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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**
13

14 **Ulises Poxtan Avendano,**)

15 Petitioner,)

16 v.)

17 **Luis Rosa Jr.,** Warden, Florence Correctional)
18 **Center; Chris McGregor,** Acting Director of)
19 **Phoenix Field Office, U.S. Immigration and**)
20 **Customs Enforcement; Todd Lyons,** Director,)
21 **U.S. Immigration and Customs Enforcement;**)
22 **Kristi Noem,** Secretary of the U.S. Department)
23 **of Homeland Security; and Pamela Bondi,**)
24 **Attorney General of the United States, in their**)
25 **official capacities.**)

26 Respondents.)

Case No. _____

**PETITION FOR WRIT OF HABEAS
CORPUS**

27 **I. INTRODUCTION**

28 1. Petitioner, Ulises Poxtan Avendano, a native of Mexico who has resided in
29 the United States since 2002, has been detained by Immigration and
30 Customs Enforcement (“ICE”) since November 26, 2025. He challenges his

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detention as a violation of the Immigration and Nationality Act (“INA”) as well as a violation of the Due Process Clause of the Fifth Amendment.

2. ICE is unlawfully subjecting Mr. Poxtan Avendano to mandatory detention without the opportunity for bond based on an improper reading of 8 U.S.C. § 1225(b). Mr. Poxtan Avendano is not an “alien seeking admission,” making section 1225(b) inapplicable to him. As such, Mr. Poxtan Avendano’s detention is a violation of his due process rights as guaranteed by the Fifth Amendment.

3. Mr. Poxtan Avendano respectfully requests the Court to grant him a Writ of Habeas Corpus, and to order him to be given a bond hearing within seven days. Such relief is proper under 23 U.S.C. § 2241, the vehicle for challenging civil immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

4. In the alternative, Mr. Poxtan Avendano asks the Court to order Respondents to “show cause why the writ should not be granted” within three days as prescribed by 28 U.S.C. § 2243. Accordingly, to vindicate Petitioner’s statutory and constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

II. CUSTODY

5. Mr. Poxtan Avendano is in the physical custody of Respondents and is being detained at Florence Correctional Center in Florence, Arizona. He is under the direct control of Respondents and their agents.

III. JURISDICTION

1 6. Jurisdiction is proper under 28 U.S.C. §§ 1331, 2241, and the Suspension
2 Clause, U.S. Const. art. I, § 9, cl. 2.

3 7. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas
4 petitions by noncitizens who challenge the lawfulness of their detention
5 under federal law. *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas*,
6 533 U.S. at 687.

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8 8. Venue is proper in the U.S. District Court for the District of Arizona,
9 because at least one Respondent is in the District, the Petitioner is detained
10 in this District, and the Petitioner's immediate physical custodian is in this
11 District. 28 U.S.C. § 1391(b).

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13 **IV. REQUIREMENTS OF 28 U.S.C. § 2243**

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

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21 10. Courts have long recognized the significance of the habeas statute in
22 protecting individuals from unlawful detention. The Great Writ has been
23 referred to as "perhaps the most important writ known to the constitutional
24 law of England, affording as it does a *swift* and imperative remedy in all
25 cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400
26 (1963) (emphasis added). "The writ of habeas corpus, challenging illegality

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of detention, is reduced to a sham if the trial courts do not act within a reasonable time.” *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978).

11. Due to the nature and urgency of this proceeding, Mr. Poxtan Avendano asks this Court to expedite the proceedings in the case as necessary and practicable for justice.

V. PARTIES

12. Petitioner Mr. Poxtan Avendano is a Mexican national who came to the United States in 2002 and has not left since that year. Mr. Poxtan Avendano is being detained by ICE in the Florence Correctional Center in Florence, Arizona.

13. Respondent Luis Rosa, Jr., is the Warden of the Florence Correctional Center. He is responsible for the custody of persons detained at the Florence Correctional Center, including Petitioner.

14. Respondent Chris McGregor is the Acting Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, ICE.

15. Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity.

16. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (“DHS”). She is a legal custodian of Petitioner and is named in her official capacity.

17. Respondent Pamela Bondi is the Attorney General of the United States Department of Justice She has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (“EOIR”), which

1 administers the immigration courts and the Board of Immigration Appeals
2 (“BIA”). She is a legal custodian of Petitioner and is named in her official
3 capacity.
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5 **VI. STATEMENT OF FACTS**

6 18. Mr. Poxtan Avendano is a 40-year-old citizen of Mexico. He supports his
7 U.S. citizen children, U [REDACTED] born on [REDACTED] in Tucson,
8 Arizona and J [REDACTED] born on [REDACTED] in Tucson, Arizona.
9 He has worked in the United States for 23 years to support himself and his
10 family. He will be seeking relief from deportation in the form of
11 cancellation of removal for certain nonpermanent residents pursuant to 8
12 U.S.C. § 1229b(b)(1) before the immigration court.
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14 19. Mr. Poxtan Avendano was taken into custody on November 26, 2025, and
15 was later transferred to Florence, Arizona. Exh. A
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17 20. On November 26, 2025, ICE Enforcement and Removal Operations issued
18 Form I-862, Notice to Appear, charging Mr. Poxtan Avendano as a citizen
19 of Mexico, stating he entered the United States “at or near UNKNOWN, on
20 or about unknown date”, and charging him as “an alien present in the United
21 States at any time or place other than as designated by the Attorney General”
22 under 8 U.S.C. § 1182(a)(6)(A)(i). Exh. B. This document was submitted to
23 the immigration court on December 10, 2025, two weeks after they detained
24 Mr. Poxtan Avendano.
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26 21. On December 3, 2025, Mr. Poxtan Avendano filed a motion for a bond
hearing before the immigration judge in Florence, Arizona.

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22. On December 8, 2025, the immigration judge held a hearing where the judge continued the matter due to the lack of ICE submitting the Notice to Appear to the court in a timely manner. The hearing was rescheduled for December 11, 2025 and the immigration judge denied Mr. Poxtan Avendano a bond, finding that she did not have jurisdiction over bond proceedings in his case, due to recent precedent from the Board of Immigration Appeals in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Exh. C. The judge’s ruling flies in the face of the recent declaratory judgment in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) which held that individuals such as Mr. Poxtan Avendano should be accorded a bond hearing.

23. Prior rulings in this District have considered this issue already and sided with petitioners. *See Echevarria v. Bondi*, 2:25-cv-03252-DWL-ESW (D. Ariz. Oct. 3, 2025), *Millan-Osuna v. Cantu*, 2025 WL 3294945, 2:25-CV-04019 (D. Ariz. Nov. 26, 2025), *Luna-Gonzalez v. Noem*, 2025 WL 2394961, 2:25-CV-03794 (D. Ariz. Nov. 26, 2025), *Armenta Soto v. Noem*, 2025 WL 3294755, 1:25-CV-13533 (D. Ariz. Nov. 26, 2025).

VII. LEGAL FRAMEWORK

24. Immigration proceedings, including detention and removal, are guided by multiple statutes working in tandem. Removal proceedings are carried out under 8 U.S.C. § 1229(a). There are different ways to arrive at 1229(a).

25. In one route, 8 U.S.C. § 1226(a) permits the Attorney General to detain noncitizens in anticipation of and while removal proceedings are ongoing.

1 “Federal regulations provide that aliens detained under § 1226(a) receive
2 bond hearings at the outset of detention.” *Jennings v. Rodriguez*, 583 U.S.
3 281, 306 (2018) (citing 8 CFR § 236.1(d)(1)). The purpose of a bond
4 hearing is to determine a respondent’s flight risk or potential for danger to
5 the community.
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7 26. In certain instances, noncitizens are not afforded a bond hearing. § 1226(c)
8 authorizes mandatory detention for criminal behaviors. 8 U.S.C. §
9 1225(b)(1)(A)(i) authorizes mandatory detention as part of the “expedited
10 removal” process. 8 U.S.C. § 1225(b)(2)(A) also requires detention, though
11 only if the noncitizen is an “applicant for admission,” and is “seeking
12 admission.”
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14 27. An applicant for admission is defined as “an alien present in the United
15 States who has not been admitted or who arrives in the United States
16 (whether or not at a designated port of arrival and including an alien who is
17 brought to the United States after having been interdicted in international or
18 United States waters)”. 8 U.S.C. § 1225(a)(1).
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20 28. “In sum, U.S. immigration law authorizes the Government to detain certain
21 aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It
22 also authorizes the Government to detain certain aliens already in the
23 country pending the outcome of removal proceedings under §§ 1226(a) and
24 (c).” *Jennings*, 583 U.S. at 289.
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26 29. Under 8 U.S.C. § 1226(a), a noncitizen “*may* be arrested and detained
pending a decision on whether the alien is to be removed from the United

1 States.” (emphasis added). Pending such decision, the Attorney General
2 “may release the alien on a bond of at least \$1,500 with security approved
3 by, and containing conditions prescribed by, the Attorney General, or
4 conditional parole...” 8 U.S.C. § 1226(a)(1)-(2).
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6 30. In other words, section 1226(a) contemplates that a noncitizen who is
7 arrested and detained pending a removal decision is “generally” entitled to
8 a bond hearing. *Nielsen v. Preap*, 586 U.S. 392, 395-98 (2019) (“Aliens
9 who are arrested because they are believed to be deportable may generally
10 apply for release by proving to the satisfaction of a Department of
11 Homeland Security officer or an immigration judge that they would not
12 endanger others and would not flee is released from custody... 8 U.S.C. §
13 1226(a) generally permits an alien to seek release in this way...”). This is
14 the “default rule.” *Jennings*, 583 U.S. at 288 (“Section 1226 generally
15 governs the process of arresting and detaining that group of aliens pending
16 their removal... Section 1226(a) sets out the default rule...”). *See also*
17 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196-97 (9th Cir. 2022) (“The
18 provision at issue in this case, 8 U.S.C. § 1226, provides the general process
19 for arresting and detaining aliens who are present in the United States and
20 eligible for removal... Under § 1226(a) and its implementing regulations, a
21 detainee may request a bond hearing before an IJ at any time before a
22 removal order becomes final... Additional provisions supplement § 1226’s
23 detention scheme. Section 1225(b) applies to an ‘applicant for
24 admission’ ...”) (citations omitted).
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- 31. For decades, people in this situation – who have been residing in the United States, often for years – were entitled to consideration for release on bond, and if not released by DHS, to bond hearings before an IJ. *See Rodriguez Vazquez v. Bostock*, 779 F.Supp.1239 (W.D. Wash. 2025).
- 32. On July 8, 2025, ICE issued a memo entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” announcing that “[e]ffective immediately, it is the position of DHS” that anyone “who has not been admitted” is “subject to detention under [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by [8 U.S.C. § 1182(d)(5) parole.” Exh. D.
- 33. On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Matter of Yajure Hurtado* adopts the same interpretation of the INA’s detention authorities as DHS, reasoning that all noncitizens who entered without admission or parole are subject to detention under § 1225(b)(2)(A).
- 34. The government has incorrectly applied section 1225(b)(2)(A) to Mr. Poxtan Avendano. The application of 1225(b)(2)(A), instead of the appropriate 1226(a), violates statutory authority and violates Mr. Poxtan Avendano’s due process rights.
- 35. The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding his detention. As the Supreme Court has explained, “[f]reedom from imprisonment – from government custody,

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detention, or other forms of physical restraint – lies at the heart of liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

36. Since the Supreme Court’s decision in *Jennings v. Rodriguez*, the Ninth Circuit has express “grave doubt” that “any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 990 F.3d 252, 256 (9th Cir. 2018).

37. To guarantee against such arbitrary detention and to guarantee the right to liberty, due process requires “adequate procedural protections” that ensure the government’s asserted justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

VIII. EXHAUSTION

38. Any appeal to the BIA would be futile considering the September 5, 2025 BIA decision where the BIA adopted DHS’ interpretation of the INA as mandating detention without bond for millions of noncitizens who reside in the U.S. *Matter of Yajure Hurtado*, 29 I&N Dec. at 218 (BIA 2025). The BIA’s decision held that immigration judges lack jurisdiction to hold bond hearings or grant bond to all individuals charged with entering the country without inspection. *Id.*

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39. The Court should find administrative exhaustion would be futile. *See Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) (“where the agency’s position appears already set and recourse to administrative remedies is very likely futile, exhaustion is not required.”). BIA decisions are binding on immigration judges, and *Hurtado* thus precludes an IJ from finding jurisdiction over noncitizens like Mr. Poxtan Avendano to hold a custody redetermination hearing. Therefore, judicial intervention enjoining Respondents from preventing petitioner from having a bond hearing pursuant to the holding in *Hurtado* is necessary to enable petitioner to avail himself of administrative remedies.

40. Therefore, the Court should consider the merits of this petition.

IX. CLAIMS FOR RELIEF

COUNT ONE

**Violation of The Immigration and Nationality Act and Implementing Regulations
8 U.S.C. § 1226(a)**

41. The allegations in the above paragraphs are realleged and incorporated herein.

42. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.

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43. The Respondents have therefore violated the INA and its implementing regulations by subjecting Mr. Poxtan Avendano to mandatory detention, in violation of 8 U.S.C. § 1226(a).

44. For these reasons, Petitioner's detention under 8 U.S.C. § 1225(b)(2) violates 8 U.S.C. § 1226(a).

COUNT TWO

Violation of Fifth Amendment Right to Due Process

45. The allegations in the above paragraphs are realleged and incorporated herein.

46. The Due Process Clause of the Fifth Amendment requires that Mr. Poxtan Avendano be afforded a bond hearing. Petitioner's continued detention without a bond hearing constitutes a deprivation of liberty without due process of law.

For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

X. PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days.
- (3) Declare that Petitioner's detention without a bond hearing violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1226(a);

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- (4) Issue a Writ of Habeas Corpus ordering Respondents to schedule a bond hearing before an immigration judge and, at such hearing, afford Petitioner the opportunity to present evidence that he is not a flight risk nor a danger to the community;
- (5) Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

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Respectfully submitted,

/s/ Maurice H. Goldman
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Counsel for Petitioner

Dated: December 17, 2025

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

I represent Petitioner, Mr. Poxtan Avendano, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 17th day of December, 2025.

s/Maurice H. Goldman

Maurice H. Goldman