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9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 Jose Luis VEGA-FIGUEROA,

12 Petitioner-Plaintiff,

13 v.

14 Jeremy CASEY, Warden at Imperial  
15 Regional Detention Center;  
16 Joseph FREDEN, Field Office Director of  
17 San Diego Office of Detention and  
18 Removal, U.S. Immigrations and  
19 Customs Enforcement; U.S. Department  
20 of Homeland Security;  
21 Todd M. LYONS, Acting Director,  
22 Immigration and Customs Enforcement,  
23 U.S. Department of Homeland Security;  
24 Sirce OWEN, Acting Director for  
Executive Office for Immigration  
Review; Kriti NOEM, in her Official  
Capacity, Secretary, U.S. Department of  
Homeland Security;  
Pam BONDI, in her Official Capacity,  
Attorney General of the United States;

Respondents-Defendants.

Case No.: '25CV3201 BTM MMP

**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 File No.:



1 Petitioner JOSE LUIS VEGA-FIGUEROA petitions this Court for a writ of habeas  
2 corpus under 28 U.S.C. § 2241 to remedy Respondents’ detaining him unlawfully, and  
3 states as follows:

4 **INTRODUCTION**

5  
6 1. Petitioner, JOSE LUIS VEGA-FIGUEROA (“Mr. Vega-Figueroa” or  
7 “Petitioner”), by and through his undersigned counsel, hereby files this petition for writ  
8 of habeas corpus and complaint for declaratory and injunctive relief to compel his  
9 immediate release from immigration detention where he has been held by the U.S.  
10 Department of Homeland Security (DHS) since being detained on June 22, 2025.

11 2. Petitioner is charged as having entered the United States without inspection. 8  
12 U.S.C. § 1182(a)(6)(A)(i). He is ineligible for bond under the September 5, 2025 recent  
13 decision of the immigration judge in *Matter of YAJURE HURTADO*, 29 I&N Dec. 216  
14 (BIA 2025), holding that individuals charged with having entered the United States  
15 without inspection are ineligible for bond redetermination hearings before an immigration  
16 judge, relying on the statute at 8 U.S.C. § 1225(b)(2)(A).

17  
18 3. Section 1225(b)(2)(A) states that an applicant for admission seeking admission  
19 shall be detained for a removal proceeding. However, 8 U.S.C. § 1225(b)(2)(A) does not  
20 apply to individuals, like Petitioner, who is charged with having entered in the United  
21 States without inspection. Instead, such individuals are subject to detention under a  
22 different statute, 8 U.S.C. § 1226(a), and eligible for release on bond.

23 4. Almost every court to address this issue, even prior to the Board’s September 5,  
24 2025 decision in *Matter of YAJURE HURTADO*, has found that those charged with

1 having entered the United States without inspection are eligible for bond hearings before  
2 immigration judges under § 1226(a).

3 5. The Board’s decision in *Matter of YAJURE HURTADO* is a violation of the statute  
4 and due process.

5 6. As such, Petitioner seeks an order of declaratory and injunctive relief that he be  
6 immediately releases from custody on the same bond and conditions of release as ordered  
7 by the Immigration Judge on September 4, 2025, or in the alternative, be provided a bond  
8 redetermination hearing before an immigration judge.

9  
10 **JURISDICTION**

11 7. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331,  
12 general federal question jurisdiction; 28 U.S.C. § 1346, original jurisdiction; 5 U.S.C. §  
13 701 *et seq.*, Administrative Procedure Act; 28 U.S.C. § 1651, All Writs Act; 28 U.S.C. §  
14 2201, the Declaratory Judgment Act; 28 U.S.C. § 2241 *et seq.*, habeas corpus; Art. 1, § 9,  
15 Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States  
16 Constitution, and the common law.

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

18 8. The Court must grant the petition for writ of habeas corpus or issue an order to  
19 show cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to  
20 relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a  
21 return “within *three days* unless for good cause additional time, *not exceeding twenty*  
22 *days*, is allowed.” *Id.* (emphasis added).  
23  
24

1 1. Courts have long recognized the significance of the habeas statute in protecting  
2 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the  
3 most important writ known to the constitutional law of England, affording as it does a  
4 *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*,  
5 372 U.S. 391, 400 (1963) (emphasis added).  
6

7 2. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs  
8 courts to give petitions for habeas corpus ‘special, preferential consideration to insure  
9 expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir.  
10 2000) (internal citations omitted). The Ninth Circuit warned against any action creating  
11 the perception “that courts are more concerned with efficient trial management than with  
12 the vindication of constitutional rights.” *Id.*  
13

### 14 VENUE

15 3. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the  
16 Respondents are employees or officers of the United States, acting in their official  
17 capacity; because a substantial part of the events or omissions giving rise to the claim  
18 occur in Imperial County in the Southern District of California where Petitioner is  
19 currently detained, and because there is no real property involved in this action.  
20

### 21 EXHAUSTION OF ADMINISTRATIVE REMEDIES

22 4. In habeas claims, exhaustion of administrative remedies is prudential, not  
23 jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may  
24 waive the prudential exhaustion requirement if “administrative remedies are inadequate

1 or not efficacious, pursuit of administrative remedies would be a futile gesture,  
2 irreparable injury will result, or the administrative proceedings would be void.” *Id.*  
3 (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation  
4 marks omitted)). Petitioner asserts that exhaustion should be waived because  
5 administrative remedies are (1) futile and (2) his continued detention results in irreparable  
6 harm.  
7

8 5. No statutory exhaustion requirements apply to Petitioner’s claim of unlawful  
9 custody in violation of his due process rights, and there are no administrative remedies  
10 that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d  
11 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a “futile exercise because the agency  
12 does not have jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*,  
13 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).  
14

15 6. Exhausting administrative remedies here is futile because Respondents contend  
16 Petitioner is subject to mandatory detention. As such, no request to release Petitioner  
17 from custody would be considered by ICE. Moreover, Immigration Judges in this district  
18 claim to have no jurisdiction to conduct a custody redetermination hearing as to  
19 individuals procedurally situated like Petitioner. Indeed, in contravention to the INA and  
20 long-standing precedent and practice, the Board of Immigration Appeals and Attorney  
21 General have deemed no noncitizen eligible for bond before an immigration judge (with  
22 the exception of noncitizens who entered the U.S. on a visa). As such, any attempts to  
23 exhaust administrative remedies would be entirely futile.  
24

1 7. More importantly, every day that Petitioner remains detained causes him harm that  
2 cannot be repaired. His continued detention puts his physical and mental health at greater  
3 risk, further warranting a finding of irreparable harm and the waiver of the prudential  
4 exhaustion requirement. The Court must consider this in its irreparable harm analysis of  
5 the effects on Petitioner as her detention continues. *See De Paz Sales v. Barr*, No. 19-CV-  
6 07221-KAW, 2020 WL 353465, at \*4 (N.D. Cal. Jan. 21, 2020) (noting that the  
7 petitioner “continues to suffer significant psychological effects from his detention,  
8 including anxiety caused by the threats of other inmates and two suicide attempts,” in  
9 finding that petitioner would suffer irreparable harm warranting waiver of exhaustion  
10 requirement).

11  
12 8. Health concerns are one factor the Court should consider in its irreparable harm  
13 analysis of the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*,  
14 No. 19-CV-07221-KAW, 2020 WL 353465, at \*4 (N.D. Cal. Jan. 21, 2020) (noting that  
15 the petitioner “continues to suffer significant psychological effects from his detention,  
16 including anxiety caused by the threats of other inmates and two suicide attempts,” in  
17 finding that petitioner would suffer irreparable harm warranting waiver of exhaustion  
18 requirement).

19  
20 9. Petitioner has exhausted his administrative remedies. On July 10, 2025, Petitioner  
21 filed a bond redetermination request with the Imperial Immigration Court. On July 17,  
22 2025, the Court conducted a custody redetermination hearing and at the outset of the  
23 hearing, the Court found it did not have jurisdiction to conduct a bond hearing because  
24

1 the Court deemed Petitioner to be “an applicant for admission subject to mandatory  
2 detention under section 235(b)(2) [8 U.S.C. § 1225(b)(2)] of the Immigration and  
3 nationality Act (INA).” Petitioner timely appealed that decision and on September 4,  
4 2025, pursuant to a motion by Petitioner, the Court held another custody redetermination  
5 hearing at which time the Court ordered release on bond in the amount of 2,000.00. Then  
6 on September 15, 2025, the Court issued a Bond Memorandum “to facilitate review of  
7 the Respondent’s appeal,” in which it states, “Subsequent to the Court’s decision, the  
8 Board of Immigration Appeals issued *Matter of YAJURE HURTADO*, 29 I&N Dec. 216  
9 (BIA 2025), which held that the plain language of INA 235(b)(2) divests jurisdiction  
10 from Immigration Judges to hear bond requests or to grant bond to aliens who are present  
11 in the United States without admission. Here, the record does not contain evidence that  
12 Respondent was admitted to the United States, Therefore, under , the Court lacks  
13 jurisdiction to redetermine Respondent’s custody.”

### 16 CUSTODY

17 10. Petitioner is currently in Respondents’ legal and physical custody. They are  
18 detaining him at the Imperial Regional Detention Facility, where he was ultimately  
19 transferred after being arrested by ICE officers at the ICE office in Camarillo, California.  
20 He is under Respondents’ and their agents’ direct control. Prior to his arrest and re-  
21 detention Petitioner was not provided with a constitutionally and statutorily compliant  
22 bond hearing.  
23  
24

**PARTIES**

1  
2 11. Petitioner is a 50-year-old married Afghan father of two children seeking asylum  
3 protection in the United States. Petitioner is of the [REDACTED] and of  
4 [REDACTED] which is a minority group in Afghanistan.

5 During the family's recent ICE check-in, the entire family was detained and separated.  
6 Petitioner was transferred to Imperial, his wife and 11-year-old son were transferred to a  
7 facility in Texas and the 18-year-old daughter is being detained at the Adelanto Detention  
8 Facility.

9  
10 12. Petitioner is currently in Respondents' legal and physical custody at the Imperial  
11 Regional Detention Facility in Imperial, California. Management and Training  
12 Corporation (MTC), a Utah corporation, operates that facility.

13 13. Respondent JOSEPH FREDEN is the Acting Field Office Director of ICE in San  
14 Diego, California and is named in his official capacity. ICE is the component of DHS that  
15 is responsible for detaining and removing noncitizens according to immigration law and  
16 oversees custody determinations. In his official capacity, he is the legal custodian of  
17 Petitioner.

18 14. Respondent TODD M. LYONS is the Acting Director of ICE and is named in his  
19 official capacity. Among other things, ICE is responsible for the administration and  
20 enforcement of the immigration laws, including the removal of noncitizens. In his official  
21 capacity as head of ICE, he is the legal custodian of Petitioner.

22  
23 15. Respondent SIRCE OWEN is the Acting Director of EOIR and has ultimate  
24 responsibility for overseeing the operation of the immigration courts and the Board of

1 Immigration Appeals, including bond hearings. Executive Office for Immigration Review  
2 (EOIR) is the federal agency responsible for implementing and enforcing the INA in  
3 removal proceedings, including for custody redeterminations in bond hearings. She is  
4 sued in her official capacity.

5 16. Respondent KRISTI NOEM is the Secretary of the DHS and is named in her  
6 official capacity. DHS is the federal agency encompassing ICE, which is responsible for  
7 the administration and enforcement of the INA and all other laws relating to the  
8 immigration of noncitizens. In her capacity as Secretary, Respondent Noem has  
9 responsibility for the administration and enforcement of the immigration and  
10 naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107  
11 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a).  
12 Respondent Noem is the ultimate legal custodian of Petitioner.  
13

14 17. Respondent PAM BONDI is the Attorney General of the United States and the  
15 most senior official in the U.S. Department of Justice (DOJ) and is named in her official  
16 capacity. She has the authority to interpret the immigration laws and adjudicate removal  
17 cases. The Attorney General delegates this responsibility to the Executive Office for  
18 Immigration Review (EOIR), which administers the immigration courts and the BIA.  
19

20 18. Respondent JEREMY CASEY is the Warden of the Imperial Regional Detention  
21 Facility where Petitioner is being held. Respondent Jeremy Casey oversees the day-to-  
22 day operations of the Imperial Regional Detention Facility and acts at the Direction of  
23 Respondents Freden, Lyons and Noem. Respondent Jeremy Casey is a custodian of  
24 Petitioner and is named in their official capacity.

**LEGAL FRAMEWORK AND ANALYSIS**

1  
2 19. The Immigration and Nationality Act (INA) prescribes three basic forms of  
3 detention for noncitizens in removal proceedings.

4 20. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-  
5 expedited removal proceedings before an immigration judge (IJ). See 8 U.S.C. § 1229a.  
6 Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their  
7 detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been  
8 arrested, charged with, or convicted of certain crimes are subject to mandatory detention,  
9 see 8 U.S.C. § 1226(c).  
10

11 21. Second, the INA provides for mandatory detention of noncitizens subject to  
12 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking  
13 admission referred to under § 1225(b)(2).

14 22. Last, the Act also provides for detention of noncitizens who have been previously  
15 ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C.  
16 § 1231(a)–(b).

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

18 24. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
19 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L.  
20 No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–  
21 585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act,  
22 Pub. L. No. 119–1, 139 Stat. 3 (2025).  
23  
24

1 25. Following enactment of the IIRIRA, EOIR drafted new regulations explaining that,  
2 in general, people who entered the country without inspection were not considered  
3 detained under § 1225 and that they were instead detained under § 1226(a). See  
4 Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct  
5 of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

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

13 27. On September 5, 2025, the Board of Immigration Appeals issued a precedent  
14 decision in *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025), finding that  
15 noncitizens who entered the United States without inspection were ineligible for bond  
16 redetermination hearings because they were seeking admission, and fell within 8 U.S.C. §  
17 1225(b)(2)(A).  
18

19 28. This legal theory that noncitizens who entered the United States without admission  
20 or parole are ineligible for bond hearings has been universally rejected by the district  
21 courts. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at \*9 (W.D.  
22 Wash. Sept. 30, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL  
23 2591530, at \*3 (C.D. Cal. Sept. 8, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-  
24

1 SKO (HC), 2025 WL 2617256, at \*9 (E.D. Cal. Sept. 9, 2025); *Vasquez Garcia v. Noem*,  
2 3:25-cv-02180-DMS-MMP (SD. Cal. Sept. 3, 2025); *Benitez v. Noem*, No. 5:25-cv-  
3 02190-RGK-AS) C.D. Cal. Aug. 26, 2025); *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-  
4 ODW-DFM (C.D. Cal. Aug. 15, 2025); *Maldonado Bautista v. Santacruz*, 5:25-cv-  
5 01873-SSS-BFM (C.D. Cal. July 28, 2025); *Carmona-Lorenzo v. Trump*, No.  
6 4:25CV3172, 2025 WL 2531521, at \*2 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No.  
7 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025); *Lopez-Campos v.*  
8 *Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at \*8 (E.D. Mich. Aug. 29, 2025);  
9 *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at \*6 (D. Minn.  
10 Aug. 27, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at \*3 (W.D.  
11 La. Aug. 27, 2025) *Rodriguez v. Bostock*, 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025).

12  
13 29. The Board’s interpretation defies the INA. The plain text of the statutory  
14 provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

15 30. Section 1226(a) applies by default to all persons “pending a decision on whether  
16 the [noncitizen] is to be removed from the United States.” These removal hearings are  
17 held under § 1229a, which “decid[e] the inadmissibility or deportability of a[]  
18 [noncitizen].”

19 31. The text of § 1226 also explicitly applies to people charged as being inadmissible,  
20 including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E).  
21 Subparagraph (E)’s reference to such people makes clear that, by default, such people are  
22 afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that  
23  
24

1 it applies to people who face charges of being inadmissible to the United States,  
2 including those who are present without admission or parole.

3 32. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
4 recently entered the United States. The statute's entire framework is premised on  
5 inspections at the border of people who are "seeking admission" to the United States. 8  
6 U.S.C. § 1225(b)(2)(A).

7  
8 33. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to  
9 people like Petitioner who are alleged to have entered the United States without  
10 admission or parole.

11 **STATEMENT OF FACTS**

12 34. Petitioner Mr. Jose Luis VEGA-FIGUEROA (Petitioner) was arrested by  
13 immigration authorities and placed into removal proceedings on June 22, 2025. He has  
14 been present in the United States since 2004.

15 35. Petitioner has his extensive family in the United States, including his U.S. citizen  
16 mother, his U.S. citizen 18-year-old son, as well as U.S. citizen siblings. Petitioner is  
17 eligible and has applied for Cancellation of Removal for Certain Nonpermanent  
18 Residents as a form of relief from removal based on the exceptional and extremely  
19 unusual hardship to his U.S. citizen mother and son.  
20

21 36. On July 10, 2025, Petitioner filed a bond redetermination request with the Imperial  
22 Immigration Court. On July 17, 2025, the Court conducted a custody redetermination  
23 hearing and at the outset of the hearing, the Court found it did not have jurisdiction to  
24

1 conduct a bond hearing because the Court deemed Petitioner to be “an applicant for  
2 admission subject to mandatory detention under section 235(b)(2) [8 U.S.C. §  
3 1225(b)(2)] of the Immigration and nationality Act (INA).” Petitioner timely appealed  
4 that decision and on September 4, 2025, pursuant to a motion by Petitioner, the Court  
5 held another custody redetermination hearing at which time the Court ordered release on  
6 bond in the amount of 2,000.00. Then on September 15, 2025, the Court issued a Bond  
7 Memorandum “to facilitate review of the Respondent’s appeal,” in which it states,  
8 “Subsequent to the Court’s decision, the Board of Immigration Appeals issued *Matter of*  
9 *YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025), which held that the plain language  
10 of INA 235(b)(2) divests jurisdiction from Immigration Judges to hear bond requests or  
11 to grant bond to aliens who are present in the United States without admission. Here, the  
12 record does not contain evidence that Respondent was admitted to the United States,  
13 Therefore, under , the Court lacks jurisdiction to redetermine Respondent’s custody.”  
14  
15

16 37. Petitioner is not eligible for a bond redetermination hearing before an immigration  
17 judge in light of the Board of Immigration Appeals’ precedent decision in *Matter of*  
18 *YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025), as he is charged with having entered  
19 the United States without inspection or admission.  
20

21 ///

22 ///

23 ///

24 ///

**CAUSES OF ACTION**

**COUNT I**

**Violation of 8 U.S.C. § 1226(a)  
*Unlawful Denial of Bond Hearing***

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

39. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted or paroled. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.

40. The application of § 1225(b)(2) to bar Petitioner from receiving a bond redetermination hearing before an immigration judge violates the Immigration and Nationality Act.

**COUNT II**

**Violation of the Administrative Procedure Act  
Unlawful Denial of Bond**

41. Petitioner repeats re-alleges and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

42. Under the Administrative Procedures Act (“APA”), an agency must act in a manner that is not arbitrary or capricious. See 5 U.S.C. § 706(2)(A) (directing courts to “hold unlawful and set aside agency action” that is arbitrary and capricious); *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a

1 “satisfactory explanation” for its action, “including a rational connection between the  
2 facts found and the choice made”).

3 43. A court must “hold unlawful and set aside agency action” that is “arbitrary,  
4 capricious, an abuse of discretion, or otherwise not in accordance with the law,” that is  
5 “contrary to constitutional right [or] power,” or that is “in excess of statutory jurisdiction,  
6 authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).  
7

8 44. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to  
9 noncitizens residing in the United States who are subject to the grounds of inadmissibility  
10 because they originally entered the United States without inspection or parole. Such  
11 noncitizens are detained under § 1226(a), unless they are subject to another detention  
12 provision, such as § 1225(b)(1), § 1226(c) or § 1231.  
13

14 45. The application of § 1225(b)(2) to bar Petitioner from receiving a bond  
15 redetermination hearing before an immigration judge is arbitrary, capricious, and not in  
16 accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).  
17

18 **COUNT III**  
**Violation of Procedural Due Process**

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

21 47. The government may not deprive a person of life, liberty, or property without due  
22 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government  
23 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that  
24

1 the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d  
2 653 (2001).

3 48. Petitioner has a fundamental interest in liberty and being free from official  
4 restraint.

5 49. The government’s detention of Petitioner without a bond redetermination hearing  
6 to determine whether he is a flight risk or danger to others violates his right to due  
7 process.

8  
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Petitioner respectfully request that this Court:

- 11 a. Assume jurisdiction over this matter;
- 12 b. Enjoin Respondents from transferring Petitioner outside the jurisdiction of the  
13 Southern District of California pending the resolution of this case;
- 14 c. Declare that the refusal to allow Petitioner a bond redetermination hearing before  
15 an immigration judge violates the INA, APA, and Due Process;
- 16 d. Order Respondents to immediately release Petitioner from custody on the same  
17 bond and conditions of release as ordered by the Immigration Judge on September  
18 4, 2025.
- 19 e. Alternatively conduct an immediate bond hearing before this Court where DHS  
20 bears the burden of justifying Petitioner’s continued detention by clear and  
21 convincing evidence and the Court takes into consideration alternatives to  
22 detention and Petitioner’s ability to pay a bond;  
23  
24

- 1 f. Alternatively, order an immediate bond hearing before a neutral decisionmaker
- 2 where DHS bears the burden of justifying Petitioner’s continued detention by clear
- 3 and convincing evidence and where alternatives to detention and Petitioner’s
- 4 ability to pay a bond are considered.
- 5
- 6 g. Award reasonable attorneys’ fees and costs pursuant to the Equal Access to Justice
- 7 Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and
- 8 h. Grant such further relief as the Court deems just and proper.

9 Dated: November 18, 2025

Respectfully submitted,

10 By: /s/ Bashir Ghazialam  
11 Bashir Ghazialam  
12 Attorney for Petitioner  
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**VERIFICATION PURSUANT TO 28 U.S.C. 2242**

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

Executed on this November 18, 2025, in San Diego, California.

/s/ Bashir Ghazialam  
Bashir Ghazialam  
Attorney for Petitioner

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