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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**

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28 **MEMORANDUM OF LAW IN SUPPORT OF**  
29 **PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING**  
30 **ORDER AND PRELIMINARY INJUNCTION**  
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**I. INTRODUCTION**

1. Mr. Poxtan Avendano has been in the custody of the Immigration and Customs Enforcement (“ICE”) since November 26, 2025. He challenges his 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

1 detained at Florence Correctional Center in Florence, Arizona. He is under  
2 the direct control of Respondents and their agents.

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4 **III. JURISDICTION**

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

7 7. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas  
8 petitions by noncitizens who challenge the lawfulness of their detention  
9 under federal law. *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas*,  
10 533 U.S. at 687.

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

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

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

24 10. Courts have long recognized the significance of the habeas statute in  
25 protecting individuals from unlawful detention. The Great Writ has been  
26 referred to as "perhaps the most important writ known to the constitutional

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law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The writ of habeas corpus, challenging illegality 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**

1. 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.
2. 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.
3. Respondent Chris McGregor is the Acting Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, ICE.
4. Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity.
5. 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.



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the immigration court on December 10, 2025, two weeks after they detained Mr. Poxtan Avendano.

10. On December 3, 2025, Mr. Poxtan Avendano filed a motion for a bond hearing before the immigration judge in Florence, Arizona.

11. 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.

12. 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**

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

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5 14. In one route, 8 U.S.C. § 1226(a) permits the Attorney General to detain  
6 noncitizens in anticipation of and while removal proceedings are ongoing.  
7 “Federal regulations provide that aliens detained under § 1226(a) receive  
8 bond hearings at the outset of detention.” *Jennings v. Rodriguez*, 583 U.S.  
9 281, 306 (2018) (citing 8 CFR § 236.1(d)(1)). The purpose of a bond  
10 hearing is to determine a respondent’s flight risk or potential for danger to  
11 the community.

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13 15. In certain instances, noncitizens are not afforded a bond hearing. § 1226(c)  
14 authorizes mandatory detention for criminal behaviors. 8 U.S.C. §  
15 1225(b)(1)(A)(i) authorizes mandatory detention as part of the “expedited  
16 removal” process. 8 U.S.C. § 1225(b)(2)(A) also requires detention, though  
17 only if the noncitizen is an “applicant for admission,” and is “seeking  
18 admission.”

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20 16. An applicant for admission is defined as “an alien present in the United  
21 States who has not been admitted or who arrives in the United States  
22 (whether or not at a designated port of arrival and including an alien who is  
23 brought to the United States after having been interdicted in international or  
24 United States waters)”. 8 U.S.C. § 1225(a)(1).

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26 17. “In sum, U.S. immigration law authorizes the Government to detain certain  
aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It

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also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Jennings*, 583 U.S. at 289.

18. 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 States.” (emphasis added). Pending such decision, the Attorney General “may release the alien on a bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General, or conditional parole...” 8 U.S.C. § 1226(a)(1)-(2).

19. In other words, section 1226(a) contemplates that a noncitizen who is arrested and detained pending a removal decision is “generally” entitled to a bond hearing. *Nielsen v. Preap*, 586 U.S. 392, 395-98 (2019) (“Aliens who are arrested because they are believed to be deportable may generally apply for release by proving to the satisfaction of a Department of Homeland Security officer or an immigration judge that they would not endanger others and would not flee is released from custody... 8 U.S.C. § 1226(a) generally permits an alien to seek release in this way...”). This is the “default rule.” *Jennings*, 583 U.S. at 288 (“Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal... Section 1226(a) sets out the default rule...”). *See also Rodriguez Diaz v. Garland*, 53 F.4<sup>th</sup> 1189, 1196-97 (9th Cir. 2022) (“The provision at issue in this case, 8 U.S.C. § 1226, provides the general process for arresting and detaining aliens who are present in the United States and

1 eligible for removal... Under § 1226(a) and its implementing regulations, a  
2 detainee may request a bond hearing before an IJ at any time before a  
3 removal order becomes final... Additional provisions supplement § 1226's  
4 detention scheme. Section 1225(b) applies to an 'applicant for  
5 admission' ...") (citations omitted).  
6

7 20. For decades, people in this situation – who have been residing in the United  
8 States, often for years – were entitled to consideration for release on bond,  
9 and if not released by DHS, to bond hearings before an IJ. *See Rodriguez*  
10 *Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, (W.D. Wash. April 24,  
11 2025).  
12

13 21. On July 8, 2025, ICE issued a memo entitled "Interim Guidance Regarding  
14 Detention Authority for Applicants for Admission," announcing that  
15 "[e]ffective immediately, it is the position of DHS" that anyone "who has  
16 not been admitted" is "subject to detention under [8 U.S.C. § 1225(b)] and  
17 may not be released from ICE custody except by [8 U.S.C. § 1182(d)(5)  
18 parole."  
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20 22. On September 5, 2025, the BIA issued a published decision in *Matter of*  
21 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Matter of Yajure Hurtado*  
22 adopts the same interpretation of the INA's detention authorities as DHS,  
23 reasoning that all noncitizens who entered without admission or parole are  
24 subject to detention under § 1225(b)(2)(A).  
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26 23. The government has incorrectly applied section 1225(b)(2)(A) to Mr.  
Poxtan Avendano. The application of 1225(b)(2)(A), instead of the

1 appropriate 1226(a), violates statutory authority and violates Mr. Poxtan  
2 Avendano's due process rights.

3 24. The Due Process Clause of the Fifth Amendment provides Petitioner with  
4 important protections regarding his detention. As the Supreme Court has  
5 explained, "[f]reedom from imprisonment – from government custody,  
6 detention, or other forms of physical restraint – lies at the heart of liberty"  
7 that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

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9 25. Since the Supreme Court's decision in *Jennings v. Rodriguez*, the Ninth  
10 Circuit has express "grave doubt" that "any statute that allows for arbitrary  
11 prolonged detention without any process is constitutional or that those who  
12 founded our democracy precisely to protect against the government's  
13 arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*,  
14 990 F.3d 252, 256 (9th Cir. 2018).

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16 26. To guarantee against such arbitrary detention and to guarantee the right to  
17 liberty, due process requires "adequate procedural protections" that ensure  
18 the government's asserted justification for a noncitizen's physical  
19 confinement "outweighs the individual's constitutionally protected interest  
20 in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal  
21 quotation marks omitted).  
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#### 24 **VIII. EXHAUSTION**

25 27. Any appeal to the BIA would be futile considering the September 5, 2025  
26 BIA decision where the BIA adopted DHS' interpretation of the INA as  
mandating detention without bond for millions of noncitizens who reside in

1 the U.S. *Matter of Yajure Hurtado*, 29 I&N Dec. at 218 (BIA 2025). The  
2 BIA’s decision held that immigration judges lack jurisdiction to hold bond  
3 hearings or grant bond to all individuals charged with entering the country  
4 without inspection. *Id.*

5  
6 28. The Court should find administrative exhaustion would be futile. *See*  
7 *Vasquez-Rodriguez v. Garland*, 7 F.4<sup>th</sup> 888, 896 (9th Cir. 2021) (“where the  
8 agency’s position appears already set and recourse to administrative  
9 remedies is very likely futile, exhaustion is not required.”). BIA decisions  
10 are binding on immigration judges, and *Hurtado* thus precludes an IJ from  
11 finding jurisdiction over noncitizens like Mr. Poxtan Avendano to hold a  
12 custody redetermination hearing. Therefore, judicial intervention enjoining  
13 Respondents from preventing petitioner from having a bond hearing  
14 pursuant to the holding in *Hurtado* is necessary to enable petitioner to avail  
15 himself of administrative remedies.  
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17  
18 29. Therefore, the Court should consider the merits of this petition.

19 **IX. CLAIMS FOR RELIEF**

20 **COUNT ONE**

21  
22 **Violation of The Immigration and Nationality Act and Implementing Regulations**  
23 **8 U.S.C. § 1226(a)**

24 30. The allegations in the above paragraphs are realleged and incorporated  
25 herein.

26 31. 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

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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.

32. 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).

33. 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**

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

35. 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;

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- (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);
- (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.

Respectfully submitted,

/s/ Maurice H. Goldman

Maurice H. Goldman

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*Counsel for Petitioner*

Dated: December 17, 2025

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**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