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5 Manuel Hernandez-Parrilla

6  
7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE DISTRICT OF NEW MEXICO**

9 Manuel Hernandez-Parrilla,  
10  
11 Petitioner,

12 v.

13 Mary De Anda-Ybarra, Field Office  
Director of Enforcement and Removal  
Operations, El Paso Field Office,  
14 Immigration and Customs Enforcement;  
Kristi Noem, Secretary, U.S. Department of  
15 Homeland Security; Pamela Bondi, U.S.  
Attorney General; Todd Lyons, Acting  
16 Director, Immigration and Customs  
Enforcement and Removal Operations.  
17

18 Respondents.

Case No. 25-1224

**PETITION FOR WRIT OF  
HABEAS CORPUS**

## INTRODUCTION

1  
2 1. Since at least the passage of the Immigration and Nationality Act of 1952,  
3 noncitizens who entered the country illegally could generally be released on bond while  
4 their removal proceedings were pending. Yet earlier this year, U.S. Immigration and  
5 Customs Enforcement (ICE) “revisited” its position and determined that all noncitizens  
6 who are present without admission are subject to mandatory detention while in removal  
7 proceedings. The Board of Immigration Appeals (BIA) recently reached the same  
8 conclusion in a precedential decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA  
9 2025), holding for the first time that all noncitizens who entered the country without  
10 admission are categorically ineligible for bond regardless of how long they have lived in  
11 the United States.  
12

13 2. Over 100 federal judges have already found the government’s novel  
14 interpretation incompatible with the INA. *See infra* nn. 3, 4. The provision on which the  
15 government relies states that noncitizens who are “seeking admission” are subject to  
16 mandatory detention while in removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Congress  
17 defined “admission” as “the lawful entry of the alien into the United States after inspection  
18 and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). Thus, by its plain  
19 terms, the provision only applies to noncitizens who present themselves at a port of entry.  
20 And in addition to disregarding the plain text of § 1225(b)(2)(A), the government’s  
21 contrary interpretation renders superfluous other provisions of the INA that require the  
22 mandatory detention of noncitizens who have engaged in criminal activity—including a  
23 provision, § 1226(c)(1)(E), enacted this year in the Laken Riley Act.  
24

1           3.     The government’s argument also flouts the Justice Department’s own  
2 regulations. Since 1997, the Justice Department has precluded immigration judges from  
3 granting bond to so-called “arriving aliens”—*i.e.*, those who seek admission at a port of  
4 entry—but not to those who entered the country without inspection. This distinction was  
5 the result of a deliberate choice made by the Attorney General following the passage of the  
6 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L.  
7 104-208, Div. C, 110 Stat. 3009-546. Under bedrock principles of administrative law,  
8 agencies cannot “overrule” by adjudication regulations that were promulgated after notice  
9 and comment. *Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980); *see Nunez-Perez v. INS*,  
10 956 F.2d 223, 225 (10th Cir. 1992) (citing *Patel*, and acknowledging that agencies cannot  
11 “use adjudication to add a requirement to a regulation which had been expressly discarded  
12 during a prior rulemaking proceeding.”).

14           4.     As a result of the government’s new interpretation, every noncitizen who  
15 entered the country without being admitted is subject to mandatory detention for the  
16 duration of their removal proceedings. One of those noncitizens is Manuel Hernandez-  
17 Parrilla, who has been residing continuously in the United States since his parents brought  
18 him here in approximately 1998 or 1999, at a time when he was 11 years old. His last entry  
19 to the United States occurred on May 15, 2012, following an indisputably unlawful  
20 involuntary removal at the hands of DHS. Mr. Hernandez-Parrilla is married to a U.S.  
21 citizen, and he has three U.S. citizen children. Mr. Hernandez-Parrilla is the primary  
22 breadwinner for the family, and he works as a ranch-hand.

1 Mr. Hernandez-Parrilla was released on bond in the amount of \$7,500 on March 26,  
2 2015. In the ensuing years, Petitioner applied for relief in the form of asylum, withholding  
3 of removal, protection under the Convention Against Torture, and cancellation of removal  
4 for certain nonpermanent residents. Those applications for relief remain pending before  
5 the immigration judge following his final merits hearing on March 14, 2024, and  
6 supplemental briefing, which was completed on April 11, 2024, in the El Paso Immigration  
7 Court.

8  
9 On September 26, 2025, DHS sent a notice to Mr. Hernandez-Parrilla's wife  
10 cancelling his immigration bond, finding that the "conditions" of the bond had been  
11 satisfied. Subsequently, on November 18, 2025, DHS directed Mr. Hernandez-Parrilla to  
12 report to El Paso on December 18, 2025, for a case review. Absent this Court's intervention,  
13 he will be detained at that case review for the remaining duration of his removal  
14 proceedings, over a hundred and fifty miles from his family and community.

### 15 JURISDICTION

16 5. Because his bond has been canceled, Petitioner is in the constructive custody  
17 of Respondents. Petitioner resides in Animas, New Mexico.

18 6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(c)(5)  
19 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of  
20 the United States Constitution (the Suspension Clause).

21 7. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory  
22 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.  
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1           8.       The “zipper clause” at 8 U.S.C. § 1252(b)(9), which channels “[j]udicial  
2 review of all questions of law . . . including interpretation and application of constitutional  
3 and statutory provisions, arising from any action taken . . . to remove an alien from the  
4 United States” to the appropriate federal court of appeals, does not apply because that  
5 section applies only to review of removal orders, and Petitioners do not seek review of  
6 orders of removal but of custody. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-  
7 cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Order Granting Temporary Restraining  
8 Order, Dkt. 14 at 4-5.

9  
10           9.       The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to  
11 hear “any cause or claim by or on behalf of any alien arising from the decision or action by  
12 the Attorney General to commence proceedings, adjudicate cases, or execute removal  
13 orders against any alien under this chapter.” The Supreme Court previously characterized  
14 § 1252(g) as a narrow provision, applying “only to three discrete actions that the Attorney  
15 General may take: her ‘decision or action’ to ‘commence proceedings, *adjudicate* cases, or  
16 *execute* removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471,  
17 482 (1999) (emphasis in original). In doing so, the Supreme Court found it “implausible  
18 that the mention of *three discrete events* along the road to deportation was a shorthand way  
19 to referring to *all claims arising from* deportation proceedings.” *Id.* (emphasis added).  
20 Petitioner’s challenge to his imminent re-detention without a pre-deprivation bond hearing  
21 does not fall within these discrete actions. *Maldonado Bautista et al. v. Santacruz, et al.*,  
22 No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Order Granting Temporary  
23 Restraining Order, Dkt. 14 at 5.  
24



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

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

9  
10 **PARTIES**

11 15. Petitioner Manuel Hernandez-Parrilla is a 45-year-old resident of New  
12 Mexico. He first entered the United States in either 1989 or 1990 when he was eleven  
13 years old, and, but for two temporary absences, has remained here ever since that time.  
14 DHS has charged Petitioner with removability under 8 U.S.C. § 1182(a)(6)(A)(i), as an  
15 alien in the United States without being admitted or paroled. He presently resides with his  
16 family in Animas, New Mexico.

17 16. Respondent Mary De ANDA-YBARRA is the Director of the El Paso Field  
18 Office of ICE’s Enforcement and Removal Operations division. As such, Ms. Anda-Ybarra  
19 is Petitioner’s constructive custodian and will be responsible for Petitioner’s detention after  
20 his check-in appointment. She is named in her official capacity.

21 17. Respondent Kristi NOEM is the Secretary of the Department of Homeland  
22 Security. She is responsible for the implementation and enforcement of the INA, and  
23  
24

1 oversees ICE, which is responsible for Petitioner’s detention. Ms. Noem has ultimate  
2 custodial authority over Petitioner and is sued in her official capacity.

3 18. Respondent Pamela BONDI is the United States Attorney General. She is  
4 responsible for the Executive Office for Immigration Review (EOIR), which is the  
5 component of the U.S. Department of Justice that is responsible for implementing and  
6 enforcing the INA in removal proceedings, including for custody redetermination in bond  
7 hearings.

8 19. Respondent Todd LYONS is the Acting Director of ICE and is named in  
9 his official capacity. Among other things, ICE is responsible for the administration and  
10 enforcement of the immigration laws, including the removal of noncitizens. In his official  
11 capacity as head of ICE, he is the legal custodian of Petitioner.  
12

## 13 **LEGAL FRAMEWORK**

### 14 **Immigration and Nationality Act and Federal Regulations**

15 20. The INA prescribes three basic forms of detention for the vast majority of  
16 noncitizens who are alleged or found to be removable from the United States.

17 21. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard  
18 removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention  
19 are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§  
20 1003.19(a), 1236.1(d), while noncitizens who have engaged in specified criminal and  
21 terrorist activity are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).  
22  
23  
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1 22. Second, the INA provides for mandatory detention of noncitizens subject to  
2 expedited removal under 8 U.S.C. § 1225(b)(1) and for other noncitizens seeking  
3 admission under § 1225(b)(2).

4 23. Last, the INA also provides for detention of noncitizens who have been  
5 ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C.  
6 § 1231(a)–(b).

7 24. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

8 25. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part  
9 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996,  
10 Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583,  
11 3009–585. Section 1225(b)(2)(A) states that if an “examining immigration  
12 officer determines that an alien seeking admission is not clearly and beyond a doubt  
13 entitled to be admitted, the alien shall be detained for [removal proceedings].” The IIRIRA  
14 also defined “admission” in 8 U.S.C. § 1101(a)(13)(A) as the “lawful entry of the alien into  
15 the United States after inspection and authorization by an immigration officer.” § 301, 110  
16 Stat. 3009-575.

17 26. Consistent with these statutory provisions, federal regulations preclude  
18 immigration judges from granting bond to “arriving aliens,” 8 C.F.R. §  
19 1003.19(h)(1)(B)(ii), a phrase defined in relevant part as “applicant[s] for admission  
20 coming or attempting to come into the United States at a port-of-entry.” 8 C.F.R. §  
21 1001.1(q). The decision to preclude immigration judges from granting bond to arriving  
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1 aliens—as distinct from all noncitizens who entered without admission—was the product  
2 of notice and comment rulemaking in early 1997 following the enactment of the IIRIRA.

3 27. As the regulations were initially proposed, all “[i]nadmissible aliens in  
4 removal proceedings” would have been ineligible for bond. *Inspection and Expedited*  
5 *Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal*, 62 Fed. Reg.  
6 444, 483 (Jan. 3, 1997). After receiving comments, however, the Attorney General deleted  
7 the proposed provision and replaced it with one that would apply only to “[a]rriving  
8 aliens.”<sup>1</sup> *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens;*  
9 *Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10361 (March  
10 6, 1997). As the Attorney General explained, “[t]he effect of this change [was] that  
11 inadmissible aliens, except for arriving aliens, have available to them bond redetermination  
12 hearings before an immigration judge, while arriving aliens do not.” *Id.* at 10323. In other  
13 words, “aliens who are present without having been admitted or paroled (formerly referred  
14 to as aliens who entered without inspection) will be eligible for bond and bond  
15 redetermination.” *Id.*

17 28. Thus, in the decades that followed, most people who entered without  
18 inspection and were placed in standard removal proceedings received bond hearings, unless  
19 their criminal history rendered them ineligible. That practice was consistent with many  
20 more decades of prior practice in which noncitizens who were not deemed “arriving” were  
21 entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)  
22

23 \_\_\_\_\_  
24 <sup>1</sup> This provision was originally promulgated as 8 C.F.R. § 236.1(c)(5)(i), and was later transferred  
to 8 C.F.R. § 1003.19(h)(2)(i)(B).

1 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply  
2 “restates” the detention authority previously found at § 1252(a)).

3 29. Section 1226 was most recently amended earlier this year by the Laken Riley  
4 Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Congress provided that noncitizens who entered  
5 the country without being admitted are subject to mandatory detention if they were  
6 thereafter charged with, arrested for, convicted of, or admitted committing various offenses.  
7 § 1226(c)(1)(E). As may be apparent, this provision would be superfluous if all noncitizens  
8 who were present without admission were already subject to mandatory detention under §  
9 1225(b)(2)(A).  
10

### 11 **Exhaustion and Futility**

12 30. Exhaustion of administrative remedies is required “[w]here Congress  
13 specifically mandates.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). But where, as  
14 here “Congress has not clearly required exhaustion, sound judicial discretion governs.” *Id.*  
15 (citations omitted). Under these principles, prudential exhaustion is not required where a  
16 request for relief before the agency would be futile because the agency has “predetermined  
17 the issue before it.” *Id.* at 148. Furthermore, “a court may waive the prudential exhaustion  
18 requirement if ‘administrative remedies are inadequate or not efficacious, pursuit of  
19 administrative remedies would be a futile gesture, irreparable injury will result, or the  
20 administrative proceedings would be void.’” *Hernandez v. Sessions*, 872 F.3d 976, 988  
21 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)); *see also*  
22 *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010) (“A narrow exception to the  
23 exhaustion requirement [in *habeas* petitions] applies if a petitioner can demonstrate that  
24

1 exhaustion is futile.”) (citing *Fazzini v. Ne. Ohio. Corr. Ctr.*, 473 F.3d 229, 235-36 (6th  
2 Cir. 2006) (recognizing futility exception in context of § 2241 petitions).

3 31. The BIA’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, renders  
4 prudential exhaustion futile in bond cases involving individuals who entered the United  
5 States without inspection. *Zaragoza Mosqueda, et al. v. Noem*, 2025 WL 2591530, at \*7  
6 (C.D. Cal. Sept. 8, 2025). Although Petitioner has pending applications for relief from  
7 removal before the immigration judge, *Matter of Yajure Hurtado* “predetermine[s]” the  
8 outcome of those proceedings. *McCarthy*, 503 U.S. at 148. Prudential exhaustion is  
9 therefore unnecessary, and the Court should exert jurisdiction over Petitioner’s case.  
10

11 32. A motion to reconsider has been filed in *Matter of Yajure Hurtado*. The  
12 motion challenges the Board’s statutory analysis and asks it to withdraw its decision  
13 because (a) the underlying removal proceedings had concluded by the time the Board  
14 issued its decision, making the case moot, and (b) the decision conflicts with longstanding  
15 regulations issued by the Attorney General.<sup>2</sup>

16 **Federal Court Decisions Regarding Detention of**  
17 **Individuals Who Are Present Without Admission**

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19  
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21 <sup>2</sup> The Board’s Decision in *Matter of Yajure Hurtado* is also not entitled to deference because it  
22 contravenes the statutory language and legislative history, and it deviates from longstanding  
23 agency practice and regulations. Moreover, the federal courts no longer owe deference to Board  
24 decisions. The Supreme Court directed district courts to “exercise independent judgment in  
determining the meaning of statutory provisions” and “not defer to an agency interpretation of  
the law simply because a statute is ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369,  
394, 413 (2024). Accordingly, the Board’s decision is not entitled to any deference.

1 33. To date, over 100 federal district judges have either outright rejected the  
2 government's novel interpretation of § 1225(b)(2)(A),<sup>3</sup> or found that noncitizens  
3 challenging the government's interpretation were substantially likely to prevail on the  
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6 <sup>3</sup> *Benitez-Cornejo v. Cantu*, No. 25-3672 (D. Ariz. Oct. 17, 2025) (Tuchi, J.); *Torres v. Wamsley*,  
7 2025 WL 2855379 (W.D. Wash. Oct. 8, 2025) (Menendez, J.); *BDVS v. Forestal*, No. 25-1968  
8 (S.D. Ind. Oct. 8, 2025) (Evans Barker, J.); *Eliseo v. Olson*, No. 25-3381, Oct. 8, 2025) (Blackwell,  
9 J.); *Buenrostro-Mendez v. Bondi*, No. 25-3726, (S.D. Tex. Oct. 7, 2025) (Rosenthal, J.);  
10 *Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025) (Joun, J.); *Belsai D.S.*  
11 *v. Bondi*, No. 25-3682 (D. Minn. Oct. 1, 2025) (Menendez, J.); *Santiago Santiago v. Noem*, No.  
12 25-361 (W.D. Tex. Oct. 1, 2025) (Cardone, J.); *Quispe-Ardiles v. Noem*, No. 25-1382, 2025 WL  
13 2783799 (E.D. Va. Sept. 30, 2025) (Nachmanoff, J.); *Rodriguez Vazquez v. Bostock*, No. 25-5240,  
14 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (Cartwright, J.); *Da Silva v. ICE*, No. 25-284,  
15 2025 WL 2778083 (D.N.H. Sept. 29, 2025) (McCafferty, J.); *Quispe v. Crawford*, No. 25-1471,  
16 2025 WL 2783799 (E.D. Va. Sept. 29, 2025) (Trennga, J.); *Inlago Tocagon v. Moniz*, No. 25-12453,  
17 2025 WL 2778023 (D. Mass. Sept. 29, 2025) (Joun, J.); *Barrios v. Shepley*, No. 25-406, 2025 WL  
18 2772579 (D. Maine Sept. 29, 2025) (Woodcock, Jr.); *J.U. v. Maldonado*, No. 25-4836, 2025 WL  
19 2772765 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Savane v. Francis*, No. 25-6666, 2025 WL  
20 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.); *Zumba v. Bondi*, No. 25-14626, 2025 WL  
21 2753496 (D.N.J. Sept. 26, 2025) (Hayden, J.); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tex.  
22 Sept. 26, 2025) (Hittner, J.); *Gamez Lira v. Noem*, No. 25-855 (D.N.M. 25-855) (Johnson, J.); *Singh*  
23 *v. Lewis*, No. 25-96, 2025 LX 400065 (W.D. Ky. Sept. 22, 2025) (Jennings, J.); *Chafla v. Scott*,  
24 No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (Neumann, J.); *Hasan v. Crawford*, No.  
25-1408, 2025 LX 499354 (E.D. Va. Sept. 19, 2025) (Brinkema, J.); *Barrera v. Tindall*, No. 25-  
451, 2025 LX 435572 (W.D. Ky. Sept. 19, 2025) (Jenning, J.); *Salazar v. Dedos*, No. 25-835,  
2025 WL 2676729 (D.N.M. Sept. 17, 2025) (Urias, J.); *Garcia Cortes v. Noem*, No. 25-2677, 2025  
WL 2652880 (D. Colo. Sept. 16, 2025) (Sweeney, J.); *Pizarro Reyes v. Raycraft*, No. 25-12546,  
2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (White, J.); *Sampiao v. Hyde*, No. 25-11981, 2025  
WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX  
360066 (D.N.H. Sept. 8, 2025) (McCafferty, J.); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819  
(D. Mass. Sept. 5, 2025) (Talwani, J.); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803  
(S.D.N.Y. Aug. 8, 2025) (Ho, J.); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379  
(E.D. Mich. Aug. 29, 2025) (McMillion, J.); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610  
(D. Mass. Aug. 27, 2025) (Kobick, J.); *Jose J.O.E. v. Bondi*, No. 25-3051, 2025 WL 2466670 (D.  
Minn. Aug. 27, 2025) (Tostrud, J.); *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 (D.  
Md. Aug. 24, 2025) (Rubin, J.); *Romero v. Hyde*, No. 25-11631, 795 F.Supp.3d 271, 2025 WL  
2403827 (D. Mass. Aug. 19, 2025) (Murphy, J.); *Samb v. Joyce*, No. 25-6373, 2025 WL 2398831  
(S.D.N.Y. Aug. 19, 2025) (Ho, J.); *dos Santos v. Noem*, No. 25-12052, 2025 WL 2370988 (D.  
Mass. Aug. 14, 2025) (Kobick, J.); *Diaz Martinez v. Hyde*, No. 25-11613, 792 F.Supp.3d 211,  
2025 WL 2084238 (D. Mass. July 24, 2025) (Murphy, J.); *Gomes v. Hyde*, No. 25-11571, 2025  
WL 1869299 (D. Mass. July 7, 2025) (Kobick, J.).

1 merits.<sup>4</sup> These judges have been unsparing in their criticism of the government’s newfound  
2 position. One called it a “nonstarter.” *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 at  
3 \*10 (D. Mass. Sept. 5, 2025). Another called it “willfully blind.” *Leal-Hernandez v. Noem*,  
4 No. 25-2428, 2025 WL 2430025 at \*25 (D. Md. Aug. 24, 2025). Another called it “a policy  
5 argument, projected onto Congress.” *Romero v. Hyde*, No. 25-11631, 795 F. Supp. 3d 271,  
6 287 (D. Mass. Aug. 19, 2025). And yet another noted that the government “could not  
7 identify any federal court that has adopted their novel reading of § 1225(b)(2)(A).” *Pizarro*  
8 *Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 at \*20 (E.D. Mich Sept. 9, 2025).

9  
10 34. It is not difficult to understand why federal district courts have rejected the  
11 government’s unsupported interpretation, as the plain text of the statutory provisions  
12 demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

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14  
15 <sup>4</sup> *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025) (Boulware, J.); *Rico-Tapia v. Smith*  
16 No. 25-379 (D. Haw. Oct. 10, 2025) (Park, J.); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D.  
17 Cal. Oct. 9, 2025) (Beeler, J.) *Flores v. Noem*, No. 25-2490, 2025 LX 444718 (C.D. Cal. Sept. 29,  
18 2025) (Birotte, J.); *Roa v. Albarran*, No. 25-7802, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025)  
19 (*Seeborg, J.*); *Lopez v. Hardin*, No. 25-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025) (Dudek,  
20 J.); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163 (E.D. Cal. Sept. 23, 2025) (Sherriff, J.); *Aceros*  
21 *v. Kaiser*, No. 25-06924, 2025 LX 330524 (N.D. Cal. Sept. 12, 2025) (Chen, J.); *Guzman v.*  
22 *Andrews*, No. 25-01015, 2025 LX 354551 (E.D. Cal. Sept. 9, 2025) (Sherriff, J.); *Mosqueda v.*  
23 *Noem*, No. 25-2304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (Snyder, J.); *Nieves v. Kaiser*,  
24 No. 25-6921, 2025 LX 320701 (N.D. Cal. Sept. 3, 2025) (Beeler, J.); *Garcia v. Noem*, No. 25-  
2180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.); *Garcia v. Kaiser*, No. 25-06916,  
2025 LX 322337 (N.D. Cal. Aug. 29, 2025) (Gonzalez Rogers, J.); *Kostak v. Trump*, No. 25-1093,  
2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Edwards, J.); *Benitez v. Noem*, No. 25-02190, 2025  
LX 322897 (C.D. Cal. Aug. 26, 2025) (Klausner, J.); *Ramirez Clavijo v. Kaiser*, No. 25-06248,  
2025 WL 2419263 (N.D. Cal. Aug. 21, 2025) (Freeman, J.); *Arrazola-Gonzalez v. Noem*, No. 25-  
01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (Wright, J.); *Maldonado v. Olson*, No. 25-  
3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (Nelson, J.); *Maldonado Bautista v. Santacruz*,  
No. 25-01873, 2025 LX 341363 (C.D. Cal. July 28, 2025); *Vazquez v. Bostock*, No. 25-05240, 779  
F. Supp. 3d 1239 (W.D. Wash. April 24, 2025) (Cartwright, J.). *But see Sixtos Chavez v. Noem*,  
No. 3:25-cv-02325-CAB-SBC (S.D. Cal. Sep. 24, 2025) (denying temporary restraining order).

1           35. By its terms, § 1225(b)(2)(A) only applies to noncitizens who are “seeking  
2 admission,” and Congress defined “admission” as the “lawful entry of the alien into the  
3 United States after inspection and authorization by an immigration officer.” §  
4 1101(a)(13)(A). Accordingly, “[c]onstruing section 1225(b)(2) to apply to noncitizens  
5 already residing in the country would read the word ‘entry’ out of the definitions of  
6 ‘admitted’ and ‘admission.’” *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept.  
7 21, 2025).

8           36. Accordingly, § 1225(b) applies to people arriving at U.S. ports of entry. The  
9 statute’s entire framework is premised on inspections at the border of people who are  
10 “seeking admission” to the United States, and individuals who entered without inspection  
11 and have never affirmatively applied for admission or parole do not fit within that category.  
12 8 U.S.C. § 1225(b)(2)(A); *see Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich.  
13 Sept. 9, 2025) (specifically rejecting the Board’s analysis of the statute in *Matter of Yajure*  
14 *Hurtado* and concluding that it is “difficult to square a noncitizen’s continued presence  
15 with “seeking admission” when that noncitizen never attempted to obtain lawful status”);  
16 *Vasquez-Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (rejecting  
17 DHS’ contention that an individual who entered the United States without inspection “is  
18 automatically understood to be ‘seeking admission’ within the meaning of § 1225(b)(2)(A),  
19 without need[ing] to affirmatively apply for admission or parole”); *see also Arrazola*  
20 *Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (concluding that habeas  
21 petitioner showed likelihood of success on the merits of argument that “[t]o ignore the  
22  
23  
24

1 ‘seeking admission’ language [in 8 U.S.C. § 1225(b)(2)(A) . . . would render the  
2 language purposeless and violate a key rule of statutory construction”).

3 37. Throughout its text, 8 U.S.C. § 1225 defines its scope by reference to  
4 “inspections”—a term not defined in the INA, but which typically connotes an examination  
5 upon or soon after physical entry. *See* 8 U.S.C. § 1225 (titled “Inspection by immigration  
6 officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing”);  
7 §§ 1225(b)(1)–(2) (referring to “inspections” in their titles); § 1225(d)(1) (authorizing  
8 immigration officials to search certain conveyances in order to conduct “inspections”  
9 where noncitizens “are being brought into the United States”). Many statutory provisions,  
10 various regulations and agency precedent discuss “inspection” in the context of admission  
11 processes at ports of entry, further supporting the conclusion that § 1225(b) has a limited  
12 temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§ 1187(h)(2)(B)(i), 1225A; 8 U.S.C.  
13 § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010)).

15 38. Indeed, the Supreme Court has explained that this mandatory detention  
16 scheme applies to noncitizens who are “arriving in the United States,” *Clark v. Martinez*,  
17 543 U.S. 371 (2005), “at the Nation’s borders and ports of entry, where the Government  
18 must determine whether a[] [noncitizen] seeking to enter the country is admissible,”  
19 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

20 39. As importantly, § 1226(c) subjects numerous categories of inadmissible  
21 noncitizens to mandatory detention. If “the [BIA was] correct that § 1225(b)’s mandatory  
22 detention provisions apply to all persons who have not been admitted into the United States,  
23 that would render superfluous those provisions of § 1226 that apply to certain categories  
24

1 of inadmissible aliens, such as § 1226(c)(1)(A), (D), and (E).” *Hasan v. Crawford*, \_\_\_ F.  
2 Supp. 3d \_\_\_, 2025 WL 2682255 at \*22 (E.D. Va. Sept. 19, 2025) (Brinkema, J.). Indeed,  
3 the BIA’s interpretation would “render the Laken Riley Act a meaningless amendment,  
4 since it would have prescribed mandatory detention for noncitizens already subject to it.”  
5 *Aceros v. Kaiser*, 2025 WL 2637503 at \*28 (N.D. Cal. Sept. 12, 2025).

6 40. Accordingly, the mandatory detention provision of § 1225(b)(2) does not  
7 apply to people like Petitioner, who have already entered and were residing in the United  
8 States at the time they were apprehended.

### 9 10 **FACTS**

11 41. Petitioner is a 45-year-old resident of New Mexico. Mr. Hernandez-Parrilla  
12 initially was brought to the United States by his parents in either 1998 or 1999, at which  
13 time he was 11 years old. Petitioner has resided in the United States since then, apart from  
14 traveling to Mexico for an uncle’s funeral, and the eighty-two days following DHS’s  
15 unlawful forced involuntary departure. Petitioner unlawfully reentered the United States  
16 on May 15, 2012.

17 42. Mr. Hernandez-Parrilla is married to a U.S. citizen, and has three U.S. citizen  
18 children. He is the primary breadwinner for his family.

19 43. On January 11, 2015 DHS issued a Notice to Appear alleging that Petitioner  
20 was removable in pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), as a noncitizen “present in  
21 the United States without being admitted or paroled[.]” Ex. A. Following a bond  
22 hearing on March 26, 2015, Mr. Hernandez-Parrilla was released from detention via a  
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1 \$7,500.00 bond. Ex. B. He also applied for relief from removal in the form of asylum,  
2 withholding of removal, CAT protection, and cancellation of removal. Those proceedings  
3 are under advisement before an immigration judge and awaiting decision. Ex. C.

4 44. Despite Petitioner not being subject to any criminal grounds of removability,  
5 and no change in his circumstances, on September 26, 2025, DHS unilaterally notified Mr.  
6 Hernandez-Parrilla’s wife that the conditions of the bond had been satisfied, and informed  
7 her the bond would be canceled. Ex. D. Subsequently, on November 10, 2025, DHS served  
8 Petitioner with a form G56 directing him to report to El Paso for a “Case Review” and to  
9 bring “[a]ny immigration documents.” Ex. E. Although El Paso ERO has not responded  
10 to undersigned counsel’s emails (Ex. F), there is ample reason to conclude that Mr.  
11 Hernandez-Parrilla will be taken into DHS custody and detained at that check-in  
12 appointment on December 18, 2025. In any event, given that his bond was revoked, he is  
13 constructively detained at this time and is no longer subject to conditional release.  
14

15 **CLAIMS FOR RELIEF**

16 **COUNT I**

17 **Violation of the INA**

18 45. Petitioner incorporates by reference the allegations of fact set forth in the  
19 preceding paragraphs.

20 46. The mandatory detention provision at 8 U.S.C. § 1225(b)(2)(A) does not  
21 apply to all noncitizens residing in the United States who entered the country without being  
22 admitted. By its terms, § 1225(b)(2)(A) only applies to noncitizens who are “seeking  
23 admission.” The term “admission” is defined to require a “lawful entry” following  
24

1 “inspection and authorization by an immigration officer.” § 1101(a)(13)(A). Accordingly,  
2 § 1225(b)(2)(A) does not apply to noncitizens like Petitioner who evade inspection and are  
3 apprehended outside a port of entry. Such noncitizens are instead detained under § 1226  
4 while in removal proceedings and are thus eligible for release on bond under § 1226(a)  
5 unless they are subject to mandatory detention under § 1226(c).

6 47. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his  
7 detention without a bond hearing and violates the INA.  
8

## 9 10 **COUNT II**

### 11 **Violation of Federal Regulations**

12 48. Petitioner incorporates by reference the allegations of fact set forth in the  
13 preceding paragraphs.

14 49. Under 8 C.F.R. § 1236.1(d)(1), immigration judges may grant bond to any  
15 noncitizen in removal proceedings who is not subject to a final order or to any of the  
16 exceptions in 8 C.F.R. § 1003.19. None of the exceptions in § 1003.19 preclude  
17 immigration judges from granting bond to noncitizens simply for being present without  
18 admission.

19 50. As relevant here, the regulations only preclude immigration judges from  
20 granting bond to noncitizens who qualify as “arriving aliens,” § 1003.19(h)(1)(B)(ii), *i.e.*,  
21 those who presented themselves for inspection at a port of entry. When these regulations  
22 were initially promulgated, the Justice Department explained that “inadmissible aliens,  
23 except for arriving aliens, have available to them bond redetermination hearings before an  
24

1 immigration judge.” 62 Fed. Reg. 10312, 10323 (March 6, 1997). The Justice Department  
2 thus made clear that individuals who had entered without inspection were eligible for  
3 consideration for bond and bond hearings before IJs under 8 U.S.C. 1226 and its  
4 implementing regulations.

5 51. Notwithstanding these regulations, the BIA held in *Matter of Yajure Hurtado*  
6 that all noncitizens who are present without admission are ineligible to receive a bond from  
7 immigration judges. Application of this decision to Petitioner unlawfully mandates his  
8 detention without a bond hearing in violation of §§ 1236.1 and 1003.19  
9

10 **COUNT III**  
11 **Violation of Due Process**

12 52. Petitioner repeats, re-alleges, and incorporates by reference each allegation  
13 in the preceding paragraphs as if fully set forth herein.

14 53. The government may not deprive a person of life, liberty, or property without  
15 due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from  
16 government custody, detention, or other forms of physical restraint—lies at the heart of the  
17 liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491,  
18 150 L.Ed.2d 653 (2001).

19 54. Petitioner has a fundamental interest in his liberty and being free from  
20 official restraint.

21 55. The government’s cancellation of his conditional release bond, pending re-  
22 detention of Petitioner without a pre-deprivation hearing where the burden is on DHS of  
23 establishing changed circumstances demonstrating dangerousness or flight risk, and its  
24

1 issuance of a precedential decision precluding his continued conditional release violates  
2 his right to due process.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 5 a. Assume jurisdiction over this matter;
- 6 b. Set this matter for expedited consideration;
- 7 c. Declare that DHS may not take Petitioner into custody without first providing  
8 him with a pre-deprivation hearing where the Government bears the burden  
9 of established changed circumstances that demonstrate danger or flight risk.
- 10 d. Award Petitioner attorney's fees and costs under the Equal Access to Justice  
11 Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis  
12 justified under law; and
- 13 e. Grant any other and further relief that this Court deems just and proper.

14 DATED this 8th day of December, 2025.

15 /s/Matthew H. Green

16 Matthew H. Green

17 AZ Bar: 020827

18 Green Evans-Schroeder, PLLC

19 130 W. Cushing Street

20 Tucson, Arizona 85701

21 Tel: (520) 882-8852

22 Email: matt@arizonaimmigration.net

23 *Attorney for Petitioner*

1  
2 **VERIFICATION PURSUANT TO 28 U.S.C. 2242**  
3

4 I am submitting this verification on behalf of the Petitioner because I am one of  
5 Petitioner's attorneys. I have discussed with the Petitioner the events described in the  
6 Petition. Based on those discussions, I hereby verify that the factual statements made in the  
7 attached Petition for Writ of Habeas Corpus are true and correct to the best of my  
8 knowledge.  
9

10 DATED this 8th day of December, 2025.  
11

12 *s/Matthew H. Green*  
13 Matthew H. Green  
14 Attorney for Petitioner  
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