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8 UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA
10 PHOENIX, ARIZONA

11 Rendy Erick Diaz Mendez


12 Plaintiff,

13 v.

14 Kristi Noem, Secretary, U.S. Department
15 of Homeland Security; Pamela Bondi,
16 Attorney General of the United States,
17 Executive Office for Immigration Review
18 (EOIR); Corina Almeida, Chief Counsel,
19 Immigration and Customs Enforcement
20 (ICE), Office of Principal Legal Advisor,
21 Florence; John Cantu, Field Office
22 Director, ICE Enforcement and Removal
23 Operations, Phoenix; Luis Rosa, Jr.,
24 Warden, Florence Correctional Center,




25 Defendants.

Case No. _____

Immigration Number: 

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

26 I. INTRODUCTION

27 1. Plaintiff Rendy Erick Diaz Mendez (  ) , by and through
28 undersigned counsel, respectfully requests this Honorable Court order Respondents to
accept payment of a \$5,000 bond, as ordered by an immigration judge should jurisdiction
be established, and release Plaintiff from the ICE Florence Correctional Center, in Florence,
Arizona. 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

1 and ICE practice of releasing similarly situated non-citizens pursuant to 8 U.S.C. § 1226(a).
2 Defendants' action during the pendency of Plaintiff's civil immigration proceedings
3 subjects Plaintiff to prolonged detention in violation of law. By the plain language of the
4 statute, 8 U.S.C. § 1225(b)(2)(A) only applies to persons being inspected by immigration
5 officers at the time of seeking admission. Admission being defined by the lawful entry into
6 the United States. 8 U.S.C. § 1101(a)(13)(A). Without directly interpreting the
7 statutory definition of "admission", Defendants issued *Matter of Yajure Hurtado*, 29 I&N
8 Dec. 216 (BIA 2025), holding that all non-citizens present without inspection, regardless of
9 how many years they have been in the country, are subject to mandatory detention under 8
10 U.S.C. § 1225(b)(2)(A). Pursuant to *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369
11 (2024), this Court is not bound by the Agency's interpretation of the INA. Indeed, one Federal
12 District Court already interpreted the statute, making contrary findings to *Yajure Hurtado*.
13 *See Rodriguez v. Bostock, et al.*, Case No. 3:25-cv-05240-TMC Preliminary Injunction (W.D.
14 Wash., April 24, 2025). Plaintiff's detention is unlawful.

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18 2. Plaintiff is a 40-year-old single male, citizen of Guatemala, who is eligible for
19 relief from removal in the form of in the form of cancellation of removal pursuant to INA
20 §240A(b)(1).
21

22 3. Plaintiff entered the United States without inspection on or about January 2008
23 and was never encountered by Border Patrol. He has continuously lived in the United States
24 since that time, more than 17 years.
25

26 4. On or about November 12, 2025, Immigration and Customs Enforcement
27 ("ICE") detained Plaintiff on his way to work.
28

1 5. Prior to his detention, Plaintiff resided in Phoenix, Arizona with his long-time
2 partner and their three (3) United States Citizen children, ages 11, 8, and almost 2 years old.

3 6. Plaintiff has no criminal issues anywhere in the world.

4 7. Plaintiff had been at liberty in the United States for over 17 years prior to his
5 detention.

6 8. On or about November 12, 2025, ICE took Petitioner into custody and placed
7 him into removal proceedings by filing a Notice to Appear with the Florence Immigration
8 Court and detaining him at the Florence Correctional Center located at 1100 Bowling Rd,
9 Florence, Arizona 85132. Petitioner requested a bond redetermination and on December 15,
10 2025, the Immigration Judge denied his release request based on jurisdiction, as compelled
11 by the recent decision of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (“*Matter*
12 *of Hurtado*”). However, should jurisdiction be established, in the alternative, the
13 Immigration Judge ordered Petitioner’s release upon payment of a \$5,000 bond.
14 Respondents continue to detain the Petitioner in violation of law.

15 9. *Matter of Hurtado* is unlawful and cannot justify Plaintiff’s ongoing
16 confinement: it misreads the statute, conflicts with binding regulations that limit expedited-
17 removal custody to classes designated by Federal Register notice, and raises grave
18 constitutional concerns the avoidance canon requires courts to steer away from. *See* INA §
19 235(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,
20 10,314, 10,318 (Mar. 6, 1997); 69 Fed. Reg. 48,877, 48,880-81 (Aug. 11, 2004); 84 Fed.
21 Reg. 35,409, 35,412 (July 23, 2019); *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Zadvydas*
22 *v. Davis*, 533 U.S. 678 (2001); *Clark v. Martinez*, 543 U.S. 371 (2005).

1 10. Defendants violated Plaintiff's right to be released upon payment of a bond
2 under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226(a), and agency
3 regulations, 8 C.F.R. §§ 1003.19(a), 1236.1(d). Defendants' coordinated action to hold
4 Plaintiff under mandatory detention is not in accordance with law and violates Plaintiff's right
5 to due process.
6

7 11. Plaintiff will suffer irreparable and immediate injury from continued unlawful
8 detention unless the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 is granted.
9

10 **I. JURISDICTION**

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

13 13. This Court has jurisdiction over petitions for Habeas Corpus pursuant to 28
14 U.S.C. § 2241. The Plaintiff is in the custody of the United States.
15

16 14. This Court has jurisdiction over civil actions brought under 28 U.S.C. § 1331
17 because this action arises under the Constitution and laws of the United States. This Court
18 has jurisdiction pursuant to 28 U.S.C. § 1361 which authorizes actions in district court, "to
19 compel an officer or employee of the United States or agency thereof to perform a duty
20 owed to the Petitioner."
21

22 15. The aid of the Court is invoked under 28 U.S.C. § 2201 and 2202, authorizing
23 a declaratory judgement.
24

25 16. This Court has jurisdiction pursuant to the Administrative Procedures Act
26 (APA) to set aside agency action not in accordance with law and order the agency to perform
27 a duty owed to Plaintiff under 5 U.S.C. § 706.
28

V. PARTIES

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2 26. Plaintiff, Rendy Erick Diaz Mendez is a native and citizen of Guatemala, and
3 is currently detained by ICE in Florence, Arizona. He is not subject to expedited removal
4 under 8 U.S.C. § 1225(b)(1).
5

6 27. Defendant Kristi Noem is the Secretary of the Department of Homeland
7 Security (DHS), responsible for overseeing and directing Immigration and Customs
8 Enforcement. DHS directed the policy to argue Plaintiff is subject to mandatory detention.
9

10 28. Defendant Pamela Bondi is the Attorney General of the United States.
11 Respondent is the head of the United States Department of Justice and responsible for the
12 entire department, which includes the Executive Office for Immigration Review (“EOIR”),
13 including the BIA.
14

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

17 30. Defendant John Cantu, Field Office Director Office Enforcement and
18 Removal Operations in Phoenix, Arizona is responsible for Plaintiff’s custody in Florence,
19 Arizona. Defendant Cantu is also responsible for the acceptance and processing of the
20 payment of bond and release of ICE detainees in Florence, Arizona.
21

22 31. Defendant Luis Rosa, Jr. is the Warden at the ICE contract facility Florence
23 Correctional Center, operated by CoreCivic. Defendant Luis Rosa, Jr. is responsible for
24 Plaintiff’s physical custody
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VI. FACTUAL ALLEGATIONS

26
27 32. Plaintiff Emily Rendy Erick Diaz Mendez is a citizen of Guatemala who last
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1 entered the United States without inspection on or about January of 2008. He has resided in
2 the United States since that date.

3 33. On or about November 12, 2025, DHS took Plaintiff into custody and placed
4 him into removal proceedings before Florence EOIR by issuing a Notice to Appear charging
5 him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). The Notice to Appear does not allege
6 Plaintiff is an arriving alien, but rather that he is present in the United States without
7 inspection. DHS detained Plaintiff at the Florence Correctional Center, in Florence, Arizona.
8

9 34. Plaintiff is eligible for cancellation of removal pursuant to INA § 240A(b)(1).
10 Cancellation of removal is available to nonpermanent residents who (a) have been
11 physically present in the United States for a continuous period of not less than 10 years
12 immediately preceding the date of such application; (b) have been persons of good moral
13 character during such period; (c) have not been convicted of certain disqualifying offenses;
14 (d) establishes that removal would result in exceptional and extremely unusual hardship to
15 their spouse, parent, or child who is a citizen or lawful permanent resident.
16

17 35. Plaintiff meets all eligibly requirements, namely, (a) he has been physically
18 present in the United States for a continuous period of 18 years; (b) he is a person of good
19 moral character; (c) he has never been charged or convicted of any criminal offenses
20 anywhere in the world; (d) his three (3) United States citizen children would suffer
21 exceptional and extremely unusual hardship in his absence
22

23 36. Plaintiff is currently in the custody of ICE, as he is detained at the Florence
24 Correctional Center in Florence, Arizona.
25

26 37. Aside from his one and only entry into the United States without inspection,
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1 Mr. Diaz Mendez has not violated any laws or ordinances; he has not been cited, arrested or
2 detained for any criminal charge.

3 38. In the United States, Plaintiff has worked in construction and painting to
4 support himself and his family. He owns a home and vehicles, is part of a church and pays
5 taxes.
6

7 39. On July 8, 2025, DHS issued new policy instructing ICE to argue and hold
8 anyone they alleged to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) subject to
9 mandatory detention under 8 U.S.C. § 1225(b)(2)(A).
10

11 40. On August 4, 2025, the BIA issued a precedent decision in *Matter of*
12 *Akhmedov*, 29 I&N Dec. 166 (BIA 2025) finding a non-citizen's custody, who "unlawfully"
13 entered the United States in 2022, was subject to the provisions of 8 U.S.C. § 1226(a).
14

15 41. On September 5, 2025, the Board of Immigration Appeals issued *Matter of*
16 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), implementing the Defendants' concerted
17 policy goal of holding that all persons who entered without inspection are subject to
18 mandatory detention under 8 U.S.C. § 1225(b)(2)(A).
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20 42. On December 15, 2025, the Florence EOIR, conducted a custody
21 redetermination hearing, where Plaintiff contested the ICE argument that he is subject to
22 mandatory detention under 8 U.S.C. § 1225(b)(2).
23

24 43. On December 15, 2025, the IJ issued a summary decision denying bond on
25 the basis of no jurisdiction. The bond order further notes: "There is no evidence of danger
26 or criminal history, the Respondent has extensive community ties, and any risk of flight
27 could be addressed with a \$5,000 bond, if the Court had jurisdiction."
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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. §

1 1225(b)(2).

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

5
6 50. Plaintiff's case concerns important distinctions between § 1226(a) and §
7 1225(b)(2). Those provisions were enacted as part of the Illegal Immigration Reform and
8 Immigrant Responsibility Act (IIRIRA) of 1996. Pub. L. No. 104-208, Div. C, § § 302-03,
9 110 Stat. 2009-546, 3009-582 to 3009-583, 3009-585. Section 1226 was most recently
10 amended earlier this year by the Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025).

11
12 51. Following the enactment of the IIRIRA, the Executive Office for Immigration
13 Review ("EOIR") drafted new regulations explaining that, in general, people who entered
14 the country without inspection were not considered detained under § 1225 and that they
15 were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens;
16 Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,
17 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens
18 who are present without having been admitted or paroled (formerly referred to as aliens who
19 entered without inspection) will be eligible for bond and bond redetermination.")

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22 52. Thus, in the decades that followed, most people who entered without
23 inspection and were thereafter arrested and placed in standard removal proceedings were
24 considered for release on bond and also received bond hearings before an IJ, unless their
25 criminal history rendered them ineligible. That practice is consistent with many more
26 decades of prior practice, in which noncitizens who had entered the United States, even if
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1 without inspection, were entitled to a custody hearing before an IJ or other hearing officer.
2 In contrast, those who were stopped at the border were only entitled to release on parole.
3 *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting
4 that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).
5

6 53. 8 U.S.C. § 1225 governs the processing of arriving aliens and recent entrants
7 and is not a detention statute. The only mention of “mandatory detention” comes under 8
8 U.S.C. § 1225(b)(1)(B)(IV) stating that applicants for admission pending asylum interviews
9 “subject to the procedures under this clause shall be detained pending final determination of
10 credible fear of persecution” 8 U.S.C. § 1225(b)(1)(A)(iii)(II) explicitly excludes from
11 expedited removal non-citizens who can show they have been “physically present in the
12 United States continuously for the 2-year period immediately prior to the date of the
13 determination of inadmissibility.”
14
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16 54. 8 U.S.C. § 1225(b)(2)(A) applies to a non-citizen “who is an applicant for
17 admission, if the examining officer determines that an alien seeking admission is not clearly
18 and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under
19 1229a of this title.”
20

21 55. In July 2025, Defendants adopted an entirely new interpretation of the statute,
22 concluding that all noncitizens who entered the United States without admission or parole
23 are considered applicants for admission, and are therefore ineligible for bond hearings
24 before an Immigration Judge under 8 U.S.C. § 1225(b)(2)(A). Around the same time, ICE
25 “in coordination with the Department of Justice” announced a corresponding policy that
26 rejected the well-established understanding of the statutory and regulatory framework and
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1 reversed decades of practice. That policy claims that all persons who entered the United
2 States without inspection shall now be deemed to be subject to mandatory detention under
3 § 1225(b)(2)(A). The policy applies regarding of when a person is apprehended, the section
4 of law under which they were previously released and affects those who have resided in the
5 United States for years.
6

7 56. Cementing the policy and making it binding all IJs, the Board of Immigration
8 Appeals (“BIA”) recently issued a precedent decision: *Matter of Hurtado*, 29 I&N Dec. 216
9 (BIA 2025). In *Hurtado*, the BIA found that any noncitizen who is present in the United
10 States without having been inspected and admitted is subject to detention under 8 U.S.C. §
11 1225(b)(2), not §1226(a).
12

13 57. There is no Ninth Circuit precedent to support the Defendants’ holding
14 Plaintiff subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).
15

16 58. The Ninth Circuit has previously interpreted the statutes in question. In *Torres*
17 *v. Barr*, 976 F.3d 918, 923-926 (9th Cir. 2020)(en banc), the Ninth Circuit provides a
18 thorough analysis, finding that applying for admission means doing so from outside the
19 United States or at a port of entry, seeking physical entry into the country. The *Torres*
20 decision holds that the idea of seeking admission is limited in time and cannot continue
21 without limit once the non-citizen is already in the United States. *Id.* at 926. “Accordingly,
22 inadmissibility must be measured at the point in time that an immigrant actually submits an
23 application for entry into the United States.” *Id.*; *See also Negrete-Ramirez v. Holder*, 741
24 F.3d 1047, 1051 (9th Cir. 2014) (“The definition refers expressly to entry into the United
25 States, denoting by its plain terms passage into the country from abroad at a port of entry.”)
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1 Based on the Ninth Circuit’s statutory analysis, the term “seeking admission” cannot apply
2 to a person already inside the United States for over 23 years.

3
4 59. Since Defendants adopted their new policies, dozens of federal courts have
5 uniformly rejected their newly invented misclassification as illegal and because it defies the
6 INA’s detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which
7 adopts the same reading of the statute as ICE, ruling that the BIA’s decision is not entitled
8 to any deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024).¹

9
10 60. The Western District of Washington has also agreed. In the Tacoma,
11 Washington, immigration Court, IJs previously stopped providing bond hearings for persons
12 who entered the United States without inspection and who have since resided here,
13 reasoning such people are subject to mandatory detention under § 1225(b)(2)(A). There, in
14 granting preliminary injunctive relief, the U.S. District Court for the Western District of
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16
17 ¹ 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*,
18 No. 1:25-cv-01968-SEB-TAB (S.D. Ind. Oct. 8, 2025); *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-
19 MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Ochoa Ochoa v. Noem*, No. 25 C 10865, 2025 WL
20 2938779 (N.D. Ill. Oct. 16, 2025) (Jenkins, J.), *H.G.V.U. v. Smith*, No. 25 C 10931, 2025 WL 2962610 (N.D.
21 Ill. Oct. 20, 2020) (Coleman, J.), *Mariano Miguel v. Noem*, No. 25 C 11137, 2025 WL 2976480 (N.D. Ill.
22 Oct. 21, 2025) (Alonso, J.), and *G.Z.T. v. Smith*, No. 25 C 12802 (N.D. Ill. Oct. 21, 2025) (Ellis, J.), *Corona*
23 *Diaz v. Olson, et al.*, No. 25-cv-12141 (N.D. Illinois 2025), *Belsai v. Bondi, et al.*, No. 25-cv-3862
24 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO
25 (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, ---
26 F.Supp.3d ---, 2025 WL 2712417 (N.D. Iowa Sept. 23, 2025); *Salazar v. Dedos*, No. 1:25- cv-00835-DHU-
27 JMR, 2025 WL 2676729 (D. N.M. Sept. 17, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal.
28 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).

1 Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not
2 § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States.
3 *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, -- F. Supp. 3d ---, 2025 WL
4 1193850 (W.D. Wash. Apr. 24, 2025).

6 61. On November 25, 2025, the United States District court for the Central
7 District of California issued a nationwide declaratory judgment in *Maldonado Bautista et*
8 *al. v Santacruz Jr. et al.*, Case No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025), that
9 directly governs the legality of Plaintiff's present detention. In that decision, the court held
10 that the 2025 BIA precedent of *Matter of Yajure Hurtado*, which allowed DHS to classify
11 all noncitizens who entered without admission or inspection as detained under INA §
12 235(b)(2)(A) regardless of where or how they were apprehended, is unlawful. The court
13 further determined that DHS's long-standing policy mirroring that approach- treating every
14 "EWI" ("entered without inspection") noncitizen as an applicant for admission subject to
15 mandatory detention- likely violates the statutory framework enacted by Congress.

18 62. As the district court explained, Congress drew a clear distinction between
19 individuals apprehended at or near the border and those arrested inside the United States.
20 For noncitizens who entered without inspection but were arrested in the interior and placed
21 into regular § 240 removal proceedings, the statutory authority governing detention is INA
22 § 236(a), not § 235(b)(2)(A). The court therefore held that such individuals are not subject
23 to mandatory detention and are instead entitled to the bond procedures Congress created
24 under § 236(a).

27 63. While the order granting partial summary judgment came out on November
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1 21, 2025, before the class certification was issued, the class certification order expressly
2 states: **“When considering this determination with the MSJ Order, the Court extends**
3 **the same declaratory relief granted to Petitioners to the Bond Eligible Class as a**
4 **whole).**” See page 14 of attached class certification order.

6 64. The Bond Eligible Class is nationwide and encompasses:

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

12 *Id.*

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

16 66. Plaintiff in this matter is squarely within the class certified by *Maldonado*
17 *Bautista*. First, Plaintiff entered the United States without admission or inspection in 2008.
18 Second, he was not apprehended at the border or immediately after lawful entry; rather, he
19 was arrested in the interior of the United States, well after his entry. Third, DHS did not
20 process him through expedited removal or any other § 235 procedure, but instead properly
21 placed him in ordinary § 240 removal proceedings before the Immigration Court. These are
22 the exact conditions that define class membership under the *Maldonado Bautista* declaratory
23 judgment.

24 67. Because Plaintiff meets each element of the class definition, the nationwide
25 judgment applies to him fully and directly. As a matter of binding Federal law, Plaintiff
26 cannot be detained under § 235(b)(2)(A) or any variant of the *Hurtado* framework. His
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1 detention must now be treated as arising under INA § 236(a), and he is entitled to the
2 procedural protections associated with the statute, including an individualized bond hearing
3 before an Immigration Judge.
4

5 68. As the *Maldonado Bautista et al.* and *Rodriguez Vazquez* court and others
6 have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not §
7 1225(b), applies to people like Plaintiff.
8

9 69. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez*
10 court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not §
11 1225(b), applies to people like Plaintiff in this matter.
12

13 70. Section 1226(a) applies by default to all persons "pending a decision on
14 whether the [noncitizen] is to be removed from the United States." These removal hearings
15 are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."
16

17 71. The text of § 1226 also explicitly applies to people charged as being
18 inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E).
19 Subparagraph (E)'s reference to such people makes clear that, by default, such people are
20 afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained,
21 "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that
22 absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d
23 at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400
24 (2010)). Section 1226 therefore leaves no doubt that it applies to people who face charges
25 of being inadmissible to the United States, including those who are present without
26 admission or parole.
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1 72. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
2 very recently entered the United States. The statute’s entire framework is premised on
3 inspections at the border of people who are “seeking admission” to the United States. 8
4 U.S.C. § 1225(b)(2)(A); *see also Diaz Martinez*, 2025 WL 2084238, at *8 (“[O]ur
5 immigration laws have long made a distinction between those [noncitizens] who have come
6 to our shores seeking admission . . . and those who are within the United States after an
7 entry, irrespective of its legality.” (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187
8 (1958))). Indeed, the Supreme Court has explained that this mandatory detention scheme
9 applies “at the Nation’s borders and ports of entry, where the Government must determine
10 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*,
11 583 U.S. 281, 287 (2018).

12 73. It must be restated, § 1225(b)(2)(A) expressly applies only to the “applicant
13 for admission” “seeking admission.” The BIA’s interpretation of the law specifically holds
14 that applicants for admission are always “seeking admission,” but if this were true, there
15 would be no need for § 1225(b)(2)(A) to limit its application to those “seeking admission.”
16 It renders the language superfluous. Seeking admission explicitly indicates an affirmative
17 request or action on the part of the applicant for admission. *Yajure Hurtado* repeatedly
18 accuses non-citizens present without admission as evading inspection, but then turns around
19 to say they are seeking admission. It cannot be both ways, a person who evades inspection,
20 cannot be considered seeking admission. *Yajure Hurtado* lacks any validity or
21 persuasiveness due to its outright failure to interpret the statutory definition of “admission”
22 under 8 U.S.C. § 1101(a)(4), (a)(13)(A). The BIA’s decision in *Yajure Hurtado* is written
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1 with the outcome in mind, rather than with a sincere intent to explore and understand the
2 law. The BIA, as a part of the Executive Branch, is a political creature, and the Courts must
3 subject them to the law. Releasing non-citizens present without admission on a bond is not
4 about “rewarding” the evasion of apprehension for more than two years, but rather about
5 protecting the interests accrued in establishing domicile: property, children, family, friends,
6 community, career, and economic interests. There is logic to mandatory detention of persons
7 just arriving to the United States. They have not established any kind of record in the
8 country, making it difficult to determine whether they pose a danger or flight risk while they
9 face removal proceedings. However, people who have been in the United States for over
10 two years should be given an opportunity to demonstrate they not a danger or flight risk,
11 pending removal proceedings. There is a record of their behavior in the United States.
12 Defendants’ desired implementation of the law leads to absurd results very likely never
13 intended by congress. Indeed, in the 28 years since the implementation of IIRIRA, congress
14 never stepped in to correct the ongoing practice and interpretation of the Immigration
15 Courts, BIA, and Federal Courts allowing release under § 1226(a) of those present without
16 admission.

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

23 75. Accordingly, the mandatory detention provision of § 1225(b)(2) does not
24 apply to people like Plaintiff, who have already entered and were residing in the United
25 States at the time they were apprehended and detained. This is made clear by the nationwide
26 judgment in *Maldonado Bautista*, that Plaintiff must be treated as detained under INA §
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1 236(a).

2 **VIII. CLAIMS FOR RELIEF.**

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

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

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

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

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

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23 81. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to
24 all noncitizens residing in the United States who are subject to the grounds of
25 inadmissibility. As relevant here, it does not apply to those who previously entered the
26 country and have been residing in the United States prior to being apprehended and placed
27 in removal proceedings by Defendants. Such noncitizens are detained under § 1226(a) and
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1 are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

4 83. The application of 1225(b)(2) to Plaintiff, who should be bond eligible,
5 unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and
6 1003.19.

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

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

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

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16 **IX. PRAYER FOR RELIEF.**

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

- 18 1) Assume jurisdiction over this cause pursuant to 28 U.S.C. § 2241;
19 2) Issue an Order to Show Cause ordering Defendants to show cause why this Petition
20 should not be granted within three days;
21 3) Order Defendants not to remove Plaintiff from the State of Arizona;
22 4) Issue a Writ of Habeas Corpus ordering Defendants to provide an individualized
23 bond hearing within five (5) days of this Court's order;
24 5) Declare that Plaintiff's detention violates the Due Process Clause of the Fifth
25 Amendment as well as the relevant statute and regulations governing detention of
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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 16TH day of December 2025.

By: s/ Jessica Anleu, Esq.

Jessica Anleu, Esq.
Attorney for Plaintiff

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LIST OF ATTACHED EXHIBITS

| Exhibit | Description |
|---------|---|
| A | December 15, 2025 Immigration Judge Bond Order |
| B | Notice to Appear, dated November 13, 2025 |
| C | November 25, 2025 <i>Maldonado Bautista</i> Order granting Plaintiff Petitioner’s Motion for Class Certification |
| D | November 21, 2025 <i>Maldonado Bautista</i> Order granting Petitioners’ Motion for Partial Summary Judgment and Denying Request to Enter Final Judgment |

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CERTIFICATE OF SERVICE

On the 16th 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

Luis Rosa, Jr.
Warden, Florence Correctional Center
1100 Bowling Rd.
Florence, 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.