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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA (LAS VEGAS)**

10 JOSE GABRIEL HERNANDEZ | Case No. 2:25-cv-

11 ISIDORO,

12 A# 

13 Petitioner-Plaintiff,

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28 U.S.C.
§ 2241 AND COMPLAINT FOR
DECLARATORY/INJUNCTIVE
RELIEF**

14
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19 v.

20 Michael V. Bernacke, Field Office

21 Director, U.S. Immigration and Customs

22 Enforcement;

23 John Mattos, Warden, Nevada Southern

24 Detention Center;

25 Kristi Noem, Secretary, U.S. Department

**AND EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER & PRELIMINARY
INJUNCTION**

1 of Homeland Security;
2 Rodney S. Scott, Commissioner, U.S.
3 Customs and Border Protection; and
4 Pam Bondi, Attorney General of the
5 United States,
6 Respondents–Defendants.
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10 **INTRODUCTION**

- 11 1. Petitioner **Jose Gabriel Hernandez Isidoro** is a long-time Nevada resident, father
12 of two U.S. citizen children, and fiancé of a lawful permanent resident. He is detained by
13 ICE at **Nevada Southern Detention Center (NSDC)** in Pahrump, Nevada, while his §
14 240 removal proceedings are pending before the **Las Vegas Immigration Court**.
15
16 2. On **November 6, 2025**, Immigration Judge **Glen Baker** issued an “Order of the
17 Immigration Judge” in Jose’s custody-redetermination proceeding. The order states that
18 Jose’s request for a change in custody status is “**Denied, because the Court lacks**
19 **jurisdiction to consider bond in this case. See Matter of Yasjure-Hurtado, 29 I&N**
20 **Dec. 216 (BIA 2025).**” The IJ did **not** make any individualized findings about flight risk,
21 danger, ability to pay, or alternatives to detention.
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23 3. Jose has **never received a bond hearing**. He remains detained solely because
24 EOIR is applying **Matter of Yajure-Hurtado** as a categorical bar to Immigration Judge
25 bond jurisdiction.
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27 4. In the meantime, Jose’s detention is inflicting **severe hardship** on his U.S. citizen
28 children, **Daniel** and **Cinthia**, and his LPR fiancée, **Erika**. Their sworn affidavits describe:

1 his arrest by ICE outside his workplace on or about **October 4**; his role as the children's
2 primary caregiver and financial provider; his two full-time restaurant jobs managing and
3 cooking; his payment of their mother's rent and other bills; and the children's current
4 **insomnia, anxiety, academic decline, and fear of losing their home and relationship**
5 **with their father.**

- 6
- 7 5. This Petition challenges Jose's continued detention as **unlawful** because it is: (1)
8 contrary to the statutory scheme of **8 U.S.C. § 1226(a)**; (2) imposed without the
9 **procedural safeguards** due process requires for civil detention; and (3) not subject to
10 meaningful review absent the writ of habeas corpus. Jose seeks a declaration that §
11 1226(a) governs his detention and an order requiring a prompt, procedurally adequate
12 bond hearing—or his release if such a hearing is not provided by a date certain.
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16 **JURISDICTION AND VENUE**

- 17 6. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas), 28 U.S.C. § 1331
18 (federal question), and the Suspension Clause to satisfy Petitioner's prayer for release.
19 Petitioner challenges the legality of detention, not a discretionary bond amount.

- 20
- 21 7. Venue is proper in the District of Nevada because Petitioner is detained within this
22 District, and the immediate custodian and Field Office Director exercises its duty here, and
23 therefore custody is here. Habeas jurisdiction is in personam and runs to the custodian.
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28 **PARTIES**

1 8. Petitioner is a noncitizen detained by ICE at NSDC, A# 221-461-816, with
2 removal proceedings pending in the Las Vegas Immigration Court.

3 9. Respondent Michael V. Bernacke is the Field Office Director for ICE with custody
4 authority over Petitioner.

5 10. Respondent John Mattos is the Warden of NSDC, where Petitioner is confined.

6 11. Respondents Kristi Noem, Rodney S. Scott, and Pamela J. Bondi are named to
7 ensure complete injunctive relief.
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11 **EXHAUSTION AND PRUDENTIAL CONSIDERATIONS**

12 12. No statute requires exhaustion for this § 2241 claim. Alternatively, exhaustion is
13 futile because the BIA’s published Matter of Yajure-Hurtado categorically adopts a no-
14 bond position, as invoked below; the Immigration Judge has already refused bond
15 jurisdiction on that basis (Ex. 1).
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18 **FACTUAL ALLEGATIONS**

19 13. **Jose has been detained since October 4, 2025.** The prolonged detention is
20 excessive and unwarranted.
21

22 14. Jose’s children, **Daniel (born 2006)** and **Cinthia (born 2001)**, were both born in
23 Las Vegas and are U.S. citizens. **In Daniel Affidavit (Ex 2)** Daniel states he resides at
24  “where my dad lives,” and that he has been in
25 his father’s custody for **the last four years**. He explains that Jose has been detained by
26 ICE “since this recent October 4th,” after being arrested “outside of his workplace”. He is
27 a hard worker who works two full-time jobs—**day-shift manager at Vintner Grill in**
28

1 **Summerlin** and **cook at Viva Michoacan on Sunset, just north of Henderson**. He has
2 helped his son Daniel buy a car and regularly pays for gas and groceries; and Consistently
3 talks with Daniel “to see that I’m on the right track to being independent.”

4 14. Daniel describes Jose as his **closest friend**, stating that he does not start anything
5 important without talking to his father first, and that Jose has guided him away from a
6 risky boxing career toward a more stable professional life. Daniel reports that he now
7 works as a lifeguard at Circus Circus and is building an online clothing business, but that
8 he is **struggling emotionally** without his father, experiencing **difficulty sleeping, worry**
9 **about the future, and pain at the thought that his father will miss holidays,**
10 **birthdays, and milestones.**

11 15. **In Cinthia’s Affidavit (Ex 3)**, Cinthia explains that she shares time between her
12 mother’s home at [REDACTED] and Jose’s apartment at [REDACTED], under
13 a **“fifty / fifty custody arrangement”** where she stays with her dad on Friday–Sunday
14 nights and with her mom Monday–Thursday.

15 16. She states that Jose has been detained since “this recent October 4th,” after he was
16 arrested by ICE outside his workplace. She describes him as “the hardest worker I’ve ever
17 known,”. Jose also pays Cinthia’s mother “several hundred each month” because he earns
18 more and the mother is undocumented. Cinthia recounts how Jose’s work ethic is driven
19 by his childhood in **extreme poverty in Michoacan, Mexico**, his refusal to let his children
20 grow up the same way, and his constant efforts to fill their lives with joy—weekend swap
21 meets, outings, ice skating, and constant encouragement when she faces bullying or
22 academic struggles.

1 17. Since Jose's detention, Cinthia reports that her **grades have fallen**, she "cannot
2 focus," and she now barely passes her classes. She had dreamed of graduating from Clark
3 High School with both parents present at the UNLV ceremony and then attending
4 community college and transferring to UNLV to study **architecture or interior design**.
5 Now, she feels **hopeless about her career goals** and describes difficulty sleeping at night,
6 worrying about her father and their future.
7

8 18. Jose's fiancée, **Erika Saldivar Salazar**, is a lawful permanent resident who has
9 lived in the United States for 14 years and resides at [REDACTED]. She
10 has been in a romantic relationship with Jose for eight years and refers to him as her
11 "marido," reflecting a committed, marriage-like partnership in her culture. (Ex 4, Affidavit
12 of Erika Saldivar Salazar)
13

14 29. Erika explains that Jose is **very low energy and depressed in detention**, and that
15 he worries constantly about his two children who are largely dependent upon him. She
16 describes him as a "very good man who works tirelessly for his kids' wellbeing," who is
17 kind and loving to her but prioritizes his children's needs, taking them to appointments
18 and where they need to go.
19

20 30. Erika recounts that she and Jose own property together, spend time at her
21 mother's cabin in Pahrump, and share a life built around work, family, and modest trips to
22 California and Utah. She hopes to marry him once she can finalize her own divorce.
23

24 33. Collectively, the affidavits establish that Jose is **the primary financial provider,**
25 **central caregiver,** and **emotional anchor** for his U.S. citizen children and LPR fiancée,
26 and that his detention has triggered a **financial crisis** and profound emotional harm in the
27 household.
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4 **LEGAL BACKGROUND**

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6 34. The INA prescribes three principal detention tracks for noncitizens in removal
7 proceedings. First, **8 U.S.C. § 1226** governs detention for individuals in **standard**
8 **removal proceedings before an Immigration Judge** under **§ 1229a**. See **8 C.F.R. §§**
9 **1003.19(a), 1236.1(d)** (authorizing IJ custody redeterminations for those detained under §
10 1226(a)); by contrast, certain noncitizens with specified criminal or security grounds are
11 subject to **mandatory detention under § 1226(c)**.

12
13 35. Second, **8 U.S.C. § 1225(b)** provides for **mandatory detention** in two narrow
14 “admissions” contexts: (i) expedited removal under **§ 1225(b)(1)** and (ii) certain **recent**
15 **arrivals “seeking admission”** processed under **§ 1225(b)(2)**.

16
17 36. Third, **8 U.S.C. § 1231** governs detention **after a final removal order**, including
18 during withholding-only proceedings. See **§ 1231(a)–(b)**.

19
20 37. This case concerns the **pre-final-order** detention provisions at **§§ 1226(a)** and
21 **1225(b)(2)**.

22
23 38. Congress enacted §§ 1226 and 1225 in **IIRIRA (1996)**, reorganizing detention
24 authority but preserving the basic division between **interior custody under § 1226** and
25 **admissions/border processing under § 1225**. See Pub. L. No. 104–208, Div. C, §§ 302–
26 03. Congress **recently amended § 1226(a)** in the **Laken Riley Act (2025)**, to address
27
28

1 criminal convictions warranting mandatory detention, an issue absent in this case, without
2 altering the longstanding role of **IJ bond authority for § 1226(a) detainees**.

3
4 39. Following IIRIRA, **EOIR and DHS** issued federal regulations as guidance which
5 provide that, **as a general matter, individuals who have entered this country without**
6 **inspection (EWI) and are placed in § 1229a proceedings are detained under § 1226,**
7 not § 1225. See **Inspection and Expedited Removal of Aliens; Detention and**
8 **Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed.**
9 **Reg. 10312, 10323 (Mar. 6, 1997)** (recognizing § 1226(a) detention with IJ bond
10 review).

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13 40. For decades thereafter, **noncitizens who were not treated as “arriving”** and
14 were placed in **ordinary § 1229a proceedings** received **bond hearings under § 1226(a),**
15 unless **§ 1226(c)** applied. That practice accords with pre-IIRIRA law (**former § 1252(a)**)
16 and contemporaneous legislative history noting **§ 1226(a)** “restates” the detention
17 authority previously found in § 1252(a).

18
19
20 41. On **July 8, 2025**, ICE—“in coordination with” DOJ—issued an **Interim**
21 **Guidance** purporting to reclassify **all EWI noncitizens** as **§ 1225(b)(2)** detainees,
22 regardless of **when** or **where** they were apprehended, and irrespective of **years of**
23 **residence** in the United States.

24
25 42. The **Interim Guidance** (titled “**Interim Guidance Regarding Detention**
26 **Authority for Applicants for Admission**”) asserts that **all EWIs** are now “applicants
27
28

1 **for admission”** who must be detained **under § 1225(b)(2)(A)**, thereby **foreclosing IJ**
2 **bond hearings**. The policy applies nationwide and retroactively to long-settled residents.

3
4 43. On **September 5, 2025**, the **BIA** issued **Matter of Yajure-Hurtado, 29 I&N**
5 **Dec. 216 (BIA 2025)**, adopting the same position: **all noncitizens present without**
6 **admission or parole are subject to § 1225(b)(2)(A)** and thus **ineligible for IJ bond**.

7
8 44. In the months since, **dozens of federal district courts**—including multiple courts
9 within the Ninth Circuit—have **rejected** DHS/EOIR’s categorical **§ 1225(b)(2)** theory
10 and **declined to follow Yajure**, holding that **§ 1226(a)** governs detention of long-resident
11 EWIs in **§ 1229a** proceedings and ordering **prompt § 1226(a) bond hearings (or**
12 **release)** with appropriate procedural safeguards.

13
14 45. The earliest wave of decisions arose after **Tacoma IJs** ceased providing bond
15 hearings to EWIs with long residence. The **Western District of Washington** held that
16 reading of the INA **likely unlawful**, concluding **§ 1226(a)**, **not § 1225(b)**, governs
17 persons **not apprehended upon arrival** to the United States. **Rodriguez-Vazquez v.**
18 **Bostock**, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

19
20
21 46. Since then, **courts across the country** have adopted the same reading of the
22 **INA’s detention authorities**, granting **TRO/PI** relief and mandating **seven-day bond-**
23 **hearing-or-release** remedies with **DHS’s clear-and-convincing burden, ability-to-pay**
24 and **ATD** considerations, and **written findings**—and expressly **rejecting** the blanket
25 reliance on **§ 1225(b)(2)/Yajure** in interior cases.
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1 47. The reason courts have **uniformly rejected** the 2025 policy and **Yajure** is textual
2 and structural: it **defies the INA**. The statutory scheme shows that **§ 1226(a)** is the
3 **default** detention authority for **§ 1229a** removal proceedings, while **§ 1225(b)** is a
4 **specialized border-inspection regime**.

5
6 48. **Section 1226(a)** by its terms governs detention “**pending a decision on whether**
7 **the [noncitizen] is to be removed from the United States.**” Those merits
8 determinations occur in **§ 1229a** proceedings to decide **inadmissibility or**
9 **deportability**—the very posture here.

10
11
12 49. Congress also wrote **§ 1226(c)** to encompass certain **inadmissibility** categories
13 (e.g., **§ 1182** grounds), confirming that **§ 1226** reaches **noncitizens charged as**
14 **inadmissible**—including some who entered without inspection. Under the familiar
15 negative-implication canon, when **Congress creates specific exceptions (mandatory**
16 **detention under § 1226(c))**, it **confirms that the statute otherwise applies**—i.e., **§**
17 **1226(a)** supplies **bond-eligible** authority for everyone **not** covered by those exceptions.
18 See, e.g., **Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.**, **559 U.S. 393,**
19 **400 (2010)**.

20
21
22 50. Accordingly, **§ 1226** applies to individuals charged as **inadmissible** and placed in **§**
23 **1229a proceedings**—which is this case—unless a specific **§ 1226(c)** exception applies.
24 **Nothing** in **§ 1226** excludes EWIs arrested in the **interior** from its scope.

25
26 51. By contrast, **§ 1225(b)** is tailored to **border/port-of-entry inspections** of persons
27 **“seeking admission.”** Its mandatory detention scheme is rooted in **the government’s**
28

1 **admissions authority at the border.** See **Jennings v. Rodriguez, 583 U.S. 281, 287**
 2 **(2018)** (describing § 1225(b)'s operation **“at the Nation’s borders and ports of entry”**).
 3 Extending § 1225(b)(2) to **long-resident EWIs arrested in the interior** collapses the
 4 statute’s core distinction and **nullifies § 1226(a)**.
 5

6 52. **Conclusion.** Because Petitioner **was not apprehended at the border** and is
 7 litigating removability in **§ 1229a proceedings**, **§ 1226(a)** governs his detention, entitling
 8 him to an **individualized IJ bond hearing**. The categorical reliance on **§**
 9 **1225(b)(2)/Yajure to foreclose IJ bond jurisdiction is contrary to the statute’s text,**
 10 **structure, history, and decades of practice**, and should be enjoined.
 11

12 53. **Recent Nevada District Court practice (Las Vegas)**¹. In 2025, **Las Vegas**
 13 **judges** granted TRO/PI relief in materially similar cases—**holding § 1226(a) governs and**
 14 **enjoining reliance on § 1225(b)(2)/Yajure to foreclose bond jurisdiction—then**
 15 **ordering a bond hearing within seven (7) days or release, with DHS bearing a clear-**
 16 **and-convincing burden, and with ability-to-pay, ATD, and written findings**
 17 **requirements.**
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22 CLAIMS FOR RELIEF

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 24 ¹ **Maldonado Vázquez v. Feeley**, No. 2:25-cv-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17,
 25 2025) (granting PI; holds § 1226(a) governs and enjoins reliance on § 1225(b)(2) to deny bond
 26 **Sanchez Roman v. Noem**, No. 2:25-cv-01684-RFB-EJY, 2025 WL 2710211 (D. Nev. Sept. 23, 2025)
 (orders § 1226(a) bond hearing within 7 days or release; enjoins use of § 1225(b)(2))
 27 **E.C. v. Noem**, No. 2:25-cv-01789-RFB-BNW (D. Nev. Oct. 14, 2025) (granting PI; incorporates
Maldonado; orders 7-day § 1226(a) bond hearing or release) (order on docket ECF 19)
 28 **Carlos v. Noem**, No. 2:25-cv-01900-RFB-BNW (D. Nev. Oct. 10, 2025) (granting TRO; cites **Maldonado &**
Sanchez Roman; rejects § 1225(b)(2) theory and the EOIR automatic-stay practice) (order at ECF 21)

1 COUNT I – Detention Contrary to Statute (INA § 236(a); 28 U.S.C. § 2241).

2 Respondents’ categorical reliance on § 1225(b)(2) and Yajure-Hurtado to deny bond
3 jurisdiction is contrary to § 1226(a), which governs interior custody during removal
4 proceedings.

5
6 COUNT II – Fifth Amendment Due Process. Prolonged civil detention without an
7 individualized bond hearing violates due process. The Court should order a prompt,
8 procedurally adequate bond hearing or release.

9
10 COUNT III – Habeas (Suspension Clause). The writ lies to test the legality of
11 executive detention, and the Court should order a § 1226(a) bond hearing with adequate
12 procedures, or release.

13
14 **Emergency Motion for TRO and Preliminary Injunction (Winter factors)**

15
16 54. **Likelihood of success.** Jose is an **interior arrestee** with long residence and qualifies for
17 cancelation relief. The government’s position **categorically forecloses** bond based on §
18 **1225(b)(2)/Yajure** rather than conducting the **individualized § 1226(a)** analysis
19 Congress prescribed. **Nevada district rulings** confronting this policy have already
20 determined that § **1226(a)** governs and have enjoined the government from using §
21 **1225(b)(2)/Yajure** to block bond.

22
23
24 55. **Irreparable harm.** The **ongoing loss of liberty** is irreparable. Here the harm is magnified:
25 Jose’s children and Fiancé are suffering emotionally and financially because of his
26 prolonged detention.

1 56. **Balance of equities & public interest.** The equities and public interest favor
2 **individualized, lawful custody determinations.** The record shows **strong community**
3 **ties, stable employment, and family involvement, and daily parenting**—all
4 undercutting flight risk and danger. (Ex 2-3) Tailored relief protects both liberty and
5 safety by ensuring consideration of **non-financial conditions** and **ATDs.**
6

7 57. **Requested TRO/PI terms (consistent with recent Nevada orders).** Order the
8 government to:
9

- 10 • Provide a **§ 1226(a) bond hearing within 7 days** before an IJ;
11
12 • Place the **burden on DHS** to prove **danger or flight risk by clear and convincing**
13 **evidence;**
14
15 • Require **contemporaneous written findings;**
16
17 • Require consideration of **ability to pay** and **alternatives to detention;** and
18
19 • If the hearing does **not** occur by the deadline, **release** Mario forthwith on appropriate
20 conditions.

21 **REQUESTED RELIEF**

22 Petitioner respectfully asks the Court to:

- 23
24 A. Declare that 8 U.S.C. § 1226(a) governs Petitioner's detention and that reliance on §
25 1225(b)(2)/Yajure-Hurtado to deny bond jurisdiction is unlawful.
26
27 B. Enjoin Respondents from withholding a bond hearing on that basis.
28

1 C. Order a bond hearing within seven (7) days before an Immigration Judge under §
2 1226(a), at which DHS bears the burden by clear and convincing evidence to prove
3 danger or flight risk, with consideration of ability to pay and alternatives to detention
4 and with contemporaneous written findings; if no hearing occurs by the deadline, order
5 immediate release on appropriate conditions.
6

7 D. Grant any further just relief.
8

9 **Attorney Verification (28 U.S.C. §§ 2242, 1746)**

10 **I, Jon Eric Garde**, counsel for Petitioner, declare under penalty of perjury that the factual
11 allegations in this Petition are true and correct to the best of my knowledge, information, and
12 belief, based on my review of Petitioner's records, court filings, agency records, and the attached
13 exhibits, and on communications with Petitioner, who is presently detained at NSDC. Because
14 Petitioner is detained and time is of the essence given the continuing harm to the petitioner and his
15 family, I am executing this verification on his behalf pursuant to 28 U.S.C. § 2242.
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19 Dated: 11/20/2025 at Las Vegas

/s/ Jon Eric Garde, Esq.

20 Jon Eric Garde, Esq. Counsel for Petitioner
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CERTIFICATE OF SERVICE

I, Jon Eric Garde, Esq., hereby certify that on November 20, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, with copies sent by Certified

Mail to the following:

1. Michael V. Bernacke, Field Office Director, ICE (ERO – Salt Lake City)
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3. Kristi Noem, Secretary, U.S. Department of Homeland Security
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4. Rodney S. Scott, Commissioner, U.S. Customs and Border Protection
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1 1300 Pennsylvania Avenue NW

2 Washington, DC 20229

3 5. Pamela J. Bondi, Attorney General of the United States

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6 Washington, DC 20530-0001

7
8 Respectfully submitted,

9
10 /s/ Jon Eric Garde, Esq.

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