same DHS July 8, 2025
22 “Interim Guidance Regarding Detention Authority for Applicants for Admission,” the same legal
23 question (whether § 1225(b)(2) or § 1226(a) governs detention of long-term EWI noncitizens
24 arrested in the interior), and materially indistinguishable facts.
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1 Key holdings include:

- 2 1. **Jurisdiction and justiciability** – The INA’s jurisdiction-stripping provisions (§§ 1252(a),
3 1252(b)(9), 1252(e)(3)) do not bar district courts from adjudicating class challenges to the
4 DHS policy where petitioners contend they are detained under § 1226, not § 1225. Slip op.
5 at 8–15.
- 6 2. **Plain-text resolution** – By applying the INA’s definition section, the court concluded that
7 “applicants for admission” in § 1225(b)(2) are those inspected by an immigration officer
8 who makes a contemporaneous inadmissibility determination; noncitizens arrested in the
9 interior without such an inspection fall under § 1226(a). Slip op. at 22–25.
- 10 3. **Statutory coherence** – Reading all never-admitted noncitizens as “applicants for
11 admission” would “collapse § 1226 into nonexistence,” contradict the rule against
12 surplusage, and upend the careful distinction between permissive and mandatory detention
13 regimes. Slip op. at 26–28.
- 14 4. **Unambiguous text** – Because the statute is unambiguous, the court found no need to
15 resort to legislative history or agency interpretations and held the DHS policy unlawful.
16 Slip op. at 28–30.

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20 This Court faces the same question. Nothing in Respondents’ opposition distinguishes
21 Petitioner’s situation from the *Maldonado Bautista* petitioners in any material way. To the
22 contrary, Respondents rely on the very policy *Maldonado Bautista* held unlawful.
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24 **VI. PETITIONER’S DETENTION IS UNLAWFUL AND VIOLATES DUE**
25 **PROCESS AND THE APA**

26 Because Petitioner is detained under the wrong statutory provision, his ongoing custody is
27 “not in accordance with law” and must be set aside under the APA, 5 U.S.C. § 706(2)(A). Under
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1 the correct provision—§ 1226(a)—he is statutorily eligible for bond. The IJ has already made the
2 factual findings necessary to effectuate release: Petitioner is not a danger, and a \$2,500 bond
3 suffices to mitigate any flight risk. Respondents’ refusal to honor that determination and accept
4 bond violates both the INA and implementing regulations, 8 C.F.R. §§ 236.1, 1236.1, 1003.19.
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6 Prolonged civil detention without a lawful statutory basis also raises grave Due Process
7 concerns. “Freedom from imprisonment—from government custody, detention, or other forms of
8 physical restraint—lies at the heart of the liberty” protected by the Fifth Amendment. *Zadvydas v.*
9 *Davis*, 533 U.S. 678, 690 (2001). The Due Process Clause applies to all “persons” in the United
10 States, regardless of status. *Id.* at 693. It cannot be squared with permanently mandatory detention
11 of long-term residents who have never had their custody reviewed under the proper statute.
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15 **VII. SECTION 2243 REQUIRES THE COURT TO GRANT THE WRIT**
16 **FORTHWITH**

17 Under 28 U.S.C. § 2243, once the return is filed, the Court must “summarily hear and determine
18 the facts, and dispose of the matter as law and justice require.” There is no material factual dispute
19 here:
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- 21 • Petitioner entered without inspection more than 23 years ago and has lived in Arizona ever
22 since;
- 23 • He was arrested in the interior on September 29, 2025, and placed into § 1229a
24 proceedings;
- 25 • He has never been processed under expedited removal or inspected at a port of entry;
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1226(a) before an IJ within 48 hours;

- 5) Enjoin Respondents from transferring Petitioner outside this District pending compliance;
- 6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- 7) Grant such other and further relief as this Court deems just and proper under the circumstances.

RESPECTFULLY SUBMITTED this 8TH day of December 2025.

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