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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Kevin Ariel SALGUERO Y SALGUERO, *and*,  
Juan Manuel GARCIA-HERNANDEZ

Case No. 25-2328

Petitioners,

**PETITION FOR WRIT OF  
HABEAS CORPUS PURSUANT TO  
28 U.S.C. §2241**

v.

Kristi NOEM, Secretary, U.S. Department of  
Homeland Security, in her official capacity;  
U.S. DEPARTMENT OF HOMELAND  
SECURITY; Pamela J. BONDI, U.S. Attorney  
General, in her official capacity; Todd  
LYONS, Acting Director for U.S. Immigration  
and Customs Enforcement, in his official  
capacity; U.S. IMMIGRATION AND  
CUSTOMS ENFORCEMENT; Jason  
KNIGHT, Acting Field Office Director, Salt  
Lake City Field Office; EXECUTIVE OFFICE  
FOR IMMIGRATION REVIEW; Sirce OWEN,  
Acting Director for Executive Office of  
Immigration Review, in her official capacity;  
LAS VEGAS IMMIGRATION COURT; John  
MATTOS, Warden of Nevada Southern  
Detention Center, in his official capacity; Reggie  
RADER, Police Chief, Henderson Detention  
Center, in his official capacity,

Respondents.

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## INTRODUCTION

1. Petitioners Kevin Ariel Salguero y Salguero (“Mr. Salguero”) and Juan Manuel Garcia-Hernandez (“Mr. Garcia-Hernandez”) are long-time Nevada residents who are currently held in civil immigration detention within this District. Mr. Salguero is detained at the Henderson Detention Center in Henderson, Nevada, and Mr. Garcia-Hernandez is detained at the Nevada Southern Detention Center in Pahrump, Nevada. Both were arrested in the interior of the United States, placed into removal proceedings under 8 U.S.C. § 1229a, and are being denied access to the individualized bond process that has long governed such cases under 8 U.S.C. § 1226(a).
2. Instead, DHS and EOIR now claim Petitioners are mandatorily detained under 8 U.S.C. § 1225(b)(2) because they originally entered the country without inspection years ago. That theory comes from DHS’s July 8, 2025 “Interim Guidance Regarding Detention Authority for Applicants for Admission” and the Board of Immigration Appeals’ recent decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), which direct that all “present without admission” noncitizens—no matter how long they have lived here or where they were arrested—are detained under § 1225(b)(2) and categorically ineligible for bond.
3. That is not what the statute says, and it is not how the INA has operated for nearly three decades. For decades after IIRIRA, DHS and EOIR consistently treated interior arrests in § 1229a proceedings—like Petitioners’—as governed by § 1226(a), with Immigration Judges exercising bond jurisdiction, subject only to the narrow mandatory-detention categories in § 1226(c).
4. In a line of recent decisions, including *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025) and *Escobar-Salgado v. Mattos*, 25-cv-01872-RFB-EJY, 2025 WL 3205356 (D. Nev. Nov. 17, 2025) in this District, federal

1 courts have rejected DHS's new attempt to convert § 1225 into a catch-all detention  
2 authority for long-settled residents arrested in the interior and to use the EOIR-43  
3 automatic stay to nullify IJ custody determinations. Those courts recognize that the text,  
4 structure, and history of the INA preserve § 1226(a) as the default detention authority in  
5 § 1229a proceedings and that EOIR's automatic-stay regulation raises serious  
6 constitutional concerns.

7 5. Petitioner Mr. Salguero is a 29-year-old national of Guatemala who has lived in the United  
8 States for approximately over ten (10) years. He is the devoted father of his five-year-old  
9 U.S. citizen daughter, L.E.S. born in January of 2020, who has already suffered significant  
10 emotional and financial hardship as a result of his detention. He was arrested in the interior  
11 of Nevada, far from any port of entry, and now faces prolonged detention even though he  
12 is in standard § 1229a proceedings and is neither a danger nor a flight risk.

13 6. Petitioner Mr. Garcia-Hernandez is a 49-year-old native and citizen of Mexico who has  
14 lived in the United States since approximately January 15, 1999. He has resided and  
15 worked in Nevada for decades, most recently in Pahrump, and is the father of two U.S.-  
16 citizen daughters, Jennifer Garcia (born [REDACTED]) and Alexandra Garcia (born  
17 [REDACTED]). He is prima facie eligible to adjust status under INA § 245(i) based on  
18 a labor certification filed on or before April 30, 2001, and a pending I-130 petition filed  
19 by his U.S.-citizen daughter. Yet DHS insists that he must remain detained under 8 U.S.C.  
20 § 1225(b)(2) and has informed the Immigration Judge that, even if proceedings are  
21 terminated to allow USCIS to adjudicate his application, DHS will simply issue and lodge  
22 a new Notice to Appear and he will remain in custody.

23 7. In Mr. Garcia-Hernandez's case, this litigation posture weaponizes a controversial  
24 detention theory, DHS's assertion that he is an "applicant for admission" subject to

1 mandatory detention throughout his removal proceedings and any re-initiated proceedings,  
2 to block a respondent from accessing relief Congress expressly authorized in INA § 245(i)  
3 and recognized in Matter of Coronado Acevedo, 28 I&N Dec. 648 (A.G. 2022). It  
4 threatens to keep him in custody not because he is dangerous or a flight risk, but because  
5 the government objects to the forum and timing of his relief and seeks to preserve  
6 detention as leverage rather than as a narrowly tailored means of ensuring appearance and  
7 public safety.

8 8. Petitioners thus challenge (1) DHS's unlawful expansion of § 1225(b)(2) to cover long-  
9 settled interior arrestees in § 1229a proceedings; (2) EOIR's implementation of that  
10 expansion through *Yajure Hurtado* and the EOIR-43 automatic stay; and (3) the resulting  
11 prolonged mandatory detention without meaningful bond hearings for Petitioners, despite  
12 strong equities and viable relief.

13 9. Petitioners seek a writ ordering their immediate release under reasonable conditions or, in  
14 the alternative, a prompt custody redetermination hearing under § 1226(a) before an  
15 Immigration Judge, at which the government must justify any continued detention by clear  
16 and convincing evidence and may not rely on § 1225(b)(2), *Yajure Hurtado*, or the  
17 automatic-stay regulation to foreclose bond.

### 18 JURISDICTION

19 10. Petitioners are in the physical custody of Respondents and detained at the Henderson  
20 Detention Center, in Henderson, Nevada, and the Nevada Southern Detention Center in  
21 Pahrump, Nevada.

22 11. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331  
23 (federal question); the INA, 8 U.S.C. §§ 1101-1538, and its implementing regulations; the  
24

1 APA 5 U.S.C. §§ 500-596, 701-706; and Article I, § 9, clause 2 of the United States  
2 Constitution (the Suspension Clause).

3 12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,  
4 28 U.S.C. § 2201 *et seq.*; the APA, 5 U.S.C. §§ 702 & 706; the All Writs Act, 28 U.S.C. §  
5 1651; Federal Rule of Civil Procedure 65; and the Court’s inherent equitable powers.

### 6 VENUE

7 13. Venue lies in the District of Nevada because Petitioners are detained within this District at  
8 the Henderson Detention Center in Henderson, Nevada, and at the Nevada Southern  
9 Detention Center in Pahrump, Nevada, and their immediate custodian is located here. See  
10 *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 493–500 (1973).

11 14. Venue is also proper under 28 U.S.C. § 1391(e) because a substantial part of the events or  
12 omissions giving rise to Petitioners’ claims occurred in this District, including their arrests,  
13 transfers to ICE custody, and ongoing detention.

### 14 REQUIREMENTS OF 28 U.S.C. § 2243

15 15. The Court must grant the petition for writ of habeas corpus or order Respondents to show  
16 cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an  
17 order to show cause is issued, the Respondents must file a return “within three days unless  
18 for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

19 16. Habeas corpus is “perhaps the most important writ known to the constitutional law . . .  
20 affording as it does a swift and imperative remedy in all cases of illegal restraint or  
21 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application  
22 for the writ usurps the attention and displaces the calendar of the judge or justice who  
23 entertains it and receives prompt action from him within the four corners of the  
24 application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

**PARTIES**

17. Petitioner Kevin Salguero y Salguero (“Mr. Salguero”) is a 29-year-old native and citizen of Guatemala who entered the United States without inspection in or about August 2015 and has resided continuously in the country for over ten (10) years. Before his detention, he lived in Las Vegas, Nevada, with his family. Mr. Salguero is the father of a U.S.-citizen daughter, L.E.S., born in January 2020, who is five years old. L.E.S. depends on him for emotional and financial support and has been severely affected by his detention. Mr. Salguero has no significant criminal record, strong family and community ties, and a record of work and contribution in Nevada. He is currently detained at the Henderson Detention Center in Henderson, Nevada. DHS has charged Mr. Salguero as removable under 8 U.S.C. §§ 1182(a)(6)(A)(i), INA § 212(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, and under §§ 1182(a)(7)(A)(i)(I), INA § 212(a)(7)(A)(i)(I), as an immigrant not in possession of a valid unexpired passport, immigrant visa, or other valid entry document required by the Act.

18. Petitioner Juan Manuel Garcia-Hernandez (“Mr. Garcia-Hernandez”) is a 49-year-old native and citizen of Mexico who entered the United States without inspection through Nogales, Sonora, on or about January 15, 1999. He has resided and worked in Nevada since that time, most recently at [REDACTED] Nevada 89048. Mr. Garcia-Hernandez is the father of two U.S.-citizen daughters, Jennifer Garcia (born [REDACTED]) and Alexandra Garcia (born [REDACTED]), both of whom were born in Las Vegas, Nevada. His daughters describe him as a devoted, hands-on father who has provided consistent financial and emotional support. DHS has charged Mr. Garcia-Hernandez as removable under 8 U.S.C. §§ 1182(a)(6)(A)(i), INA § 212(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, and under §§ 1182(a)(7)(A)(i)(I),

1 INA § 212(a)(7)(A)(i)(I), as an immigrant not in possession of a valid unexpired passport,  
2 immigrant visa, or other valid entry document required by the Act.

3 19. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security  
4 (“DHS”) and is responsible for the administration and enforcement of the Immigration and  
5 Nationality Act (“INA”) and oversees ICE, which is responsible for the Petitioners’  
6 detention. Defendant Noem has ultimate custodial authority over Petitioners and is sued in  
7 her official capacity.

8 20. Respondent U.S. Department of Homeland Security (“DHS”) is the federal agency  
9 responsible for implementing and enforcing the INA, including the detention and removal  
10 of noncitizens. Respondent DHS is the legal custodian of the Petitioners.

11 21. Respondent Pamela Bondi is the Attorney General of the United States and administers the  
12 Department of Justice, including EOIR, the BIA, and the Immigration Courts. Respondent  
13 Bondi is sued in her official capacity.

14 22. Respondent Todd Lyons is the Acting Director and Senior Officer Performing the Duties  
15 of the Director of ICE. Respondent Lyons is responsible for ICE’s policies, practices, and  
16 procedures, including those relating to the detention of immigrants during their removal  
17 procedures. Respondent Lyons is a legal custodian of Petitioners. Respondent Lyons is  
18 sued in his official capacity.

19 23. Respondent U.S. Immigration and Customs Enforcement (“ICE”) is the subagency of DHS  
20 that is responsible for carrying out removal orders and overseeing immigration detention.  
21 Respondent ICE is a legal custodian of Petitioners.

22 24. Respondent Jason Knight is the Acting Field Office Director for ICE’s Salt Lake City Field  
23 Office, which exercises authority over the detention and removal of noncitizens in Nevada,  
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1 including Petitioners. He is the Petitioners' legal custodian for immigration purposes and  
2 is sued in his official capacity.

3 25. Respondent Executive Office for Immigration Review ("EOIR") is the federal agency  
4 responsible for implementing and enforcing the INA in removal proceedings, including for  
5 custody redeterminations in bond hearings.

6 26. Respondent Sirce Owen is the Acting Director of EOIR and has ultimate responsibility for  
7 overseeing the operation of the immigration courts and the Board of Immigration Appeals,  
8 including bond proceedings. She is sued in her official capacity.

9 27. Respondent Las Vegas Immigration Court is the adjudicatory body within EOIR with  
10 jurisdiction over the removal and bond cases of the Petitioners.

11 28. Respondent John Mattos is the Warden of Nevada Southern Detention Center in Pahrump,  
12 Nevada. He has day-to-day physical custody over Petitioner Garcia-Hernandez. He is sued  
13 in his official capacity as an immediate custodian.

14 29. Respondent Reggie Rader is the Police Chief responsible for the Henderson Detention  
15 Center in Henderson, Nevada. He has day-to-day physical custody over Petitioner Salguero.  
16 He is sued in his official capacity as an immediate custodian.

## 17 **LEGAL FRAMEWORK**

### 18 **A. The INA's Three Detention Regimes**

19 30. The INA prescribes three principal detention schemes for most noncitizens in removal  
20 proceedings:

- 21 a. 8 U.S.C. § 1226 – detention "pending a decision on whether the alien is to be  
22 removed," including discretionary detention with bond under § 1226(a) and narrow  
23 mandatory detention for certain criminal categories under § 1226(c);  
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1 b. 8 U.S.C. § 1225(b) – mandatory detention of certain “applicants for admission”  
2 encountered at or near the border during inspection; and

3 c. 8 U.S.C. § 1231(a) – post-order detention for individuals with final orders of  
4 removal.

5 31. Section 1226(a) is the default detention authority for noncitizens in § 1229a removal  
6 proceedings who have been arrested in the interior of the United States. It authorizes DHS  
7 to arrest and detain a person “pending a decision on whether the alien is to be removed”  
8 and permits release on bond or conditional parole.

9 32. Section 1225(b)(2), by contrast, governs certain “applicants for admission” at or near the  
10 border who are in the process of inspection and not subject to expedited removal under §  
11 1225(b)(1). The Supreme Court has described § 1225 as applying at “the Nation’s borders  
12 and ports of entry,” where the government determines whether a noncitizen seeking entry  
13 is admissible.

14 33. Section 1231 applies only after entry of a final order of removal; Petitioners are not subject  
15 to § 1231 because their § 1229a proceedings are ongoing and not resolved by a final,  
16 executable order.

### 17 **B. Longstanding Agency Practice and 1997 Regulations**

18 34. Since IIRIRA’s enactment in 1996, DHS and EOIR implemented the INA by treating  
19 interior arrests in § 1229a proceedings as governed by § 1226(a). EOIR’s 1997 regulations,  
20 promulgated at 62 Fed. Reg. 10312 (Mar. 6, 1997), drew a sharp distinction between  
21 “arriving aliens” at the border and individuals arrested in the interior; Immigration Judges  
22 were given bond jurisdiction for the latter.

23 35. Under this regime, noncitizens like Petitioners—who entered without inspection but were  
24 later arrested deep inside the United States and placed into § 1229a proceedings—were

1 almost uniformly treated as § 1226(a) detainees with access to IJ bond hearings, subject  
2 only to § 1226(c) where applicable.

3 **C. DHS’s July 2025 “Interim Guidance” and *Matter of Yajure Hurtado***

4 36. On July 8, 2025, ICE, “in coordination with” DOJ, issued the “Interim Guidance Regarding  
5 Detention Authority for Applicants for Admission,” asserting that anyone present without  
6 admission or parole is an “applicant for admission” detained under § 1225(b)(2), regardless  
7 of whether they have resided in the United States for months, years, or decades, and  
8 regardless of where they are arrested.

9 37. In September 2025, the BIA issued Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025),  
10 formalizing that position and holding that IJs lack bond authority over noncitizens deemed  
11 detained under § 1225(b)(2) by virtue of being “present without admission.”

12 38. This late-breaking reinterpretation reverses decades of practice and effectively eliminates  
13 bond jurisdiction for a broad class of long-term residents in § 1229a proceedings—like  
14 Petitioners—without any clear statutory basis.

15 **D. Emerging Federal Court Decisions**

16 39. Federal courts around the country, including this Court, have rejected DHS’s expanded  
17 view of § 1225(b)(2). In decisions such as *Vazquez v. Feeley* and *Escobar-Salgado v.*  
18 *Mattos*, this Court has held that:

- 19 a. § 1226(a) remains the default detention authority for individuals in § 1229a  
20 proceedings who were arrested in the interior;
- 21 b. § 1225(b) is limited to detention incident to border inspection and does not apply years  
22 later to long-settled residents apprehended deep inside the country; and
- 23  
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1 c. The EOIR-43 automatic-stay regulation, 8 C.F.R. § 1003.19(i)(2), which allows DHS  
2 to automatically block release ordered by an IJ without meaningful procedural  
3 safeguards, is unconstitutional and contrary to the INA.

4 40. These decisions reflect a consistent recognition that DHS's new theory upends the carefully  
5 structured balance Congress created between §§ 1225, 1226, and 1231 and raises grave  
6 constitutional concerns when used to impose prolonged mandatory detention on long-  
7 settled residents with strong equities and viable relief.

## 8 **FACTS**

### 9 **A. Petitioner Kevin Salguero y Salguero**

10 41. Mr. Salguero entered the United States without inspection in approximately August of 2015  
11 and has lived in the United States for over 10 years. He has made his home in Nevada and  
12 developed significant family and community ties.

13 42. Mr. Salguero is the father of a U.S.-citizen daughter, L.E.S., born in January of 2020. She  
14 is now five years old. She and her mother rely on his income and support; his detention has  
15 caused acute emotional distress to a very young child and disrupted the family's financial  
16 stability.

17 43. On or about October 16, 2025, while living in Las Vegas, Nevada, Mr. Salguero was  
18 arrested in the interior of the United States, far from any port of entry, and subsequently  
19 transferred to ICE custody. He is detained at the Henderson Detention Center pending  
20 removal proceedings.

21 44. DHS issued a Notice to Appear placing him into § 1229a removal proceedings before the  
22 Las Vegas Immigration Court, charging him as removable under 8 U.S.C. §§  
23 1182(a)(6)(A)(i), INA § 212(a)(6)(A)(i), as an alien present in the United States without  
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1 being admitted or paroled, and under §§ 1182(a)(7)(A)(i)(I), INA § 212(a)(7)(A)(i)(I) and  
2 related grounds.

3 45. On November 13, 2025, Mr. Salguero requested a custody redetermination hearing. On  
4 November 17, 2025, Mr. Salguero appeared for a custody redetermination hearing before  
5 Immigration Judge Ann McDermott. The Immigration Judge issued a written “Order of the  
6 Immigration Judge” denying his request based upon the following finding: “Denied,  
7 because the respondent entered without inspection, is an applicant for admission pursuant  
8 to INA 235(b) and thus is subject to mandatory detention. Matter of Yajure Hurtado, 29  
9 I&N Dec. 216 (BIA 2025)”. The order reflects that the Immigration Court did not make  
10 any individualized finding of danger or flight risk; bond was denied solely because the  
11 court treated Mr. Salguero as an “applicant for admission” under § 235(b) (8 U.S.C. §  
12 1225(b)(2)) and therefore mandatorily detained.

13 46. As a result, Mr. Salguero remains in mandatory detention, without any meaningful  
14 opportunity to seek release under § 1226(a), despite strong family ties, lack of significant  
15 criminal history, and the severe hardship his detention imposes on his five-year-old  
16 daughter.

17 **B. Petitioner Juan Manuel Garcia-Hernandez**

18 47. Mr. Garcia-Hernandez entered through Nogales, Sonora on or about January 15, 1999,  
19 without inspection. Since that time, he has lived continuously in the United States,  
20 predominantly in Nevada, where he has maintained steady work and deep community ties.

21 48. He has resided for the last several years at [REDACTED] Nevada, and  
22 has worked in the plumbing and mechanical trades for companies including Brass 2 Copper  
23 Mechanical Inc., Canyon Plumbing, Purified Plumbing, and IMAC Plumbing.  
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1 49. His two U.S.-citizen daughters, Jennifer and Alexandra, were born in Las Vegas and have  
2 grown up with him as a constant presence in their lives. Letters from family, employers,  
3 and community members describe him as a pillar of support and a reliable, hardworking  
4 father.

5 50. Mr. Garcia-Hernandez has two misdemeanor reckless-driving convictions and no violent  
6 criminal history. A DUI allegation from October 10, 2025, resulted in no formal charges;  
7 he remained presumed innocent when ICE assumed custody.

8 51. After his October 2025 arrest in Nye County, local authorities honored an ICE detainer and  
9 transferred him to ICE custody. He has been detained since at the Nevada Southern  
10 Detention Center, in Pahrump, Nevada.

11 52. DHS initiated § 1229a removal proceedings against Mr. Garcia-Hernandez, charging him  
12 as inadmissible under § 212(a)(6)(A)(i) for entry without inspection and related grounds.

13 53. Mr. Garcia-Hernandez is grandfathered under INA § 245(i) based on a labor certification  
14 filed by April 30, 2001; the labor certification was properly filed, non-frivolous, and  
15 approvable when filed. His U.S.-citizen daughter Jennifer has filed an I-130 petition  
16 (Receipt No. ~~XXXXXXXXXX~~), providing an immediately available immigrant visa basis.

17 54. On this record, he is prima facie eligible to adjust status under § 245(i) either before USCIS  
18 (if proceedings are terminated) or before the Immigration Court (if proceedings are retained  
19 and jurisdiction to adjust is exercised).

20 55. On November 6, 2025, Mr. Garcia-Hernandez appeared for a custody redetermination  
21 hearing before Immigration Judge Glen Baker. In a written “Order of the Immigration  
22 Judge,” the court denied his request for bond, finding “Denied, because the Court lacks  
23  
24

1 jurisdiction to consider bond in this case. See *Matter of Yasjure<sup>1</sup> Hurtado*, 29 I&N Dec.  
2 216 (BIA 2025).”

3 56. As with Mr. Salguero, the Immigration Court did not assess whether Mr. Garcia-Hernandez  
4 is a danger or flight risk; instead, it treated *Yajure Hurtado* as stripping the court of bond  
5 jurisdiction altogether based solely on DHS’s decision to classify him as detained under §  
6 1225(b)(2).

7 57. At a master calendar hearing, held on November 18, 2025, through counsel, Mr. Garcia-  
8 Hernandez moved to terminate proceedings without prejudice under 8 C.F.R. §§ 1239.2(c),  
9 1240.1(a)(1)(ii) and *Matter of Coronado Acevedo*, 28 I&N Dec. 648 (A.G. 2022) to allow  
10 USCIS to adjudicate his 245(i) application based on the pending I-130.

11 58. The government opposed termination, arguing *not* that he was ineligible for § 245(i), but  
12 that the I-130 “would not be adjudicated in time” for the detained docket and, critically,  
13 that if the Immigration Judge was *inclined* to terminate proceedings, Mr. Garia-Hernandez  
14 would “remain in custody” because DHS would simply issue and lodge a new NTA. In  
15 other words, DHS asserted it would keep him detained under its § 1225(b)(2) theory even  
16 as it restarted removal proceedings, thereby using detention as leverage to prevent him  
17 from effectively pursuing the relief Congress created in § 245(i).

18 59. The government’s position exploits a distinction it attempts to draw from *Matter of*  
19 *Coronado Acevedo*, arguing that *Acevedo* was a non-detained case and thus provides no  
20 guidance for detained respondents. Yet nothing in *Acevedo* limits termination authority to  
21 non-detained cases; the decision recognizes the Immigration Court’s power to terminate to  
22 allow collateral relief where appropriate. The government’s effort to withhold termination  
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24 <sup>1</sup> Typographical error contained in the bond order.

1 and to threaten a new NTA solely to preserve Mr. Garcia-Hernandez's detention is  
2 unsupported by statute, regulation, or precedent.

3 60. In recognition of the viability of § 245(i) relief and the risk of prolonged detention, the  
4 Immigration Judge afforded undersigned counsel time to attempt coordination with OPLA  
5 to expedite adjudication of the I-130 and resolve the case without unnecessary delay.  
6 However, DHS is not obligated to consent to such an expedition, and its stated intention to  
7 re-lodge an NTA even after termination makes clear that any relief pursued while detained  
8 is constrained by the government's use of detention as a bargaining chip rather than as a  
9 narrowly tailored means of ensuring appearance and public safety.

10 61. The cumulative effect is that a respondent who is statutorily eligible for relief Congress  
11 expressly provided—§ 245(i)—is being held in prolonged detention under DHS's  
12 expanded § 1225(b)(2) theory, and the government has asserted it will continue to re-  
13 initiate proceedings to preserve that detention even if the Immigration Court seeks to follow  
14 Acevedo and allow collateral relief. This approach has a racialized impact and raises  
15 serious equal protection and due process concerns, reinforcing why the statutory scheme  
16 must be read to keep Mr. Garcia-Hernandez in the § 1226(a) framework with access to  
17 bond and meaningful relief.

### 18 **C. Futility of Further Administrative Remedies**

19 62. Both Petitioners have already requested custody redetermination hearings under 8 C.F.R.  
20 § 1236 and received written denials based solely on *Matter of Yajure Hurtado* and DHS's  
21 classification of them as § 1225(b)(2) detainees. In Mr. Salguero's case, the Immigration  
22 Judge expressly held that he "entered without inspection, is an applicant for admission  
23 pursuant to INA 235(b) and thus is subject to mandatory detention. *Matter of Yajure*  
24 *Hurtado*, 29 I&N Dec. 216 (BIA 2025)."

1 63. In Mr. Garcia-Hernandez’s case, the court expressly held it “lacks jurisdiction to consider  
2 bond in this case. See Matter of Yasjure<sup>2</sup> Hurtado, 29 I&N Dec. 216 (BIA 2025).”

3 64. These orders confirm that Immigration Judges are treating Yajure Hurtado and DHS’s July  
4 8, 2025 “Interim Guidance” as binding and dispositive on the question of bond jurisdiction,  
5 without any individualized assessment of danger or flight risk. Further motions for bond in  
6 the Immigration Court would therefore be futile, as would appeals to the BIA, which is  
7 bound by its own precedential decision in Yajure Hurtado.

8 65. Because Petitioners have no adequate administrative remedy to challenge the legal basis of  
9 their detention, and because their continued confinement depends on DHS’s unlawful  
10 interpretation of § 1225(b)(2), habeas corpus is the only effective means to secure review  
11 of their custody. Moreover, for Mr. Garcia-Hernandez, DHS’s stated intention to re-lodge  
12 an NTA if proceedings are terminated demonstrates that agency actors intend to maintain  
13 his detention regardless of form, so long as they can continue to rely on their § 1225(b)(2)  
14 theory. Nothing in the INA requires a detained respondent to endure serial NTAs and  
15 indefinite detention before seeking habeas relief.

16 66. Accordingly, Petitioners have no adequate or effective administrative remedy to challenge  
17 the legal basis of their detention, and habeas relief is appropriate.

## 18 CLAIMS FOR RELIEF

### 19 COUNT I

#### 20 Violation of the INA – Unlawful Application of § 1225(b)(2) to Petitioners

21 67. Petitioners re-allege and incorporate by reference the foregoing paragraphs.  
22  
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24 <sup>2</sup> Typographical error contained in the bond order.

1 68. The INA’s text, structure, and history establish that § 1226(a) is the default detention  
2 authority for noncitizens in § 1229a proceedings who have been arrested in the interior of  
3 the United States, including those charged as inadmissible under § 212(a)(6)(A)(i) for entry  
4 without inspection.

5 69. Section 1225(b)(2) governs detention of certain “applicants for admission” during  
6 inspection at or near the border; it does not authorize the government to treat long-settled  
7 residents, arrested years after entry in Nevada, as if they were still at the threshold seeking  
8 admission.

9 70. Petitioners are in § 1229a removal proceedings, were arrested in the interior of the United  
10 States, and have lived here for many years. Under the statutory scheme and longstanding  
11 practice, they fall within § 1226(a), not § 1225(b)(2).

12 71. By classifying Petitioners as § 1225(b)(2) detainees and denying them access to § 1226(a)  
13 bond hearings, Respondents are acting in excess of their statutory authority and in a manner  
14 contrary to the INA.

15 72. Respondents’ application of § 1225(b)(2) to Petitioners is unlawful and renders their  
16 ongoing detention unauthorized by statute.

## 17 **COUNT II**

### 18 **Violation of the Fifth Amendment – Due Process**

19 73. Petitioners re-allege and incorporate by reference the foregoing paragraphs.

20 74. The Due Process Clause protects noncitizens in the United States from arbitrary and  
21 prolonged civil detention. At a minimum, due process requires an individualized custody  
22 determination in which the government bears the burden to justify detention and the  
23 decisionmaker considers less restrictive alternatives.  
24

1 75. Petitioners have now been detained for significant periods and face ongoing detention  
2 while their removal cases and collateral relief are adjudicated. Neither Petitioner has  
3 received a meaningful bond hearing under § 1226(a) at which the government must show  
4 they are dangerous or a flight risk.

5 76. Instead, Respondents have misclassified Petitioners as § 1225(b)(2) detainees and treated  
6 them as subject to categorical mandatory detention, foreclosing access to bond hearings  
7 altogether based on Yajure Hurtado and the July 2025 guidance.

8 77. In Mr. Garcia-Hernandez's case, Respondents have gone further, asserting that even if  
9 proceedings are terminated to pursue § 245(i) relief, they will re-lodge a new NTA and he  
10 will remain in custody. This position utilizes detention not as a means of ensuring  
11 attendance or public safety, but as a means to obstruct a viable, statutorily authorized path  
12 to lawful permanent residence.

13 78. Detention imposed in this manner, without individualized findings, without meaningful  
14 review, and in a way that disproportionately impacts respondents like Petitioners—violates  
15 the Due Process Clause and raises equal protection concerns.

16 79. To the extent Respondents rely on the EOIR-43 automatic-stay regulation, 8 C.F.R. §  
17 1003.19(i)(2), to block Petitioners' release after an IJ bond order, that regulation is  
18 unconstitutional on its face and as applied. It allows DHS to unilaterally suspend release  
19 orders without adequate procedural safeguards and without any neutral decision maker  
20 promptly reviewing the stay.

21 80. Respondents' conduct violates Petitioners' rights under the Fifth Amendment to the U.S.  
22 Constitution.

23 81. This Court has already granted preliminary injunction and habeas relief in multiple parallel  
24 cases challenging DHS's July 2025 detention policy and the BIA's decision in *Matter of*

1 *Yajure Hurtado*. See *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 WL 2676082  
2 (D. Nev. Sept. 17, 2025); *Escobar-Salgado v. Mattos*, No. 2:25-cv-01872-RFB-EJY, 2025  
3 WL 3205356 (D. Nev. Nov. 17, 2025); *Perez Sales v. Mattos*, No.  
4 2:25-cv-01819-RFB-BNW (D. Nev. Nov. 19, 2025). In each, the Court held that § 1226(a)  
5 governs detention of long-settled residents arrested in the interior, that the EOIR-43  
6 automatic-stay regulation is unconstitutional, and that prolonged detention without  
7 individualized bond hearings violates due process. Petitioners' claims here mirror those  
8 findings and seek identical relief.

### 9 **COUNT III**

#### 10 **Violation of the APA; No Deference; Major Questions Doctrine; Constitutional Avoidance**

11 82. Petitioners re-allege and incorporate by reference the foregoing paragraphs.

12 83. DHS's July 8, 2025 "Interim Guidance" and EOIR's adoption of that position in *Matter of*  
13 *Yajure Hurtado* constitute final agency actions that interpret § 1225(b)(2) in a manner  
14 inconsistent with the INA's text, structure, and history, and drastically expand mandatory  
15 detention for long-settled residents in § 1229a proceedings.

16 84. These actions are arbitrary, capricious, and contrary to law within the meaning of the  
17 Administrative Procedure Act (APA), 5 U.S.C. § 706(2). They reverse decades of  
18 consistent agency practice (recognizing § 1226(a) as the baseline for interior arrestees)  
19 without adequate explanation, ignore the careful limits Congress placed in § 1226(c), and  
20 treat § 1225(b)(2) as a sweeping catch-all detention authority.

21 85. After *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), courts must exercise  
22 independent judgment in interpreting statutes; *Chevron* deference is unavailable. At most,  
23 agency interpretations like *Yajure Hurtado* may receive *Skidmore* weight, which is absent  
24 where the interpretation conflicts with statutory text, structure, and longstanding practice.

1 86. Even if the Court were inclined to consider agency views, the Major Questions Doctrine  
2 independently forecloses DHS’s position. That doctrine requires clear congressional  
3 authorization before an agency may assert authority of vast economic and political  
4 significance or fundamentally reorder a statutory scheme.

5 87. DHS’s July 2025 pivot transforms § 1225(b)(2), historically limited to detention incident  
6 to border inspection, into a nationwide mandatory-detention regime for virtually all  
7 noncitizens “present without admission,” including long-time residents like Petitioners in  
8 § 1229a proceedings. This reinterpretation:

- 9 a. Eliminates the long-standing § 1226(a) bond process for a broad class of interior  
10 arrestees;
- 11 b. Allows DHS effectively to override Congress’s careful detention rules in § 1226(a) and  
12 (c), including time- and offense-limited mandatory detention categories; and
- 13 c. Directly affects core questions of immigration enforcement, family unity, detention  
14 capacity, and the availability of statutorily authorized relief such as § 245(i).

15 88. In Mr. Garcia-Hernandez’s case, DHS’s asserted authority has been used to block the  
16 operation of § 245(i) and *Coronado Acevedo* by insisting that he remain detained under §  
17 1225(b)(2) even if proceedings are terminated and by threatening to re-lodge an NTA to  
18 preserve custody. This attempt to turn § 1225(b)(2) into a tool for preventing a detained,  
19 long-settled Latino respondent from accessing a congressionally created path to lawful  
20 status starkly illustrates the sweeping and transformative nature of DHS’s claim.

21 89. Nothing in § 1225(b)(2)’s text or legislative history suggests Congress intended such a  
22 massive restructuring of the detention scheme or such a broad power to displace § 1226(a),  
23 § 1226(c), and § 245(i). Under the Major Questions Doctrine, courts may not lightly  
24

1 presume that Congress quietly granted DHS this authority in a provision designed for  
2 border inspection.

3 90. Any arguable ambiguity in the INA must be resolved through constitutional avoidance,  
4 selecting the interpretation that avoids serious due-process and equal-protection concerns.  
5 Reading the statute to place Petitioners in § 1226(a)—not § 1225(b)(2)—preserves access  
6 to individualized bond hearings and prevents the indefinite, mandatory detention of long-  
7 settled residents whose children, like L.E.S. and Mr. Garcia-Hernandez’s U.S.-citizen  
8 daughters, depend on their presence.

9 91. For these reasons, the Court should reject DHS’s interpretation of § 1225(b)(2), hold that  
10 Petitioners are detained under § 1226(a), and declare Respondents’ contrary policies  
11 unlawful under the APA and the Constitution.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Petitioners respectfully pray that this Court:

14 A. Assume jurisdiction over this matter;

15 B. Issue a writ of habeas corpus declaring that Petitioners’ detention is governed by 8 U.S.C.  
16 § 1226(a), not § 1225(b)(2), and that their current detention without access to bond hearings  
17 is unlawful;

18 C. Order Petitioners’ immediate release from custody under reasonable conditions of  
19 supervision, including but not limited to bond, recognizance, or alternative-to-detention  
20 programs;

21 D. In the alternative, order prompt individualized custody redetermination hearings for each  
22 Petitioner before an Immigration Judge under § 1226(a), at which:

- 23 1. The government bears the burden to show, by clear and convincing evidence, that  
24 continued detention is necessary to prevent flight or danger to the community;

