

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 Petitioner

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA


Anibal Gonzalez-Gonzalez,
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") 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
Florence Service Processing Center, in his official
capacity,

Respondents.

Case No.

Agency No. 

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

INTRODUCTION

The Respondents are unlawfully detaining Petitioner Anibal Gonzalez-Gonzalez, at the Florence Service Processing 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

1 Appeals (BIA) issued a precedential decision on September 5, 2025, holding that all
2 noncitizens present in the United States without admission – no matter how long they
3 have resided here – are still “applicants for admission” under 8 U.S.C. § 1225(a) and
4 not entitled to bond hearings because they are subject to mandatory detention under §
5 1225(b)(2)(A). *See, Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) filed
6 herewith as Exhibit 2.
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9 But this interpretation of the Immigration and Naturalization Act (INA) violates
10 both procedural and substantive Fifth Amendment protections, ignores the plain
11 statutory language of both § 1225 and § 1226, and is contrary to numerous recent Federal
12 Court decisions in this District that have rejected these exact arguments. *See e.g.*
13 10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-
14 PHX-DWL (ESW), (D. Ariz. 10/3/2025), filed herewith as Exhibit 16.
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17 Petitioner filed an Application for Asylum and for Withholding of Removal,
18 which shows that he has been living in the United States for 20 years. *See*, Petitioner’s
19 Application for Asylum and for Withholding of Removal, filed herewith as Exhibit 6.
20 Petitioner has no criminal history. *See*, Petitioner’s Affidavit, filed herewith as Exhibit
21 4. Further, when Respondents issued a Notice to Appear, it identified Petitioner as an
22 “alien present in the United States” despite “arriving alien” being an option. *See*,
23 Petitioner’s Notice to Appear, filed herewith as Exhibit 5.
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26 In addition to BIA decisions not being binding precedent upon this Court, the
27 Supreme Court decision last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S.
28 369, 400 (2024), made clear that federal courts must independently interpret statutes and

1 no longer defer under so-called “Chevron deference.” This Court is therefore in the best
2 position to determine whether the Respondents are misinterpreting the relevant federal
3 statutes and improperly denying alien detainees bond hearings on the grounds that they
4 are all subject to mandatory detention under § 1225(b)(2)(A). The petition for writ of
5 habeas corpus should be granted.
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7 **JURISDICTION & CUSTODY**

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9 1. Petitioner Anibal Gonzalez-Gonzalez, is in the physical custody of
10 Respondents and Immigration and Customs Enforcement (ICE), an agency within the
11 Department of Homeland Security.
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13 2. Petitioner is currently detained at Florence Service Processing Center
14 and is under the direct control of Respondents and their agents.
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16 3. This action arises under the Constitution of the United States and 8
17 U.S.C. § 1101 et seq.

18 4. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of
19 the United States Constitution, 28 U.S.C. § 1331, and the common law. This Court may
20 grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. §
21 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.
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23 5. Congress has preserved judicial review of challenges to immigration
24 detention. *See Jennings v. Rodriguez*, 583 U.S. 122, 130-131 (2018) (holding that 8
25 U.S.C. §§ 1226(e) and 1252(b)(9) do not bar review of challenges to prolonged
26 immigration detention).
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1 12. Respondent DHS is a federal executive agency responsible for, among
2 other things, enforcing federal immigration laws and overseeing lawful immigration to
3 the United States. Respondent DHS is a legal custodian of Petitioner.
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5 13. Respondent Todd M. Lyons is Acting Director and Senior Official
6 Performing the Duties of the Director of U.S. Immigration and Customs Enforcement
7 (“ICE”). Respondent Lyons is responsible for ICE’s policies, practices, and procedures,
8 including those relating to the detention of immigrants during their removal procedures.
9 Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in his
10 official capacity.
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12 14. Respondent ICE is a federal law enforcement agency within DHS.
13 Respondent ICE is responsible for the enforcement of immigration laws, including the
14 detention and removal of immigrants. Respondent ICE is a legal custodian of Petitioner.
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16 15. Respondent John Cantu is Field Office Director for ICE’s Enforcement
17 and Removal Operation’s (“ERO”) Field Office. Respondent Cantu is a legal custodian
18 of Petitioner and is sued in his official capacity.
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20 16. Respondent Luis Rosa, Jr. is the Warden of the Florence Service
21 Processing Center. Respondent Rosa is a legal custodian of Petitioner. Respondent Rosa
22 is sued in his official capacity.
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24 17. Respondent Sirce Owen is the Acting Director of the Executive Office
25 for Immigration Review (EOIR), a federal agency within the U.S. Department of Justice.
26 Respondent EOIR is responsible for the administration of immigration courts, and
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1 acceptance of forms and petitions related to adjudication of immigration claims, as well
2 as motions for bond. Respondent Sirce Owen is sued in her official capacity.

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4 **STATEMENT OF FACTS**

5 18. Petitioner Anibal Gonzalez-Gonzalez was born on 
6 in Guatemala. *See*, Petitioner's Application for Asylum and for Withholding of
7 Removal, filed herewith as Exhibit 6.

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9 19. Petitioner Anibal Gonzalez-Gonzalez last entered the United States on
10 December 5, 2007. *See*, Petitioner's Application for Asylum and for Withholding of
11 Removal, filed herewith as Exhibit 6.

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13 20. Respondents arrested Petitioner on August 25, 2025. *See* Petitioner's
14 Affidavit, filed herewith as Exhibit 4.

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16 21. Petitioner was issued a Notice to Appear which identified him as an
17 "alien present in the United States" even though "arriving alien" was an alternate option.
18 *See*, Petitioner's Notice to Appear, filed herewith as Exhibit 5.

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20 22. Petitioner is detained at the Florence Service Processing Center where
21 he remains in custody. *See* ICE Online Detainee Locator Printout, filed herewith as
22 Exhibit 3.

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24 23. Petitioner has been living in the United States for 20 years. *See*,
25 Petitioner's Application for Asylum and for Withholding of Removal, filed herewith as
26 Exhibit 6.

1 29. Congress has granted the Attorney General discretion to decide
2 whether to detain or release certain noncitizens pending a removal decision. *See* 8 U.S.C.
3 § 1226(a). The Attorney General has delegated that authority to IJs. 8 C.F.R. §§ 1003.19,
4 1236.1.
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6 30. On July 8, 2025, DHS adopted a new policy on mandatory detention
7 for noncitizens who have been residing in the United States. *See*, ICE Memo: Interim
8 Guidance Regarding Detention Authority for Applications for Admission filed herewith
9 as Exhibit 1.
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11 31. On September 5, 2025, the BIA entered the precedential decision
12 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed herewith as Exhibit 2,
13 which holds that all noncitizens who enter without inspection are “applicants for
14 admission” under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under
15 § 1225(b)(2), without regard for the length of time they have lived in the United States.
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18 32. The Ninth Circuit has held that § 1226(a) is the “default” detention
19 statute for aliens in removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the
20 default detention statute for noncitizens in removal proceedings and applies to
21 noncitizens “[e]xcept as provided in [Subsection C].” 8 U.S.C. § 1226(a).” *Avilez v.*
22 *Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*,
23 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD
24 Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-*
25 *Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).
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1 33. Almost every Federal District Court that has considered the issue has
2 found that DHS's interpretation defies the INA. In Arizona, the following decisions so
3 find and collect the cases from other district courts around the country:
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- 5 a. 11/18/2025 Order Granting Habeas in *Rodrigues da Silva v. Figueroa*, et
6 al., Case No. 25-cv-04015-PHX (D. Ariz. 11-18-25)("dozens of other
7 district courts have concluded individuals like Petitioner are subject to §
8 1226 and not § 1225 and, therefore, are not subject to mandatory
9 detention"), gathering cases, filed with the Habeas Petition as Exhibit 7;
- 10 b. 11/13/2025 Order granting habeas in *Perez Rodriguez v. Noem*, et al., Case
11 No. 25-cv-03921-PHX (D. Ariz. 11/13/2025)("the vast majority of courts
12 concluded individuals like Petitioner are subject to § 1226 and not § 1225
13 and, therefore, are not subject to mandatory detention"), gathering cases,
14 filed with the Habeas Petition as Exhibit 8
- 15 c. 11/6/25 Order granting habeas in *Gonzalez Rodriguez v. Bondi*, et al., Case
16 No. 25-cv-03917-PHX (D. Ariz. 11-6-25)("dozens of other district courts
17 have concluded individuals like Petitioner are subject to § 1226 and not §
18 1225 and, therefore, are not subject to mandatory detention"), gathering
19 cases, filed with the Habeas Petition as Exhibit 9
- 20 d. 11/6/2025 Order Granting Habeas in *Abrego-Zarate v. Noem, et al.*, Case
21 No. 25-cv-03564-KML (D. Ariz. 11-6-25)("the great weigh of authority
22 is that individuals like petitioner are not subject to mandatory detention.
23 This court agrees with the majority view. For these reasons, the petition is
24 granted, and petitioner must receive a bond hearing without application of
25 *Matter of Yajure Hurtado*, 29 I&N 216 (B.I.A. 2025."), filed herewith as
26 Exhibit 10.
- 27 e. 11/03/25 Order granting habeas petition in *Lopez-Cruz v. Noem, et al*, No.
28 2:25-cv-03566-DJH--ASB (D. Ariz. 11/3/2025)("dozens of other district
courts have concluded individuals like Petitioner are subject to § 1226 and
not § 1225 and, therefore, are not subject to mandatory detention. This
Court agrees with this conclusion."), filed herewith as Exhibit 11.

- 1 f. 10/22/2025 Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No.
2 2:25-cv-03391-SHD-DMF at page 2 (D. Ariz. Oct. 22, 2025)(“while
3 Respondents point to two district court opinions adopting their
4 interpretation of § 1225(b)(2)(A), myriad other district courts have
5 reached the same conclusion as *Echevarria* and held individuals like
6 Petitioner are not subject to mandatory detention under 1225(b)(2)(A)”),
7 filed herewith as Exhibit 12.
- 8 g. 10/17/2025 Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et*
9 *al.*, No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)(“individuals like
10 Petitioner are not “arriving aliens” subject to mandatory detention but,
11 rather, are subject to the general removal statute, 8 U.S.C. § 1226(a)”),
12 filed herewith as Exhibit 13.
- 13 h. 10/09/2025 Order granting habeas entered in *Hector Lopez-Melo v. Bondi,*
14 *et. al.*, Case No. Case 2:25-cv-03394-DJH--JZB (D. Ariz.
15 10/9/2025)(“petitioner, who had been present in the United States for
16 years, was not an applicant for admission under 1225(b)(2)(A) or subject
17 to mandatory detention”), filed herewith as Exhibit 14.
- 18 i. 10/07/2025 Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No.
19 CV-25-02989-PHX-SPL (D Arizona 10/07/2025)(“Respondents maintain
20 he is subject to mandatory detention under 1225(b)(2). Again,
21 Respondents are mistaken.”), filed herewith as Exhibit 15.
- 22 j. 10/3/2025 Order granting habeas corpus in *Echevarria v. Bondi, et al.*, No.
23 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3,
24 2025)(“Court agrees with the majority of courts that have concluded that
25 § 1226(a), rather than § 1225(b)(2)(A), applies in this circumstance.”),
26 filed herewith as Exhibit 16.
- 27 k. 08/11/2025 Magistrate’s Report and Recommendation in *Rocha Rosado*
28 *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

1 discretionary detention rather than § 1225's mandatory detention
2 requirement, and that the IJ erred by finding they did not have jurisdiction
3 to consider Rosado's detention.") *report and recommendation adopted sub*
4 *nom.* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025), filed herewith as
Exhibit 17.

5 34. Petitioner has located only 5 cases holding to the contrary. In *Vargas*
6 *Lopez v. Trump*, --F. Supp. 3d--, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), the court
7 held that Vargas Lopez failed to meet his burden to show that he falls under § 1226(a),
8 so "his Petition fails regardless of the parties' arguments about the scope of § 1225(b)
9 and § 1226(a)." *Vargas Lopez v. Trump*, 2025 WL 2780351 at *7 (emphasis added). In
10 *Chavez v. Noem*, -- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), the
11 court denied a temporary restraining order on the grounds that the petitioners had "not
12 demonstrated serious questions about the application of Section 1225 to aliens present
13 in the United States." *Chavez v. Noem*, 2025 WL 2730228 at *4. However, the court
14 spent less than 2 pages analyzing the statutory language and caselaw before concluding
15 that "Petitioners have not shown either a likelihood of success or serious questions going
16 to the merits [therefore] we do not address the remaining Winter factors." *Chavez v.*
17 *Noem*, 2025 WL 2730228 at *5. *Mejia Olalde v. Noem*, 2025 U.S. Dist. LEXIS 221830
18 (E.D. Mo. Nov. 10, 2025) was concerned with whether the habeas petition had been
19 properly filed in that court's jurisdiction and never reached the application of § 1225(b)
20 to the petitioner. *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657 (E.D. Va. Aug.
21 5, 2025) and *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025)
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1 were each shorter than two pages long and neither contained any significant analysis.
2 Thus, none of these cases are particularly instructive.

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4 35. In 1997, after Congress amended the INA through the Illegal
5 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and
6 the then-Immigration and Naturalization Service issued an interim rule to interpret and
7 apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and
8 Detention of Aliens,” the agencies explained that:
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10 Despite being applicants for admission, aliens who are
11 present without having been admitted or paroled (formerly
12 referred to as aliens who entered without inspection) **will be**
eligible for bond and bond redetermination.

13 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that
14 individuals who had entered without inspection **were** eligible for consideration for
15 bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing
16 regulations.
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18 36. Thus, for almost 30 years, all participants in the immigration system
19 have understood that people arrested inside the United States generally fall within §
20 1226 for detention purposes and are therefore required to receive a bond hearing upon
21 request—even if they initially entered the country without permission. *See Martinez v.*
22 *Hyde*, No. 25-11613, 2025 WL 2084238, at *4 n.9 (D. Mass. July 24, 2025) (citing the
23 United States Solicitor General’s representation to the Supreme Court at oral argument
24 that “DHS’s long-standing interpretation has been that 1226(a) applies to those who
25 have crossed the border between ports of entry and are shortly thereafter apprehended”).
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5. Grant any further relief the Court deems just and proper.

Dated this 4th day of December, 2025.

By: /s/ *Erica Sanchez*
Erica Sanchez, Esq.
Shefer Law Firm, P.A.
800 SE 4th. Ave #803
Hallandale Beach, Florida 33009
(786) 295-9077
erica@shefer.legal

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

I represent Petitioner Anibal Gonzalez-Gonzalez 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 this 4th day of December, 2025.

By: /s/ *Erica Sanchez*
Erica Sanchez, Esq.

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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	ICE Online Detainee Locator Printout
Exhibit 4	Petitioner's Affidavit
Exhibit 5	Notice to Appear
Exhibit 6	Petitioner's Application for Asylum and for Withholding of Removal
Exhibit 7	Order granting habeas in <i>Rodrigues da Silva v. Figueroa</i> , et al., Case No. 25-cv-04015-PHX (D. Ariz. 11-18-25)
Exhibit 8	Order entered <i>Perez Rodriguez v. Noem</i> , et al., Case No. 25-cv-03921-PHX (D. Ariz. 11/13/2025)
Exhibit 9	Order entered <i>Gonzalez Rodriguez v. Bondi</i> , et al., Case No. 25-cv-03917-PHX (D. Ariz. 11-6-25)
Exhibit 10	Order entered in <i>Abrego-Zarate v. Noem</i> , et al., Case No. 25-cv-03564-KML (D. Ariz. 11-6-25)
Exhibit 11	Order entered in <i>Lopez-Cruz v. Noem</i> , et al, No. 2:25-cv-03566-DJH--ASB (D. Ariz. 11/3/2025)
Exhibit 12	Order entered in <i>Garcia-Rosales v. Noem</i> , et al., No. 2:25-cv-03391-SHD—DMF (D. Ariz. Oct. 22, 2025)
Exhibit 13	Order granting habeas corpus in <i>Benitez-Cornejo v. Cantu</i> , et al., No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)
Exhibit 14	Order entered in <i>Hector Lopez-Melo v. Bondi</i> , et al., Case No. Case 2:25-cv-03394-DJH--JZB [docket no. 11] (D.C. Ariz. 10/9/2025)
Exhibit 15	Order granting habeas corpus in <i>Bo Li v. Cantu</i> , et al., No. CV-25-02989-PHX-SPL (D Arizona 10/07/2025)
Exhibit 16	Order entered in <i>Francisco Echevarria v. Pam Bondi</i> , et al., CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025)
Exhibit 17	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)