

1 Erica Sanchez, Of Counsel
2 Shefer Law Firm, P.A.
3 800 SE 4th. Ave #803
4 Hallandale Beach, Florida 33009
5 Telephone: (480) 866-1111
6 erica@shefer.legal
7 Arizona Bar #027107
8 Attorney for Respondent

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Fauser Reino Godinez-Juarez,
Petitioner,

v.

Kristi Noem, Secretary of the United States Department of Homeland Security, in her official capacity; **Todd Lyons**, Acting of the Director of U.S. Immigration and Customs Enforcement, in his official capacity; **John Cantu**, Field Office Director for ICE's Enforcement and Removal Operation's ("ERO") Phoenix, Arizona Field Office, in his official capacity; **Sirce Owen**, Acting Director of Executive Office for Immigration Review, in her official capacity; **Luis Rosa, Jr.**, Warden of the Central Arizona Florence Correctional Complex, in his official capacity;

Respondents.

Case No.

A No. 

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

INTRODUCTION

The Respondents are unlawfully detaining Petitioner Fauser Reino Godinez-Juarez, at Florence Correctional Center, because the Department of Homeland Security (DHS) recently changed its long-standing position with regard to mandatory detention. See, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission filed herewith as Exhibit 1. The Bureau of Immigration Appeals (BIA) issued a precedential

1 decision on September 5, 2025, holding that all noncitizens present in the United States
2 without admission – no matter how long they have resided here – are still “applicants for
3 admission” under 8 U.S.C. § 1225(a) and not entitled to bond hearings because they are
4 subject to mandatory detention under § 1225(b)(2)(A). *See, Matter of Yajure Hurtado*, 29
5 I&N Dec. 216 (B.I.A. 2025) filed herewith as Exhibit 2.
6

7 But this interpretation of the Immigration and Naturalization Act (INA) violates both
8 procedural and substantive Fifth Amendment protections, ignores the plain statutory
9 language of both § 1225 and § 1226, and is contrary to numerous recent Federal Court
10 decisions in this District that have rejected these exact arguments. *See e.g.* 10/3/2025
11 Order entered in *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-PHX-DWL
12 (ESW), (D. Ariz. 10/3/2025), filed herewith as Exhibit 3.
13

14 Petitioner filed an Application for Asylum and for Withholding of Removal on
15 11/4/2025, which shows that he has been living in the United States for 4 ½ years, since
16 entering on 5/5/2021. *See*, Petitioner’s Application for Asylum and for Withholding of
17 Removal, filed herewith as Exhibit 6. Petitioner has no criminal history. *See*, Petitioner’s
18 Affidavit, filed herewith as Exhibit 4. Further, when Respondents issued a Notice to
19 Appear, it identified Petitioner as an “alien present in the United States” despite “arriving
20 alien” being an option. *See*, Petitioner’s Notice to Appear, filed herewith as Exhibit 5.
21

22 In addition to BIA decisions not being binding precedent upon this Court, the
23 Supreme Court decision last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369,
24 400 (2024), made clear that federal courts must independently interpret statutes and no
25 longer defer under so-called “*Chevron* deference.” This Court is therefore in the best
26 position to determine whether the Respondents are misinterpreting the relevant federal
27
28

1 statutes and improperly denying alien detainees bond hearings on the grounds that they
2 are subject to mandatory detention under § 1225(b)(2)(A). The petition for writ of habeas
3 corpus should be granted.

4 JURISDICTION & CUSTODY

5
6 1. Petitioner Fauser Reino Godinez-Juarez is in the physical custody of
7 Respondents and Immigration and Customs Enforcement (ICE), an agency within the
8 Department of Homeland Security.

9
10 2. Petitioner is currently detained at Florence Correctional Center and is
11 under the direct control of Respondents and their agents.

12
13 3. This action arises under the Constitution of the United States and 8
14 U.S.C. § 1101 et seq.

15
16 4. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the
17 United States Constitution, 28 U.S.C. § 1331, and the common law. This Court may
18 grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. §
19 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

20
21 5. Congress has preserved judicial review of challenges to immigration
22 detention. See *Jennings v. Rodriguez*, 583 U.S. 122, 130-131 (2018) (holding that 8
23 U.S.C. §§ 1226(e) and 1252(b)(9) do not bar review of challenges to prolonged
24 immigration detention).

25
26 6. The Court must grant the petition for writ of habeas corpus or order
27 Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28
28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return

1 "within three days unless for good cause additional time, not exceeding twenty days, is
2 allowed." *Id.*


3 7. The Court has inherent power to release the petitioner pending review
4 of his petition. *See Martin v. Solem*, 801 F.2d 324, 329 (8th Cir. 1986).

5 VENUE

6
7 8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
8 484, 493- 500 (1973), venue lies in this Court, the federal judicial district in which
9 Petitioner is currently is in custody.

10 9. Venue is also properly in this Court pursuant to 18 U.S.C. § 1391(e)
11 because Respondents are employees, officers, and agencies of the United States.

12 PARTIES

13
14 10. Petitioner Fauser Reino Godinez-Juarez was born on  in San
15 Marcos , Guatemala. *See*, Petitioner's Asylum Application, filed herewith as Exhibit 6.
16 He is currently detained by ICE at Florence Correctional Center. *See*, Petitioner's
17 Affidavit, filed herewith as Exhibit 4.

18
19 11. Respondent Kristi Noem is the Secretary of the U.S. Department of
20 Homeland Security ("DHS"). In this capacity, Respondent Noem is a legal custodian of
21 Petitioner. Respondent Noem is sued in her official capacity.

22 12. Respondent DHS is a federal executive agency responsible for, among
23 other things, enforcing federal immigration laws and overseeing lawful immigration to the
24 United States. Respondent DHS is a legal custodian of Petitioner.

25
26 13. Respondent Todd M. Lyons is Acting Director and Senior Official
27 Performing the Duties of the Director of U.S. Immigration and Customs Enforcement
28

1 ("ICE"). Respondent Lyons is responsible for ICE's policies, practices, and procedures,
2 including those relating to the detention of immigrants during their removal procedures.
3 Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in his
4 official capacity.


5
6 14. Respondent ICE is a federal law enforcement agency within DHS.
7 Respondent ICE is responsible for the enforcement of immigration laws, including the
8 detention and removal of immigrants. Respondent ICE is a legal custodian of Petitioner.

9
10 15. Respondent John Cantu is Field Office Director for ICE's Enforcement
11 and Removal Operation's ("ERO") Phoenix, Arizona Field Office. Respondent Cantu is a
12 legal custodian of Petitioner. Respondent Cantu is sued in his official capacity.

13
14 16. Respondent Luis Rosa Jr. is the Warden of the Central Arizona
15 Florence Correctional Complex. Respondent Rosa is a legal custodian of Petitioner.
16 Respondent Rosa is sued in his official capacity.

17
18 17. Respondent Sirce Owen is the Acting Director of the Executive Office
19 for Immigration Review (EOIR), a federal agency within the U.S. Department of Justice.
20 Respondent EOIR is responsible for the administration of immigration courts, and
21 acceptance of forms and petitions related to adjudication of immigration claims, as well
22 as motions for bond. Respondent Sirce Owen is sued in her official capacity.

23 STATEMENT OF FACTS

24 18. Petitioner Fauser Reino Godinez-Juarez was born on  in San
25 Marcos , Guatemala. See, Petitioner's Asylum Application, filed herewith as Exhibit 6.
26 He is currently detained by ICE at Florence Correctional Center. See, Petitioner's
27 Affidavit, filed herewith as Exhibit 4.
28

1 27. Due process thus requires “adequate procedural protections” to ensure
2 that the government’s asserted justification for a noncitizen’s physical confinement
3 “outweighs the individual’s constitutionally protected interest in avoiding physical
4 restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

5 28. In the immigration context, the Supreme Court has recognized only two
6 valid purposes for civil detention: to mitigate the risks of danger to the community and to
7 prevent flight. *Id.*; *Demore*, 538 U.S. at 528. The government may not detain a
8 noncitizen based on any other justification.

9 29. Congress has granted the Attorney General discretion to decide
10 whether to detain or release certain noncitizens pending a removal decision. See 8
11 U.S.C. § 1226(a). The Attorney General has delegated that authority to IJs. 8 C.F.R. §§
12 1003.19, 1236.1.

13 30. On July 8, 2025, DHS adopted a new policy on mandatory detention for
14 noncitizens who have been residing in the United States. See, ICE Memo: Interim
15 Guidance Regarding Detention Authority for Applications for Admission filed herewith as
16 Exhibit 1.

17 31. On September 5, 2025, the BIA entered the precedential decision
18 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed herewith as Exhibit 2,
19 which holds that all noncitizens who enter without inspection are “applicants for
20 admission” under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention
21 under § 1225(b)(2), without regard for the length of time they have lived in the United
22 States.
23
24
25
26
27
28

1 32. The Ninth Circuit has held that § 1226(a) is the “default” detention
2 statute for aliens in removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the
3 default detention statute for noncitizens in removal proceedings and applies to
4 noncitizens “[e]xcept as provided in [Subsection C].” 8 U.S.C. § 1226(a).” *Avilez v.*
5 *Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*, 83
6 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD Wash.
7 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v.*
8 *DHS*, 535 F.3d 942 (9th Cir. 2008).

9
10 33. Almost every Federal District Court that has considered the issue has
11 found that DHS’s interpretation defies the INA. In Arizona, the following decisions so
12 find and collect the cases from other district courts around the country:
13

- 14 A. 11/6/2025 Order granting habeas in *Abrego-Zarate v. Noem, et al.*, Case
15 No. 25-cv-03564-KML (D. Ariz. 11-6-25)(“in accord with numerous other
16 courts addressing the same issue—‘Respondents’ narrow focus on the
17 language of § 1225(a)(1) fails to take account of the entirety of the
18 statutory scheme...” *citing to Echevarria v. Bondi, et al.*, CV-25-03252-
19 PHX-DWL (ESW), 2025 WL 2821282, at *9 (D. Ariz. October 3, 2025)),
20 filed herewith as Exhibit 7.
21
22 B. 10/22/2025 Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No.
23 2:25-cv-03391-SHD-DMF at page 2 (D. Ariz. Oct. 22, 2025)(“while
24 Respondents point to two district court opinions adopting their
25 interpretation of § 1225(b)(2)(A), myriad other district courts have reached
26 the same conclusion as *Echevarria* and held individuals like Petitioner are
27 not subject to mandatory detention under 1225(b)(2)(A)”; filed herewith as
28 Exhibit 9.
29
30 C. 10/17/2025 Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et*
31 *al.*, No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)(“individuals like
32 Petitioner are not “arriving aliens” subject to mandatory detention but,
33 rather, are subject to the general removal statute, 8 U.S.C. § 1226(a)”),
34 filed herewith as Exhibit 10.
35
36 D. 10/9/2025 Order granting habeas entered in *Hector Lopez-Melo v. Bondi,*
37 *et. al.*, Case No. Case 2:25-cv-03394-DJH--JZB (D. Ariz.

1 10/9/2025)(“petitioner, who had been present in the United States for
2 years, was not an applicant for admission under 1225(b)(2)(A) or subject to
mandatory detention”); filed with the Habeas Petition as Exhibit 8.

3 E. 10/07/2025 Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No. CV-
4 25-02989-PHX-SPL (D Arizona 10/07/2025)(“Respondents maintain he is
5 subject to mandatory detention under 1225(b)(2). Again, Respondents are
mistaken.”); filed herewith as Exhibit 12.

6 F. 8/11/2025 Magistrate’s Report and Recommendation in *Rocha Rosado v.*
7 *Figueroa*, No. CV-25-02157-PHX-DLR 2025 WL 2349133 at *10 (D. Ariz.
8 Aug. 13, 2025)(Magistrate’s Report and Recommendation Adopted at 2025
9 WL 2349133)([t]he text of § 1226, the canons of statutory interpretation,
10 this section’s legislative history, and longstanding agency practice indicate
11 that Rosado is subject to § 1226(a)’s ‘default’ rule for discretionary
12 detention rather than § 1225’s mandatory detention requirement, and that
the IJ erred by finding they did not have jurisdiction to consider Rosado’s
detention.”) *report and recommendation adopted sub nom.* 2025 WL
2349133 (D. Ariz. Aug. 13, 2025); filed herewith as Exhibit 14.

13 G. 8/04/25 Order Granting Mot. for Temporary Restraining Order, *Co Tupul v.*
14 *Noem*, No. 25-AT-99908 (D. Ariz. August 4, 2025)(“Petitioner alleges she
15 has been present in the United States for 30 years and, as a result, is
16 statutorily ineligible for expedited removal proceedings. See 8 U.S.C. §
17 1225(b)(1)(A)(iii)(II) (conditioning the Attorney General’s ability to apply
expedited removal procedures to non-arriving noncitizens on those
noncitizens ‘having been present in the United States for under two
years”), filed herewith as Exhibit 13.

18
19 30. Petitioner has only found two cases in other district courts that hold to the
20 contrary, *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) and *Vargas*
21 *Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). However, in *Vargas Lopez*,
22 the Court held that Vargas Lopez fails to meet his burden to show that he falls under §
23 1226(a), so “his Petition fails **regardless of the parties’ arguments about the scope of §**
24 **1225(b) and § 1226(a).**” *Vargas Lopez v. Trump*, 2025 WL 2780351 at *7 (emphasis
25 added). And in *Chavez v. Noem*, the court spent less than 2 pages analyzing the statutory
26 language and caselaw before concluding that “Petitioners have not shown either a
27
28

1 likelihood of success or serious questions going to the merits [therefore] we do not address
2 the remaining *Winter* factors.” *Chavez v. Noem*, 2025 WL 2730228 at *5. Thus, neither
3 case is particularly informative on these issues.

4 31. In 1997, after Congress amended the INA through the Illegal
5 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and the
6 then-Immigration and Naturalization Service issued an interim rule to interpret and apply
7 IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of
8 Aliens,” the agencies explained that:

9 Despite being applicants for admission, alilens who are present
10 without having been admitted or paroled (formerly referred to as
11 aliens who entered without inspection) **will be eligible** for bond
12 and bond redetermination.

13 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals
14 who had entered without inspection **were** eligible for consideration for bond and bond
15 hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

16 32. Thus, for almost 30 years, all participants in the immigration system
17 have understood that people arrested inside the United States generally fall within §
18 1226 for detention purposes and are therefore required to receive a bond hearing upon
19 request—even if they initially entered the country without permission. *See Martinez v.*
20 *Hyde*, No. 25-11613, 2025 WL 2084238, at *4 n.9 (D. Mass. July 24, 2025) (citing the
21 United States Solicitor General’s representation to the Supreme Court at oral argument
22 that “DHS’s long-standing interpretation has been that 1226(a) applies to those who
23 have crossed the border between ports of entry and are shortly thereafter
24 apprehended”).
25
26
27
28

1 33. Despite the overwhelming number of federal cases that have ruled
2 against the government's position, DHS and DOJ are continuing to systemically
3 misclassify people and unlawfully deny them access to bond hearings and release on
4 bond during the pendency of their immigration proceedings.

5
6 **CLAIMS FOR RELIEF**
7 **FIRST CLAIM FOR RELIEF**
8 **Violation of Fifth Amendment – Substantive Due Process**

9 34. Petitioner realleges and incorporates herein the allegations contained in
10 the preceding paragraphs of the petition as if fully set forth herein.

11 35. The Due Process Clause of the Fifth Amendment forbids the
12 government from depriving any “person” of liberty “without due process of law,” including
13 noncitizens. U.S. Const. amend. V.

14 36. Substantive due process asks whether a person's life, liberty, or
15 property is deprived without sufficient purpose. There is no question that Petitioner has
16 been deprived of his liberty in this case.

17 37. The government's continued detention of Petitioner is not supported by
18 any special interest or compelling justification that outweighs his liberty interest.

19 38. Petitioner's ongoing detention when so many federal courts have held
20 that he is entitled to be considered for release upon posting an appropriate bond under §
21 1226 constitutes prolonged detention and violates his substantive due process rights.
22

23
24 **SECOND CLAIM FOR RELIEF**
25 **Violation of Fifth Amendment Right - Procedural Due Process**

26 39. Petitioner realleges and incorporates herein the allegations contained in
27 the preceding paragraphs of the petition as if fully set forth herein.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. Grant any further relief the Court deems just and proper.

Dated: November 24, 2025

Attorney for Respondent

By: /s/ Erica Sanchez
Erica Sanchez, Of Counsel
Shefer Law Firm, P.A.
800 SE 4th. Ave #803
Hallandale Beach, Florida 33009
Telephone: (480) 866-1111
erica@shefer.legal
Arizona Bar #027107

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

1
2 I represent Petitioner Fauser Reino Godinez-Juarez and submit this verification on his
3 behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of
4 Habeas Corpus are true and correct to the best of my knowledge.
5

6
7 Dated: November 24, 2025

8 Attorney for Respondent

9 By: /s/ Erica Sanchez
10 Erica Sanchez, Of Counsel
11 Shefer Law Firm, P.A.
12 800 SE 4th. Ave #803
13 Hallandale Beach, Florida 33009
14 Telephone: (480) 866-1111
15 erica@shefer.legal
16 Arizona Bar #027107
17 Attorney for Respondent
18
19
20
21
22
23
24
25
26
27
28

LIST OF EXHIBITS

Exhibit 1	<u>ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission</u> (last visited September 8, 2025).
Exhibit 2	<i>Matter of Yajure Hurtado</i> , 29 I&N Dec. 216 (B.I.A. 2025).
Exhibit 3	10/3/2025 Order entered in <i>Francisco Echevarria v. Pam Bondi, et al.</i> , CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025)
Exhibit 4	Petitioner's Affidavit
Exhibit 5	Notice to Appear
Exhibit 6	Petitioner's Application for Asylum and for Withholding of Removal
Exhibit 7	11-6-2025 Order entered in <i>Abrego-Zarate v. Noem, et al.</i> , Case No. 25-cv-03564-KML (D. Ariz. 11-6-25)
Exhibit 8	10/22/2025 Order entered in <i>Lopez-Cruz v. Noem, et al</i> , No. 2:25-cv-03566-DJH--ASB (D. Ariz. 11/3/2025)
Exhibit 9	10/22/2025 Order entered in <i>Garcia-Rosales v. Noem, et al.</i> , No. 2:25-cv-03391-SHD—DMF (D. Ariz. Oct. 22, 2025)
Exhibit 10	10/17/2025 Order granting habeas corpus in <i>Benitez-Cornejo v. Cantu, et al.</i> , No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)
Exhibit 11	10/9/2025 Order entered in <i>Hector Lopez-Melo v. Bondi, et. al.</i> , Case No. Case 2:25-cv-03394-DJH--JZB [docket no. 11] (D.C. Ariz. 10/9/2025)
Exhibit 12	10/07/2025 Order granting habeas corpus in <i>Bo Li v. Cantu, et al.</i> , No. CV-25-02989-PHX-SPL (D Arizona 0/07/2025)
Exhibit 13	10/3/2025 Order entered in <i>Francisco Echevarria v. Pam Bondi, et al.</i> , CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025)
Exhibit 14	8/13/2025 Magistrate's Report and Recommendation in <i>Rocha Rosado v. Figueroa</i> , No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025)