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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Kelvin Douglas Godinez-Juarez,
Petitioner,

v.

Kristi Noem, Secretary of the United States Department of Homeland Security, in her official capacity; **Todd Lyons**, Acting Director 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 Kelvin Douglas Godinez-Juarez, at Florence Correctional Center, due to the Department of Homeland Security (DHS) recently changed its long-standing position with regard to the status of 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 decision on September 5, 2025, holding that all noncitizens present in the United States

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

5
6 But this interpretation of the Immigration and Naturalization Act (INA) violates both
7 procedural and substantive Fifth Amendment protections, ignores the plain statutory
8 language of both § 1225 and § 1226, and is contrary to numerous recent Federal Court
9 decisions in this District that have rejected these exact arguments. *See e.g* 10/3/2025 Order
10 entered in *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-PHX-DWL (ESW), (D.
11 Ariz. 10/3/2025) , filed herewith as Exhibit 3.

12
13 Petitioner has been living in the United States for 18 years, since he arrived in 2007.
14 *See*, Petitioner's Affidavit, filed herewith as Exhibit 4. He has an approved U-Visa, valid from
15 5/14/2025 through 5/13/229. *See*, DHS Form I797, filed herewith as Exhibit 5. Further, when
16 Respondents issued a Notice to Appear, it identified Petitioner as an “alien present in the
17 United States” despite “arriving alien” being an option. *See*, Petitioner's Notice to Appear,
18 filed herewith as Exhibit 6.

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20 In addition to BIA decisions not being binding precedent upon this Court, the Supreme
21 Court decision last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024),
22 made clear that federal courts must independently interpret statutes and no longer defer
23 under so-called “*Chevron* deference.” This Court is therefore in the best position to determine
24 whether the Respondents are misinterpreting the relevant federal statutes and improperly
25 denying alien detainees bond hearings on the grounds that they are subject to mandatory
26 detention under § 1225(b)(2)(A). The petition for writ of habeas corpus should be granted.
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JURISDICTION & CUSTODY

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3 1. Petitioner Kelvin Douglas Godinez-Juarez, in the physical custody of
4 Respondents and Immigration and Customs Enforcement (ICE), an agency within the
5 Department of Homeland Security.

6
7 2. Petitioner is currently detained at Florence Correctional Center and is under
8 the direct control of Respondents and their agents. See, Petitioner's Affidavit, filed herewith
9 as Exhibit 4

10 3. This action arises under the Constitution of the United States and 8 U.S.C.
11 § 1101 et seq.

12
13 4. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the
14 United States Constitution, 28 U.S.C. § 1331, and the common law. This Court may grant
15 relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.,
16 and the All Writs Act, 28 U.S.C. § 1651.

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

22 6. The Court must grant the petition for writ of habeas corpus or order
23 Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28
24 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within
25 three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*
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1 14. Respondent ICE is a federal law enforcement agency within DHS.
2 Respondent ICE is responsible for the enforcement of immigration laws, including the
3 detention and removal of immigrants. Respondent ICE is a legal custodian of Petitioner.

4 15. Respondent John Cantu is Field Office Director for ICE's Enforcement and
5 Removal Operation's ("ERO") Phoenix, Arizona Field Office. Respondent Cantu is a legal
6 custodian of Petitioner. Respondent Cantu is sued in his official capacity.
7

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

11 17. Respondent Sirce Owen is the Acting Director of the Executive Office for
12 Immigration Review (EOIR), a federal agency within the U.S. Department of Justice.
13 Respondent EOIR is responsible for the administration of immigration courts, and
14 acceptance of forms and petitions related to adjudication of immigration claims, as well as
15 motions for bond. Respondent Sirce Owen is sued in her official capacity.
16

17 **STATEMENT OF FACTS**

18 18. Petitioner Kelvin Douglas Godinez-Juarez was born on  in San
19 Pedros-San Marcos, Guatemala and he is currently detained by ICE at Florence Correctional
20 Center. See, Petitioner's Affidavit, filed herewith as Exhibit 4
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22 19. Petitioner has been living in the United States for 18 years, since he arrived
23 in 2007. See, Petitioner's Affidavit, filed herewith as Exhibit 4.
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25 20. Respondents arrested Petitioner on September 10, 2025. See, Petitioner's
26 Affidavit, filed herewith as Exhibit 4.
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1 21. He was issued a Notice to Appear which identified him as an “alien present
2 in the United States” even though “arriving alien” was an alternate option. See, Petitioner’s
3 Notice to Appear, filed herewith as Exhibit 5.

4 22. Petitioner was detained at the Florence Detention Center in Arizona where
5 he remains in custody. See, Petitioner’s Affidavit, filed herewith as Exhibit 4.

6 23. Petitioner has been living in the United States for 18 years, since he arrived
7 in 2007. See, Petitioner’s Affidavit, filed herewith as Exhibit 4.

8 24. Petitioner has no Criminal History. See, Petitioner’s Affidavit, filed herewith
9 as Exhibit 4.

10 25. Further, when Respondents issued a Notice to Appear, it identified
11 Petitioner as an “alien present in the United States” despite “arriving alien” being an option.
12 See, Petitioner’s Notice to Appear, filed herewith as Exhibit 6.

13 LEGAL FRAMEWORK

14 26. The length of time that a petitioner has been living in the United States is a
15 constitutionally relevant consideration, because “once an alien enters the country, the legal
16 circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United
17 States, including aliens, whether their presence here is lawful, unlawful, temporary, or
18 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It is therefore reasonable to read
19 these statutes “against [that] backdrop.” See *Hewitt v. United States*, 605 U.S. —, 145 S. Ct.
20 2165, 2173 (2025).

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

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

7
8 29. Congress has granted the Attorney General discretion to decide whether to
9 detain or release certain noncitizens pending a removal decision. See 8 U.S.C. § 1226(a).
10 The Attorney General has delegated that authority to IJs. 8 C.F.R. §§ 1003.19, 1236.1.

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

14 31. On September 5, 2025, the BIA entered the precedential decision *Matter of*
15 *Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), which holds that all noncitizens who enter
16 without inspection are "applicants for admission" under 8 U.S.C. § 1225(a) and therefore
17 subject to mandatory detention under § 1225(b)(2), without regard for the length of time they
18 have lived in the United States.

19 32. The Ninth Circuit has held that § 1226(a) is the "default" detention statute
20 for aliens in removal proceedings "[8 U.S.C. §1226(a) ("Subsection A")] is the default
21 detention statute for noncitizens in removal proceedings and applies to noncitizens "[e]xcept
22 as provided in [Subsection C]." 8 U.S.C. § 1226(a)." *Avilez v. Garland*, 69 F. 4th 525, 529-
23 530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023);
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1 *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534
2 F.3d 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

3 33. Almost every Federal District Court that has considered the issue has found
4 that DHS's interpretation defies the INA. In Arizona, the following decisions so find and
5 collect the cases from other district courts around the country:

- 6
- 7 A. 11/6/2025 Order granting habeas in *Abrego-Zarate v. Noem, et al.*, Case No.
8 25-cv-03564-KML (D. Ariz. 11-6-25)("in accord with numerous other courts
9 addressing the same issue—'Respondents' narrow focus on the language of §
10 1225(a)(1) fails to take account of the entirety of the statutory scheme..." *citing*
11 *to Echevarria v. Bondi, et al.*, CV-25-03252-PHX-DWL (ESW), 2025 WL
12 2821282, at *9 (D. Ariz. October 3, 2025)), filed herewith as Exhibit 7.
- 13 B. 10/22/2025 Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No. 2:25-
14 cv-03391-SHD-DMF at page 2 (D. Ariz. Oct. 22, 2025)("while Respondents
15 point to two district court opinions adopting their interpretation of §
16 1225(b)(2)(A), myriad other district courts have reached the same conclusion
17 as *Echevarria* and held individuals like Petitioner are not subject to mandatory
18 detention under 1225(b)(2)(A)"); filed herewith as Exhibit 9.
- 19 C. 10/17/2025 Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.*,
20 No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)("individuals like Petitioner are
21 not "arriving aliens" subject to mandatory detention but, rather, are subject to
22 the general removal statute, 8 U.S.C. § 1226(a)"), filed herewith as Exhibit 10.
- 23 D. 10/9/2025 Order granting habeas entered in *Hector Lopez-Melo v. Bondi, et.*
24 *al.*, Case No. Case 2:25-cv-03394-DJH--JZB (D. Ariz. 10/9/2025)("petitioner,
25 who had been present in the United States for years, was not an applicant for
26 admission under 1225(b)(2)(A) or subject to mandatory detention"); filed with
27 the Habeas Petition as Exhibit 8.
- 28 E. 10/07/2025 Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No. CV-25-
02989-PHX-SPL (D Arizona 10/07/2025)("Respondents maintain he is subject
to mandatory detention under 1225(b)(2). Again, Respondents are mistaken.");
filed herewith as Exhibit 12.
- F. 8/11/2025 Magistrate's Report and Recommendation in *Rocha Rosado v.*
Figueroa, No. CV-25-02157-PHX-DLR 2025 WL 2349133 at *10 (D. Ariz. Aug.
13, 2025)(Magistrate's Report and Recommendation Adopted at 2025 WL
2349133)([t]he text of § 1226, the canons of statutory interpretation, this
section's legislative history, and longstanding agency practice indicate that
Rosado is subject to § 1226(a)'s 'default' rule for discretionary detention rather

1 than § 1225's mandatory detention requirement, and that the IJ erred by finding
2 they did not have jurisdiction to consider Rosado's detention.") *report and*
3 *recommendation adopted sub nom.* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025);
4 filed herewith as Exhibit 14.

5 G. 8/04/25 Order Granting Mot. for Temporary Restraining Order, *Co Tupul v.*
6 *Noem*, No. 25-AT-99908 (D. Ariz. August 4, 2025) ("Petitioner alleges she has
7 been present in the United States for 30 years and, as a result, is statutorily
8 ineligible for expedited removal proceedings. See 8 U.S.C. §
9 1225(b)(1)(A)(iii)(II) (conditioning the Attorney General's ability to apply
10 expedited removal procedures to non-arriving noncitizens on those noncitizens
11 'having been present in the United States for under two years'), filed herewith
12 as Exhibit 13.

13 34. Petitioner has only found two cases in other district courts that hold to the
14 contrary, *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) and *Vargas Lopez*
15 *v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). However, in *Vargas Lopez*, the Court
16 held that Vargas Lopez fails to meet his burden to show that he falls under § 1226(a), so "his
17 Petition fails **regardless of the parties' arguments about the scope of § 1225(b) and §**
18 **1226(a).**" *Vargas Lopez v. Trump*, 2025 WL 2780351 at *7 (emphasis added). And in
19 *Chavez v. Noem*, the court spent less than 2 pages analyzing the statutory language and
20 caselaw before concluding that "Petitioners have not shown either a likelihood of success or
21 serious questions going to the merits [therefore] we do not address the remaining *Winter*
22 *factors.*" *Chavez v. Noem*, 2025 WL 2730228 at *5. Thus, neither case is particularly
23 informative on these issues. In 1997, after Congress amended the INA through the Illegal
24 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and the then-
25 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.
26 Specifically, under the heading of "Apprehension, Custody, and Detention of Aliens," the
27 agencies explained that "Despite being applicants for admission, alilens who are present
28 without having been admitted or paroled (formerly referred to as aliens who entered without

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

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6 35. Thus, for almost 30 years, all participants in the immigration system have
7 understood that people arrested inside the United States generally fall within § 1226 for
8 detention purposes and are therefore required to receive a bond hearing upon request—
9 even if they initially entered the country without permission. See *Martinez v. Hyde*, No. 25-
10 11613, 2025 WL 2084238, at *4 n.9 (D. Mass. July 24, 2025) (citing the United States
11 Solicitor General's representation to the Supreme Court at oral argument that "DHS's long-
12 standing interpretation has been that 1226(a) applies to those who have crossed the border
13 between ports of entry and are shortly thereafter apprehended").
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15 36. Despite the overwhelming number of federal cases that have ruled against
16 the government's position, DHS and DOJ are continuing to systemically misclassify people
17 and unlawfully deny them access to bond hearings and release on bond during the pendency
18 of their immigration proceedings.
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20 **CLAIMS FOR RELIEF**

21 **FIRST CLAIM FOR RELIEF**
22 **Violation of Fifth Amendment – Substantive Due Process**

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24 37. Petitioner realleges and incorporates herein the allegations contained in the
25 preceding paragraphs of the petition as if fully set forth herein.
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1 38. The Due Process Clause of the Fifth Amendment forbids the government
2 from depriving any "person" of liberty "without due process of law," including noncitizens.
3 U.S. Const. amend. V.

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

7 40. The government's continued detention of Petitioner is not supported by any
8 special interest or compelling justification that outweighs his liberty interest.

9 41. Petitioner's ongoing detention when so many federal courts have held that
10 he is entitled to be considered for release upon posting an appropriate bond under § 1226
11 constitutes prolonged detention and violates his substantive due process rights.
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14 **SECOND CLAIM FOR RELIEF**
15 **Violation of Fifth Amendment Right - Procedural Due Process**

16 42. Petitioner realleges and incorporates herein the allegations contained in the
17 preceding paragraphs of the petition as if fully set forth herein.

18 43. The Due Process Clause of the Fifth Amendment guarantees Petitioner the
19 right to procedural due process in seeking a bond redetermination and the government may
20 not unreasonably restrict this right.

21 44. The government's knowing misclassification of Petitioner as an "applicant
22 for admission" under § 1225 in order to justify its argument for mandatory detention is not
23 supported by any special interest or compelling justification that outweighs Petitioner's liberty
24 interest.
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26 45. The continued detention of Petitioner is not supported by any special
27 interest or compelling justification that outweighs his liberty interest.
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PRAYER FOR RELIEF

WHEREFORE Petitioner Kelvin Douglas Godinez-Juarez respectfully requests that the Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order Respondents not to transfer Petitioner out of this District during the pendency of these proceedings, to preserve jurisdiction;
3. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to immediately release Petitioner from custody or, in the alternative, order Respondents to provide Petitioner a bond hearing under 8 U.S.C. § 1226, and without regard to the holding of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), within three (3) business days;
4. Award Petitioner reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
5. Grant any further relief the Court deems just and proper.

Dated: November 24, 2025

Attorney for Respondent

By: /s/ Erica Sanchez
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

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

Dated: November 24, 2025
Attorney for Respondent

By: /s/ Erica Sanchez
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Attorney for Respondent

LIST OF EXHIBITS

1		
2	Exhibit 1	<u>ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission</u> (last visited September 8, 2025).
3		
4	Exhibit 2	<i>Matter of Yajure Hurtado</i> , 29 I&N Dec. 216 (B.I.A. 2025).
5	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)
6		
7	Exhibit 4	Petitioner's Affidavit
8	Exhibit 5	DHS Form I797
9	Exhibit 6	Notice to Appear
10	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)
11	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)
12	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)
13	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)
14		
15	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)
16		
17	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)
18		
19	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)
20		
21	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)
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