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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX, ARIZONA

[redacted] Leyva Mora

Plaintiff,

v.

Kristi Noem, Secretary, U.S. Department of Homeland Security; Pamela Bondi, Attorney General of the United States, Executive Office for Immigration Review (EOIR); Corina Almeida, Chief Counsel, Immigration and Customs Enforcement (ICE), Office of Principal Legal Advisor, Florence; John Cantu, Field Office Director, ICE Enforcement and Removal Operations, Phoenix; Fred Figueroa, Warden, Eloy Detention Center,

Defendants.

Case No._____

Immigration Number: [redacted]

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

I. INTRODUCTION

1. Plaintiff [redacted] Leyva Mora ([redacted]) aka Jules Leyva Mora[1], by and through undersigned counsel, respectfully requests this Honorable Court order Defendants to schedule a bond custody hearing within seven (7) days and failure to do so, order

[1] Plaintiff, although born biologically female, identifies as male and is in the process of transitioning. As such, he identifies with the "he/his" pronouns and Counsel will do the same for this filing. Despite identifying as a transgender male, he is being housed in female only housing at the Eloy Detention Center in Eloy, Arizona and being denied access to prescribed testosterone medication.

Plaintiff's release. Defendants deny Plaintiff's release by asserting he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), a new policy argument contrary to decades of EOIR and ICE practice of releasing similarly situated non-citizens pursuant to 8 U.S.C. § 1226(a). Defendants' action during the pendency of Plaintiff's civil immigration proceedings subjects Plaintiff to prolonged detention in violation of law. By the plain language of the statute, 8 U.S.C. § 1225(b)(2)(A) only applies to persons being inspected by immigration officers at the time of seeking admission. Admission being defined by the lawful entry into the United States. 8 U.S.C. § 1101(a)(13)(A). Without directly interpreting the statutory definition of "admission", Defendants issued *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), holding that all non-citizens present without inspection, regardless of how many years they have been in the country, are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Pursuant to *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024), this Court is not bound by the Agency's interpretation of the INA. Indeed, one Federal District Court already interpreted the statute, making contrary findings to *Yajure Hurtado. See Rodriguez v. Bostock, et al.*, Case No. 3:25-cv-05240-TMC Preliminary Injunction (W.D. Wash., April 24, 2025). Plaintiff's detention is unlawful.

2. Plaintiff is a 21-year-old single transgender male, citizen of Mexico, who is eligible for relief from removal in the form of asylum pursuant to INA §208, withholding of removal and protection under the Convention against Torture.

3. Plaintiff entered the United States without inspection on or about January 2012 and was never encountered by Border Patrol. He has continuously lived in the United States since that time, more than 13 years.

4. On or about September 30, 2025, Immigration and Customs Enforcement ("ICE") detained Plaintiff after alleging trespassing on some property.

5. Prior to his detention, Plaintiff resided in Phoenix, Arizona with his mother and three (3) siblings. He also has the support of extended family, including his Lawful Permanent Resident aunt.

6. Although Plaintiff was arrested for trespassing, to date, no criminal charges have been filed in the Municipal or Superior Court. Apart from this recent arrest, Plaintiff has no criminal issues anywhere in the world.

7. Plaintiff had been at liberty in the United States for over 13 years prior to his detention.

8. On or about September 30, 2025, ICE took Plaintiff into custody and placed him into removal proceedings by filing a Notice to Appear with the Eloy Immigration Court and detaining him at the Eloy Detention Center located at 1705 E Hanna Rd, Eloy, Arizona 85131. Plaintiff requested a bond redetermination and on November 18, 2025. The Immigration Judge denied his release request based on jurisdiction, as compelled by the recent decision of *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025) ("*Matter of Hurtado").* Defendants continue to detain the Plaintiff in violation of law. Plaintiff requested another bond hearing in light of a recent class action and on December 1, 2025, the Immigration Judge again denied bond based on jurisdiction.

9. *Matter of Hurtado* is unlawful and cannot justify Plaintiff's ongoing confinement: it misreads the statute, conflicts with binding regulations that limit expedited-removal custody to classes designated by Federal Register notice, and raises grave

constitutional concerns the avoidance canon requires courts to steer away from. *See* INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A); 8 C.F.R. § 235.3(b)(1)-(2); 62 Fed. Reg. 10,312, 10,314, 10,318 (Mar. 6, 1997); 69 Fed. Reg. 48,877, 48,880-81 (Aug. 11, 2004); 84 Fed. Reg. 35,409, 35,412 (July 23, 2019); *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Clark v. Martinez*, 543 U.S. 371 (2005).

10. Defendants violated Plaintiff's right to be released upon payment of a bond under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226(a), and agency regulations, 8 C.F.R. §§ 1003.19(a), 1236.1(d). Defendants' coordinated action to hold Plaintiff under mandatory detention is not in accordance with law and violates Plaintiff's right to due process.

11. Plaintiff will suffer irreparable and immediate injury from continued unlawful detention unless the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 is granted.

I. JURISDICTION

12. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*

13. This Court has jurisdiction over petitions for Habeas Corpus pursuant to 28 U.S.C. § 2241. The Plaintiff is in the custody of the United States.

14. This Court has jurisdiction over civil actions brought under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States. This Court has jurisdiction pursuant to 28 U.S.C. § 1361 which authorizes actions in district court, "to compel an officer or employee of the United States or agency thereof to perform a duty owed to the Petitioner."

15. The aid of the Court is invoked under 28 U.S.C. § 2201 and 2202, authorizing a declaratory judgement.

16. This Court has jurisdiction pursuant to the Administrative Procedures Act (APA) to set aside agency action not in accordance with law and order the agency to perform a duty owed to Plaintiff under 5 U.S.C. § 706.

17. Plaintiff concurrently files a motion for a temporary restraining order and/or preliminary injunction to protect his right to be protected from deprivation of liberty without due process of law.

II. VENUE

18. Venue is proper because Plaintiff is in the custody of the Immigration and Customs Enforcement in Eloy, Arizona, which is within the jurisdiction of this District.

19. Venue is asserted pursuant to 28 U.S.C. § 1391(e) because the Plaintiff is being detained in Eloy, Arizona. Defendants are the U.S. Government, and no real property is involved in the action.

III. EXHAUSTION

20. Exhaustion is a prudential rather than a jurisdictional requirement. *Singh v. Holder*, 638 F.3d 1196, 1203 n. 3 (9th Cir. 2011). Waiver of exhaustion is appropriate "where administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted).

21. In the instant case, Plaintiff requested a bond hearing and the Immigration

Judge, denied Plaintiff's release request solely based on jurisdiction. While the Plaintiff may file an appeal of the custody redetermination to the Board of Immigration Appeals ("BIA"), the appellate division of EOIR, that would be futile in light of *Matter of Hurtado*. Plaintiff has no other means of challenging his ongoing prolonged detention in violation of law.

IV. REQUIREMENTS OF 28 U.S.C. § 2243 AND APPLICATION FOR AN ORDER OF SHOW CAUSE

22. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Defendants "forthwith," unless the Plaintiff is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require defendants to file a return "within ***three days*** unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

23. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

24. Pursuant to 28 U.S.C. § 2243, Plaintiff respectfully requests that the Court issue an order to all Defendants requiring them to show cause why the Plaintiff's Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701; and

the Declaratory Judgment Act, 28 U.S.C. § 2201 should not be granted and why Defendants should not be ordered to release Plaintiff from detention.

25. Pending adjudication of these claims, Plaintiff asks for an order enjoining Defendants from transferring Plaintiff from the jurisdiction of the Phoenix Field Office of the Immigration & Customs Enforcement ("ICE") Office of Enforcement and Removal Operations ("ERO") and this District.

V. PARTIES

26. Plaintiff, [redacted] Leyva Mora aka Jules Leyva Mora is a native and citizen of Mexico, and is currently detained by ICE in Eloy, Arizona. He is not subject to expedited removal under 8 U.S.C. § 1225(b)(1).

27. Defendant Kristi Noem is the Secretary of the Department of Homeland Security (DHS), responsible for overseeing and directing Immigration and Customs Enforcement. DHS directed the policy to argue Plaintiff is subject to mandatory detention.

28. Defendant Pamela Bondi is the Attorney General of the United States. Respondent is the head of the United States Department of Justice and responsible for the entire department, which includes the Executive Office for Immigration Review ("EOIR"), including the BIA.

29. Defendant Corina Almeida, Chief Counsel of the ICE Office of Principal Legal Advisor oversees the ICE attorneys in Eloy, Arizona.

30. Defendant John Cantu, Field Office Director Office Enforcement and Removal Operations in Phoenix, Arizona is responsible for Plaintiff's custody in Eloy, Arizona. Defendant Cantu is also responsible for the acceptance and processing of the

payment of bond and release of ICE detainees in Eloy, Arizona.

31. Defendant Fred Figueroa is the Warden at the ICE contract facility Eloy Detention Center, operated by CoreCivic. Defendant Fred Figueroa is responsible for Plaintiff's physical custody

VI. FACTUAL ALLEGATIONS

32. Plaintiff [redacted] Leyva Mora aka Jules Leyva Mora is a citizen of Mexico who last entered the United States without inspection on or about January of 2012. He has resided in the United States since that date.

33. On or about September 30, 2025, DHS took Plaintiff into custody and placed him into removal proceedings before Eloy EOIR by issuing a Notice to Appear charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). The Notice to Appear does not allege Plaintiff is an arriving alien, but rather that he is present in the United States without inspection. DHS detained Plaintiff at the Eloy Detention Center, in Eloy, Arizona.

34. Plaintiff is eligible for asylum pursuant to INA §208, withholding of removal and protection under the Convention against Torture and has an application pending before the Immigration Court.

35. Plaintiff is currently in the custody of ICE, as he is detained at the Eloy Detention Center in Eloy, Arizona.

36. Plaintiff was apprehended for an incident for trespassing on or about September 30, 2025; however, no criminal charges have been filed, as evidenced in attached. As such, aside from his one and only entry into the United States without inspection, Plaintiff has not violated any laws or ordinance.

37. In the United States, Plaintiff has worked to support himself and his family.

38. On July 8, 2025, DHS issued new policy instructing ICE to argue and hold anyone they alleged to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

39. On August 4, 2025, the BIA issued a precedent decision in *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025) finding a non-citizen's custody, who "unlawfully" entered the United States in 2022, was subject to the provisions of 8 U.S.C. § 1226(a).

40. On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), implementing the Defendants' concerted policy goal of holding that all persons who entered without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

41. On November 18, 2025, the Eloy EOIR, conducted a custody redetermination hearing, where Plaintiff contested the ICE argument that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

42. On November 18, 2025, the IJ issued a summary decision denying bond on the basis of no jurisdiction.

43. On November 25, 2025, Counsel for Plaintiff motioned the court to reconsider its November 18, 2025 based on material changed circumstances, specifically related to the nationwide declaratory judgment in *Maldonado Bautista et al. v Santacruz Jr. et al.*, Case No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025). However, on December 1, 2025, the Immigration Judge again denied bond on jurisdiction.

VII. LEGAL FRAMEWORK

44. The Immigration and Nationality Act ("INA") prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

45. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge ("IJ"). *See* 8 U.S.C. § 1229a.

46. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. § 1003.19(a), 1236.1(d). 8 U.S.C. § 1226(a) governs the general detention and release of non-citizens in removal proceedings: "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States . . . and (2) may release the alien on- (A) bond of at least $1500 . . . or (B) conditional parole."

47. 8 U.S.C. § 1226(c), amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), provides for the mandatory detention of inadmissible non-citizens with certain criminal convictions and conduct. The statute and the amendments made by the Laken Riley Act intentionally precludes some, but not all, aliens inadmissible under 8 U.S.C. 1182(a)(6)(A)(i) from being granted bond. 8 C.F.R. §§ 1003.19(a), 1236.1(d), provide the parameters for EOIR to provide bond hearings to non-citizens pending removal proceedings.

48. The INA provides for mandatory detention of certain non-citizens with final orders of removal under 8 U.S.C. § 1231, suspected terrorists under 8 U.S.C. § 1226a, noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1), and those "seeking admission" and being reviewed for admissibility at the time of arrival under 8 U.S.C. §

1225(b)(2).

49. Plaintiff seeks release under 8 U.S.C. § 1226(a) as a non-citizen domiciled in the United States subject to removal proceedings under 8 U.S.C. § 1229a. Defendants purport to deny Plaintiff release under 8 U.S.C. § 1225(b)(2)(A).

50. Plaintiff's case concerns important distinctions between § 1226(a) and § 1225(b)(2). Those provisions were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. Pub. L. No. 104-208, Div. C, § § 302-03, 110 Stat. 2009-546, 3009-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025).

51. Following the enactment of the IIRIRA, the Executive Office for Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.")

52. Thus, in the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice is consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if

without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

53. 8 U.S.C. § 1225 governs the processing of arriving aliens and recent entrants and is not a detention statute. The only mention of "mandatory detention" comes under 8 U.S.C. § 1225(b)(1)(B)(IV) stating that applicants for admission pending asylum interviews "subject to the procedures under this clause shall be detained pending final determination of credible fear of persecution . . . ." 8 U.S.C. § 1225(b)(1)(A)(iii)(II) explicitly excludes from expedited removal non-citizens who can show they have been "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility."

54. 8 U.S.C. § 1225(b)(2)(A) applies to a non-citizen "who is an applicant for admission, if the examining officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under 1229a of this title."

55. In July 2025, Defendants adopted an entirely new interpretation of the statute, concluding that all noncitizens who entered the United States without admission or parole are considered applicants for admission, and are therefore ineligible for bond hearings before an Immigration Judge under 8 U.S.C. § 1225(b)(2)(A). Around the same time, ICE "in coordination with the Department of Justice" announced a corresponding policy that rejected the well-established understanding of the statutory and regulatory framework and

reversed decades of practice. That policy claims that all persons who entered the United States without inspection shall now be deemed to be subject to mandatory detention under § 1225(b)(2)(A). The policy applies regarding of when a person is apprehended, the section of law under which they were previously released and affects those who have resided in the United States for years.

56. Cementing the policy and making it binding all IJs, the Board of Immigration Appeals ("BIA") recently issued a precedent decision: *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Hurtado*, the BIA found that any noncitizen who is present in the United States without having been inspected and admitted is subject to detention under 8 U.S.C. § 1225(b)(2), not §1226(a).

57. There is no Ninth Circuit precedent to support the Defendants' holding Plaintiff subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

58. The Ninth Circuit has previously interpreted the statutes in question. In *Torres v. Barr*, 976 F.3d 918, 923-926 (9th Cir. 2020)(en banc), the Ninth Circuit provides a thorough analysis, finding that applying for admission means doing so from outside the United States or at a port of entry, seeking physical entry into the country. The *Torres* decision holds that the idea of seeking admission is limited in time and cannot continue without limit once the non-citizen is already in the United States. *Id.* at 926. "Accordingly, inadmissibility must be measured at the point in time that an immigrant actually submits an application for entry into the United States." *Id*; *See also Negrete-Ramirez v. Holder*, 741 F.3d 1047, 1051 (9th Cir. 2014) ("The definition refers expressly to entry into the United States, denoting by its plain terms passage into the country from abroad at a port of entry.")

Based on the Ninth Circuit's statutory analysis, the term "seeking admission" cannot apply to a person already inside the United States for over 23 years.

59. Since Defendants adopted their new policies, dozens of federal courts have uniformly rejected their newly invented misclassification as illegal and because it defies the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE, ruling that the BIA's decision is not entitled to any deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024).[2]

60. The Western District of Washington has also agreed. In the Tacoma, Washington, immigration Court, IJs previously stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, reasoning such people are subject to mandatory detention under § 1225(b)(2)(A). There, in granting preliminary injunctive relief, the U.S. District Court for the Western District of

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[2] See, e.g., *Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK (S.D. Ind. Oct. 11, 2025); *B.D.V.S. v. Forestal*, No. 1:25-cv-01968-SEB-TAB (S.D. Ind. Oct. 8, 2025); *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Ochoa Ochoa v. Noem*, No. 25 C 10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025) (Jenkins, J.), *H.G.V.U. v. Smith*, No. 25 C 10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2020) (Coleman, J.), *Mariano Miguel v. Noem*, No. 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025) (Alonso, J.), and *G.Z.T. v. Smith*, No. 25 C 12802 (N.D. Ill. Oct. 21, 2025) (Ellis, J.), *Corona Diaz v. Olson, et al.*, No. 25-cv-12141 (N.D. Illinois 2025), *Belsai v. Bondi, et al.*, No. 25-cv-3862 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, --- F.Supp.3d ---, 2025 WL 2712417 (N.D. Iowa Sept. 23, 2025); *Salazar v. Dedos*, No. 1:25- cv-00835-DHU-JMR, 2025 WL 2676729 (D. N.M. Sept. 17, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25- cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025).

Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, -- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025).

61. On November 25, 2025, the United States District court for the Central District of California issued a nationwide declaratory judgment in *Maldonado Bautista et al. v Santacruz Jr. et al.*, Case No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025), that directly governs the legality of Plaintiff's present detention. In that decision, the court held that the 2025 BIA precedent of *Matter of Yajure Hurtado*, which allowed DHS to classify all noncitizens who entered without admission or inspection as detained under INA § 235(b)(2)(A) regardless of where or how they were apprehended, is unlawful. The court further determined that DHS's long-standing policy mirroring that approach- treating every "EWI" ("entered without inspection") noncitizen as an applicant for admission subject to mandatory detention- likely violates the statutory framework enacted by Congress.

62. As the district court explained, Congress drew a clear distinction between individuals apprehended at or near the border and those arrested inside the United States. For noncitizens who entered without inspection but were arrested in the interior and placed into regular § 240 removal proceedings, the statutory authority governing detention is INA § 236(a), not § 235(b)(2)(A). The court therefore held that such individuals are not subject to mandatory detention and are instead entitled to the bond procedures Congress created under § 236(a).

63. While the order granting partial summary judgment came out on November

21, 2025, before the class certification was issued, the class certification order expressly states: "**When considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole).**" *See* page 14 of attached class certification order.

64. The Bond Eligible Class is nationwide and encompasses:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Id.

65. Under the November 25, 2025 court order, DHS must treat all members of the certified nationwide class as eligible for individualized custody determination before an Immigration Judge.

66. Plaintiff in this matter is squarely within the class certified by *Maldonado Bautista.* First, Plaintiff entered the United States without admission or inspection in 2012. Second, he was not apprehended at the border or immediately after lawful entry; rather, he was arrested in the interior of the United States, well after his entry. Third, DHS did not process him through expedited removal or any other § 235 procedure, but instead properly placed him in ordinary § 240 removal proceedings before the Immigration Court. These are the exact conditions that define class membership under the *Maldonado Bautista* declaratory judgment.

67. Because Plaintiff meets each element of the class definition, the nationwide judgment applies to him fully and directly. As a matter of binding Federal law, Plaintiff cannot be detained under § 235(b)(2)(A) or any variant of the *Hurtado* framework. His

detention must now be treated as arising under INA § 236(a), and he is entitled to the procedural protections associated with the statute, including an individualized bond hearing before an Immigration Judge.

68. As the *Maldonado Bautista et al.* and *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Plaintiff.

69. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazequez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Plaintiff in this matter.

70. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

71. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

72. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who very recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A); *see also Diaz Martinez*, 2025 WL 2084238, at *8 ("'[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.'" (*quoting Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

73. It must be restated, § 1225(b)(2)(A) expressly applies only to the "applicant for admission" "seeking admission." The BIA's interpretation of the law specifically holds that applicants for admission are always "seeking admission," but if this were true, there would be no need for § 1225(b)(2)(A) to limit its application to those "seeking admission." It renders the language superfluous. Seeking admission explicitly indicates an affirmative request or action on the part of the applicant for admission. Yajure Hurtado repeatedly accuses non-citizens present without admission as evading inspection, but then turns around to say they are seeking admission. It cannot be both ways, a person who evades inspection, cannot be considered seeking admission. Yajure Hurtado lacks any validity or persuasiveness due to its outright failure to interpret the statutory definition of "admission" under 8 U.S.C. § 1101(a)(4), (a)(13)(A). The BIA's decision in Yajure Hurtado is written

with the outcome in mind, rather than with a sincere intent to explore and understand the law. The BIA, as a part of the Executive Branch, is a political creature, and the Courts must subject them to the law. Releasing non-citizens present without admission on a bond is not about "rewarding" the evasion of apprehension for more than two years, but rather about protecting the interests accrued in establishing domicile: property, children, family, friends, community, career, and economic interests. There is logic to mandatory detention of persons just arriving to the United States. They have not established any kind of record in the country, making it difficult to determine whether they pose a danger or flight risk while they face removal proceedings. However, people who have been in the United States for over two years should be given an opportunity to demonstrate they not a danger or flight risk, pending removal proceedings. There is a record of their behavior in the United States. Defendants' desired implementation of the law leads to absurd results very likely never intended by congress. Indeed, in the 28 years since the implementation of IIRIRA, congress never stepped in to correct the ongoing practice and interpretation of the Immigration Courts, BIA, and Federal Courts allowing release under § 1226(a) of those present without admission.

74. Defendants' application of § 1225(b) to Plaintiff renders all references to inadmissible non-citizens under § 1226 superfluous.

75. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Plaintiff, who have already entered and were residing in the United States at the time they were apprehended and detained. This is made clear by the nationwide judgment in *Maldonado Bautista,* that Plaintiff must be treated as detained under INA §

236(a).

VIII. **CLAIMS FOR RELIEF.**

76. Plaintiff realleges paragraphs 1 through 75 herein as fully set forth.

77. Plaintiff's continued detention is a violation of Due Process rights under the Fifth Amendment, which provides that no person shall "be deprived of life, liberty, or property without due process of law" along with the U.S. Constitution and not in accordance with the INA.

78. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Moreover, "[t]he Due Process clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent." *Id.* at 693.

79. Pursuant to the APA, the Defendants refusal to release Plaintiff on bond is arbitrary, capricious, and not in accordance with the law.

80. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

81. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Defendants. Such noncitizens are detained under § 1226(a) and

are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

82. Nonetheless, the DHS and the Immigration Court will apply § 1225(b)(2) to Plaintiff.

83. The application of 1225(b)(2) to Plaintiff, who should be bond eligible, unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

84. This Court has jurisdiction to review the Defendants' action and order Plaintiff's release on bond.

85. Defendants' mandatory detention of Plaintiff without consideration for release on bond or access to a bond hearing violates his due process rights.

86. Plaintiff is eligible for payment of attorney's fees, related expenses, and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

IX. PRAYER FOR RELIEF.

WHEREFORE, Plaintiff prays that the Court grant the following relief:

1) Assume jurisdiction over this cause pursuant to 28 U.S.C. § 2241;
2) Issue an Order to Show Cause ordering Defendants to show cause why this Petition should not be granted within three days;
3) Order Defendants not to remove Plaintiff from the State of Arizona;
4) Issue a Writ of Habeas Corpus ordering Defendants to provide an individualized bond hearing within five (5) days of this Court's order;
5) Declare that Plaintiff's detention violates the Due Process Clause of the Fifth Amendment as well as the relevant statute and regulations governing detention of

noncitizens;

6) Award Plaintiff's attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

7) That the Court grant further relief as this Court deems just and proper under the circumstances.

RESPECTFULLY SUBMITTED this 4TH day of December 2025.

By: s/ *Jessica Anleu, Esq.*

Jessica Anleu, Esq.
Attorney for Plaintiff

LIST OF ATTACHED EXHIBITS

Exhibit	Description
A	November 18, 2025 Immigration Judge Bond Order
B	December 1, 2025 Immigration Judge Bond Order
C	November 25, 2025 *Maldonado Bautista* Order granting Plaintiff Petitioner's Motion for Class Certification
D	November 21, 2025 *Maldonado Bautista* Order granting Petitioners' Motion for Partial Summary Judgment and Denying Request to Enter Final Judgment

CERTIFICATE OF SERVICE

On the 4th day of December 2025, I, Jessica Anleu, the undersigned, served via certified U.S. Mail, the attached **Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241**, on each person/entity listed below addressed as follows:

Civil Clerk
United States Attorney's Office
District of Arizona
Two Renaissance Square
40 N. Central Avenue, Suite 1200
Phoenix, AZ 85004-4408

Fred Figueroa
Warden, Eloy Detention Center
1705 E Hanna Rd
Eloy, Arizona 85131

Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW
Mail Stop 0485 Washington, DC 20528

s/ *Jessica Anleu, Esq.*