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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **NORMA MARILANDA TOMAS**
13 **HERNANDEZ,**

14 **Petitioner,**

15 **v.**

16 **CHRISTOPHER LAROSE, Warden at**
17 **Otay Mesa Detention Center, KRISTI**
18 **NOEM, Secretary of the Department of**
19 **Homeland Security, PAMELA JO**
20 **BONDI, Attorney General, TODD M.**
21 **LYONS, Acting Director, Immigration**
22 **and Customs Enforcement, GREGORY J**
23 **ARCHAMBEAULT, Field Office**
24 **Director, San Diego Field Office, US**
25 **ICE, US DHS,**

26 **Respondents.**

27 **CIVIL CASE NO.: 25-CV-**
28 **'25CV3187 BAS AHG**

Petition
for a
Writ of Habeas Corpus

1 INTRODUCTION

2 This petition arises from a sudden change in the way that the Board of
3 Immigration Appeals interprets 8 U.S.C. §§ 1225, 1226. “For decades, and across
4 administrations, DHS has acknowledged that § 1226(a) applies to individuals who
5 entered the United States unlawfully, but who were later apprehended within the
6 borders of the United States long after their entry.” *Rodriguez v. Bostock*, 779 F.
7 Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting Petitioner’s brief and noting that
8 Respondents had not contested that claim). But in *Matter of Yajure Hurtado*, 29 I.
9 & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (“BIA”) accepted
10 the government’s new position that inadmissible immigrants are not eligible for
11 bond under § 1226(a), even if they have been living in the United States for years
12 or decades. Instead, the BIA held that all inadmissible immigrants are subject to the
13 mandatory detention provisions in 8 U.S.C. § 1225(b)(2)(A).

14 Courts do not agree. The government has lost this argument in districts across
15 the United States, *see, e.g., Rodriguez*, 779 F. Supp. 3d at 1260; *Romero v. Hyde*,
16 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238
17 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y.
18 Aug. 13, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24,
19 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-*
20 *Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Carmona-*
21 *Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sept. 3,
22 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8,
23 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025);
24 *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), including this
25 one, *see Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025)
26 (Sabraw, J.). This Court should reject that argument, too, and order Petitioner’s
27 immediate release on the bond imposed by the immigration judge (“IJ”)
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STATEMENT OF FACTS

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Norma Marilanda Tomas Hernandez (Ms. Tomas) is a Guatemalan citizen who came to the United States in May 2024 with her young daughter [REDACTED] and her husband Jose Luis, and she has resided in the United States that time. Exh. A, First Notice to Appear and Exh. F, Application for Asylum, Withholding of Removal and Protection Under the Convention Against Torture. Ms. Tomas and hr family were placed in removal proceedings upon entering the United States. *Id.* After detaining them for less than a day, ICE voluntarily released them pending those proceedings. Exh. B, Notice of Release on Recognizance. Ms. Tomas and her family attended all their immigration court hearings, at the end of which the immigration judge denied their applications for relief. Exh. C, Order of the Immigration Judge.

In October 2025, the United States Department of Homeland Security (DHS) took Ms. Tomas and her husband into custody. Exh. D, Form I-213. DHS then issued Ms. Tomas a new alien registration number (a.k.a. “A number”) and reinitiated removal proceedings against her, which are currently pending while she remains detained at the Otay Mesa Detention Center. Exh. E, Second Notice to Appear.

Detention has proved to be a serious hardship for Ms. Tomas. Since her arrest by DHS, Ms. Tomas has been separated from her seven-year-old daughter, [REDACTED] for the first time in her life. Exh. F. DHS has since deported Ms. Tomas’ husband to Guatemala. *Id.*

LEGAL BACKGROUND

I. In *Yajure Hurtado*, the BIA stripped most noncitizens who enter without inspection of the right to seek bond.

This habeas petition turns on the BIA’s recent decision in *Yajure Hurtado*. The issue in *Yajure Hurtado* revolves around two statutes, 8 U.S.C. § 1226(a) and 8 U.S.C. § 1225(b)(2)(A).

1 “Section 1226(a) provides for the arrest and detention of noncitizens
2 ‘pending a decision on whether the alien is to be removed from the United States.’”
3 *Hernandez Nieves*, 2025 WL 2533110, at *3. It instructs that the Attorney General
4 “may continue to detain” arrestees or “may release [them] on bond of at least \$1,500
5 with security approved by, and containing conditions prescribed by, the Attorney
6 General.” 8 U.S.C. § 1226(a) (punctuation altered). “Federal regulations”
7 implementing this statute “provide that aliens detained under § 1226(a) receive
8 bond hearings at the outset of detention.” *Jennings v. Rodriguez*, 583 U.S. 281, 306
9 (2018) (citing 8 C.F.R. § 1236.1(d)(1)).

10 Section 1225(b)(2)(A) provides that “in the case of an alien who is an
11 applicant for admission, if the examining immigration officer determines that an
12 alien seeking admission is not clearly and beyond a doubt entitled to be admitted,
13 the alien shall be detained for” certain immigration proceedings. 8 U.S.C.
14 § 1225(b)(2)(A). Federal regulations do not prescribe bond hearings for people
15 detained under that section. Instead, “DHS has the sole discretion to temporarily
16 release on parole ‘any alien applying for admission to the United States’ on a ‘case-
17 by-case basis for urgent humanitarian reasons or significant public benefit.’”
18 *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting 8 U.S.C. § 1182(d)(5)(A)).

19 By their terms, these statutes apply to different groups of immigrants.
20 “Section 1226(a) sets out the default rule,” which governs unless some other, more
21 specific detention provision overrides it. *Rodriguez* 779 F. Supp. 3d at 1246
22 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an
23 “applicant for admission” who is also an “alien seeking admission.” 8 U.S.C.
24 § 1225(b)(2)(A).

25 *Yajure Hurtado* considered which of these provisions—the default rule in
26 § 1226(a) or the mandatory detention provision in § 1225(b)(2)(A)—applies to
27 immigrants who enter the United States without inspection but live for years in the
28 country’s interior. 29 I.&N. Dec. at 216. The respondent in *Yajure Hurtado* had

1 entered without inspection in November 2022, before obtaining Temporary
2 Protected Status (“TPS”). *Id.* at 216–17. He was arrested after his TPS expired in
3 April 2025. *Id.* An immigration judge (“IJ”) ruled that he was subject to mandatory
4 detention under § 1225(b)(2)(A). *Id.* at 217.

5 On appeal to the BIA, the respondent conceded that he was an “applicant for
6 admission” in the meaning of § 1225(b)(2)(A), *id.* at 221, because he had not been
7 legally “admitted”—that is, he had not effected a “lawful entry . . . into the United
8 States after inspection and authorization by an immigration officer.” 8 U.S.C.
9 § 1101(a)(13)(A). But he argued that he did not fall within § 1225(b)(2)(A)’s ambit
10 because he was not actively “seeking admission” at the border. 29 I&N Dec. at 221.
11 He had crossed the border and proceeded to the country’s interior years ago. *Id.*

12 The BIA disagreed, holding that only noncitizens who were legally admitted
13 retain bond eligibility. *Id.* at 218, 223. The BIA gave three reasons to support that
14 conclusion.

15 First, the BIA rejected the distinction between immigrants who are
16 “applicants for admission” and those who are “seeking admission.” In the BIA’s
17 view, that distinction would leave people like Mr. Yajure Hurtado without any
18 “legal status” and would create a line-drawing problem. *Id.* at 221.

19 Second, the BIA rejected the argument that interpreting § 1225(b)(2) to cover
20 noncitizens like Mr. Yajure Hurtado renders superfluous much of § 1226(c).
21 Instead, it asserted without explanation that limiting the reach of § 1225(b)(2)
22 would render that provision superfluous. *Id.* at 221–22.

23 Third, the BIA claimed that the legislative history supported its construction
24 of § 1225, because in enacting IIRIRA, Congress sought to remedy the inequity of
25 the prior statutory scheme, which provided greater procedural and substantive
26 rights to noncitizens who entered without inspection (and were placed in
27 deportation proceedings) than those who presented themselves to authorities for
28 inspection (and were placed in exclusion proceedings). *Id.* at 223–25. But the BIA

1 did not cite any legislative history specifically addressing detention statutes or
2 custody determinations that would support its interpretation. *Id.*

3 For these reasons, the BIA concluded that noncitizens who enter without
4 inspection have no right to seek bond from an IJ, regardless of how long they have
5 been residing in the country and irrespective of whether they were apprehended by
6 immigration authorities. *Id.* at 228.

7 **II. Courts disagree with the BIA’s reasoning.**

8 Since *Yajure Hurtado* was decided, many immigrants who otherwise would
9 have received bond hearings under § 1226(a) have challenged that decision in the
10 federal courts. Courts broadly agree that the BIA’s novel constructions of
11 § 1225(b)(2)(A) and § 1226(a) are not correct.

12 On the one hand, § 1225(b)(2)(A) is best read to apply to immigrants who
13 are at or near the border or other ports of entry, for at least three reasons.

14 *First*, § 1225(b)(2)(A)’s statutory context strongly suggests that it applies
15 only to persons apprehended at or near the border. As the Supreme Court
16 recognized in *Jennings*, § 1225(b) is concerned “primarily [with those] seeking
17 entry,” and is generally imposed “at the Nation’s borders and ports of entry, where
18 the Government must determine whether [a noncitizen] seeking to enter the country
19 is admissible.” 583 U.S. at 297, 287. Throughout its text, the statute refers to
20 “inspections”—a term not defined in the INA but which typically connotes an
21 examination upon or soon after physical entry. 8 U.S.C. § 1225 (“Inspection by
22 immigration officers; expedited removal of inadmissible arriving [noncitizens];
23 referral for hearing”); *id.* § 1225(b)(1)–(2) (referring to “inspections” in their titles);
24 *id.* § 1225(d)(1) (authorizing immigration officials to search certain conveyances
25 in order to conduct “inspections” where noncitizens “are being brought into the
26 United States”). Many statutory provisions, various regulations, and BIA precedent
27 discuss “inspection” in the context of admission processes at ports of entry, further
28 supporting the conclusion that § 1225 has a limited temporal and geographic scope.

1 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1;
2 *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Petitioner’s interpretation
3 accords

4 *Second*, consistent with the statute’s overall focus on the moment of physical
5 entry, § 1225(b)(2)’s plain language limits the statute’s reach to persons actively
6 attempting to enter the United States. The statute applies only to those who are *both*
7 “applicants for admission” *and* in the process of “seeking admission.” 8 U.S.C.
8 § 1225(b)(2)(A). Because the statute’s first clause already limits the provision to
9 “applicants for admission,” the phrase “seeking admission” must have a different
10 meaning. Any other reading would constitute “an obvious violation of the rule
11 against surplusage.” *Romero*, 2025 WL 2403827, at *10.

12 On its face, the phrase “seeking admission” suggests an active attempt to
13 enter the country. Congress’s use of the present and present progressive tenses
14 “necessarily requires some sort of present-tense action,” excluding noncitizens in
15 the interior who are no longer in the process of seeking admission to the U.S.
16 *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL
17 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the
18 statute’s “present-tense active language”). “Realistically speaking,” it is hard to
19 accept that the statute’s plain language could mean anything else: “[I]f Congress’s
20 intention” to detain everyone who entered without inspection “was so clear, why
21 did it take thirty years to notice?” *Romero*, 2025 WL 2403827, at *12.

22 *Third*, the statutory history supports a limited reading of § 1225(b)’s reach.
23 When Congress amended § 1225(b)’s predecessor statute—which authorized
24 detention only of arriving noncitizens—to include individuals who had not been
25 admitted, legislators expressed concerns about recent arrivals to the United States
26 who lacked the documents to remain in the country. H.R. Rep. No. 104-469, pt. 1,
27 at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.).
28 There was no suggestion in the legislative history that Congress intended to subject

1 all people present in the United States after an unlawful entry to mandatory
2 detention and thereby transform immigration detention and sweep millions of
3 noncitizens into § 1225(b).

4 The BIA’s contrary reading of the legislative history is not persuasive. True,
5 IIRIRA “altered the typology of immigration *proceedings* to ‘place[] on equal
6 footing’ ‘all immigrants who have not been lawfully admitted.’” *Romero*, 2025 WL
7 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th
8 Cir. 2020)). But that “says nothing about *detention* pending the outcome of those
9 proceedings.” *Id.* (emphasis added). All these indicators suggest that
10 § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry, not
11 people who have already entered the country.

12 On the other hand, § 1226(a) is best read to apply to some inadmissible
13 persons. It cannot plausibly be the case that all inadmissible persons fall under
14 § 1225(b)(2)(A) and none fall under § 1226(a).

15 *First*, § 1226(a)’s statutory structure makes clear that it reaches some
16 individuals who have not been admitted and have entered without inspection.
17 Section 1226(c) exempts specific categories of noncitizens from the default
18 eligibility to seek release on bond in § 1226(a). “Among the individuals carved out
19 and subject to mandatory detention are certain categories of ‘inadmissible’
20 noncitizens.” *Rodriguez*, 779 F. Supp. 3d at 1246 (quoting 8 § 1226(c)(1)(A), (D),
21 (E)). The 2025 Laken Riley Act (“LRA”) added to that list. “This ‘new’ category”
22 of persons not eligible for bond “includes those noncitizens who are deemed
23 inadmissible, including for being ‘present in the United States without being
24 admitted or paroled,’ and who have been arrested, charged with, or convicted of
25 certain crimes.” *Rosado*, 2025 WL 2337099, at *9 (citing 8 U.S.C. § 1226(c)(1)(E);
26 LRA, Pub. L. No. 119-1). If § 1226(a) did not apply to inadmissible noncitizens,
27 then the longstanding carve outs that refer to inadmissibility and Congress’ most
28 recent amendments would all be surplusage. *See Garcia*, 2025 WL 2549431, at *6.

1 The better reading is the Supreme Court’s in *Jennings*: that § 1226(a) “applies to
2 aliens already present in the United States.” 583 U.S. at 303.

3 *Second*, § 1226(a)’s legislative history supports Petitioner’s reading. “After
4 passing the IIRIRA, Congress declared the new § 1226(a) ‘restates the current
5 provisions in [the predecessor statute] regarding the authority of the Attorney
6 General to arrest, detain, and release on bond’ a noncitizen ‘who is not lawfully in
7 the United States.’” *Rosado*, 2025 WL 2337099, at *9. Because noncitizens deemed
8 inadmissible “were entitled to discretionary detention under § 1226(a)’s
9 predecessor statute, and Congress declared the statute’s scope unchanged by
10 IIRIRA,” § 1226(a) must “allow for a discretionary release on bond for”
11 inadmissible noncitizens, too. *Id.*

12 Thus, the best reading of 8 U.S.C. §§ 1225, 1226 shows that petitioner is
13 eligible for bond. And under the Supreme Court’s recent decision in *Loper Bright*
14 *v. Raimondo*, this Court must independently interpret the meaning and scope of
15 §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S.
16 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025
17 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
18 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA’s decision in *Yajure*
19 *Hurtado* is a deviation from the agency’s long-standing interpretation of §§ 1225,
20 1226; is not guidance issued contemporaneously with enactment of the relevant
21 statutes; and contradicts the statutory interpretations of dozens of federal courts,
22 this Court should give it no weight. If anything, the government’s “decades of
23 practice” providing bond hearings to those who entered without inspection is a
24 more persuasive guide to the proper outcome here. *Martinez*, 2025 WL 2084238,
25 at *4.

26 **III. Because an appeal to the BIA would be futile and Ms. Tomas faces**
27 **irreparable harm, exhaustion is not required.**

28 Petitioners raising this argument need not exhaust remedies by appealing a

1 denial of bond to the BIA. “Here, no statute requires exhaustion.” *Romero*, 2025
2 WL 2403827, at *5. Rather, “exhaustion here is a prudential requirement.” *Garcia*,
3 2025 WL 2549431, at *4. “[A] court may waive the prudential exhaustion
4 requirement if . . . pursuit of administrative remedies would be a futile gesture.”
5 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (cleaned up). “Here,
6 exhausting administrative remedies would be futile because all ICE employees
7 have been directed by DHS’ and DOJ’s new policy to consider anyone arrested in
8 the United States and charged with being inadmissible under § 1182(a)(6)(A)(i) to
9 be an ‘applicant for admission’ under § 1225(b)(2)(A) and therefore be subject to
10 mandatory detention.” *Garcia*, 2025 WL 2549431, at *5 (cleaned up). This habeas
11 petition can therefore proceed.

12 **IV. Either Outright Release and No Re-Detention Absent a Pre-Detention**
13 **Bond Hearing or, in the Alternative, a Bond Hearing and/or Release if a**
14 **Bond Hearing is Not Held Within Five Days Are Proper Remedies/**

15 The Court has two options for remedies in this case. Under one option, the
16 Court should order outright release of Ms. Tomas without re-detention absent a pre-
17 detention bond hearing. *See Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO
18 (HC), 2025 WL 2716910, at *10 (E.D. Cal. Sept. 23, 2025) *and see Hernandez*
19 *Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *5 (N.D. Cal. Sept.
20 3, 2025).

21 In the alternative, the Court should order a bond hearing before the IJ and/or
22 release if there is no bond hearing within a certain time frame set by the Court. *See*
23 *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *7
24 (C.D. Cal. Sept. 8, 2025) (“Respondents are enjoined from continuing to detain
25 petitioners unless they are provided with an individualized bond hearing before an
26 immigration judge pursuant to 8 U.S.C. § 1226(a) within seven (7) days of this
27 Order”); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at
28 *10 (E.D. Mich. Aug. 29, 2025) (“Writ of Habeas Corpus (ECF No. 1) is

1 GRANTED. Respondents are HEREBY ORDERED to immediately release Lopez-
2 Campos, or in the alternative, provide him with a bond hearing under 8 U.S.C. §
3 1226(a) within seven (7) days of the date of this Order”).

4 **CLAIMS AND PRAYER FOR RELIEF**

5 **Detaining Petitioner Without a Bond Hearing Violates 8 U.S.C. § 1226(a),**
6 **Associated Regulations, the Administrative Procedures Act, and the Fifth**
7 **Amendment Right to Due Process.**

8 For the reasons just given, Petitioner may be detained, if at all, pursuant to 8
9 U.S.C. § 1226(a). Both the statute and its associated regulations entitle Petitioner
10 to a bond hearing. *See* 8 C.F.R. §§ 326.1(d), 1236.1, 1003.19(a)-(f). Accordingly,
11 the Fifth Amendment’s due process clause requires the government to provide the
12 legally required bond hearing before Petitioner is detained. *See Hernandez-Lara v.*
13 *Lyons*, 10 F.4th 19, 27 (1st Cir. 2021).

14 The statute and regulations implement the due process protection that attends
15 any civil detention. *See Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018)
16 (expressing “grave doubts that any statute that allows for arbitrary prolonged
17 detention without any process is constitutional or that those who founded our
18 democracy precisely to protect against the government’s arbitrary deprivation of
19 liberty would have thought so”). The Supreme Court has “repeatedly recognized
20 that civil commitment for any purpose constitutes a significant deprivation of
21 liberty that requires due process protection,” including an individualized detention
22 hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979); *see also United States v.*
23 *Salerno*, 481 U.S. 739, 755 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 81–83
24 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997).

25 Here, Petitioner would have been eligible for release on bond under
26 § 1226(a), but for the BIA’s recent decision in *Yajure Hurtado*.

27 Accordingly, Petitioner respectfully requests that this Court:
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1. Order the Respondents to immediately release Petitioner from custody under the condition that Respondents cannot re-detain her absent a pre-detention bond hearing;
2. Order, in the alternative, a bond hearing before the IJ and release from detention immediately if a bond hearing is not held within a certain time frame set by the Court; and
3. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: November 14, 2025

s/ Amanda Bernardo
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