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9  
10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF ARIZONA**

12 **Javier Lopez Penaloza,**  
13 **Petitioner,**

14 v.

15 **Kristi Noem**, Secretary of the United States  
16 Department of Homeland Security, in her official  
17 capacity; **Todd Lyons**, Acting Director U.S.  
18 Immigration and Customs Enforcement, in his official  
19 capacity; **John Cantu**, Field Office Director for ICE's  
20 Enforcement and Removal Operation's ("ERO") Field  
21 Office, in his official capacity; **Sirce Owen**, Acting  
22 Director of Executive Office for Immigration Review,  
23 in her official capacity; **Luis Rosa, Jr.**, Warden of the  
24 Florence Correctional Center, in his official capacity,  
25 **Respondents.**

Case No.

Agency No. 

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

26 **INTRODUCTION**

27 The Respondents are unlawfully detaining Petitioner Javier Lopez Penaloza, at  
28 the Florence Correctional Center, due to the Department of Homeland Security (DHS)  
recently changed its long-standing position with regard to the status of mandatory  
detention. *See*, ICE Memo: Interim Guidance Regarding Detention Authority for  
Applications for Admission filed herewith as Exhibit 1. The Bureau of Immigration

1 Appeals (BIA) issued a precedential decision on September 5, 2025, holding that all  
2 noncitizens present in the United States without admission – no matter how long they  
3 have resided here – are still “applicants for admission” under 8 U.S.C. § 1225(a) and  
4 not entitled to bond hearings because they are subject to mandatory detention under §  
5 1225(b)(2)(A). *See, Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) filed  
6 herewith as Exhibit 2.  
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9 But this interpretation of the Immigration and Naturalization Act (INA) violates  
10 both procedural and substantive Fifth Amendment protections, ignores the plain  
11 statutory language of both § 1225 and § 1226, and is contrary to numerous recent Federal  
12 Court decisions in this District that have rejected these exact arguments. *See e.g.*  
13 *10/3/2025 Order entered in Francisco Echevarria v. Pam Bondi, et al., CV-25-03252-*  
14 *PHX-DWL (ESW), (D. Ariz. 10/3/2025)*, filed herewith as Exhibit 16.  
15

16  
17 Petitioner is neither a flight risk nor a danger to the community. He has been in a  
18 stable marriage for over twenty-three years, resides with his wife, children, and extended  
19 family. He has also filed an application for asylum and withholding of removal (Form  
20 I-589). *See, Petitioner’s Application for Asylum and for Withholding of Removal*, filed  
21 herewith as Exhibit 6.  
22

23 Mr. Lopez Penaloza has a felony conviction for Aggravated Drivign Under the  
24 Influence (DUI). This offense is his only conviction. A formal Risk/Needs Assessment  
25 conducted during his criminal proceedings classified him as low risk to re-offend. The  
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1 offense was non-repetitive and unrelated to domestic violence, sex offenses, or gang  
2 activity.

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4 Additionally, when Respondents issued a Notice to Appear, it identified  
5 Petitioner as an “alien present in the United States” despite “arriving alien” being an  
6 option. *See*, Petitioner’s Notice to Appear, filed herewith as Exhibit 5.

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8 In addition to BIA decisions not being binding precedent upon this Court, the  
9 Supreme Court decision last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S.  
10 369, 400 (2024), made clear that federal courts must independently interpret statutes and  
11 no longer defer under so-called “Chevron deference.” This Court is therefore in the best  
12 position to determine whether the Respondents are misinterpreting the relevant federal  
13 statutes and improperly denying alien detainees bond hearings on the grounds that they  
14 are all subject to mandatory detention under § 1225(b)(2)(A). The petition for writ of  
15 habeas corpus should be granted.  
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18 **JURISDICTION & CUSTODY**


19 1. Petitioner Javier Lopez Penaloza, is in the physical custody of  
20 Respondents and Immigration and Customs Enforcement (ICE), an agency within the  
21 Department of Homeland Security.  
22

23 2. Petitioner is currently detained at Florence Correctional Center and is  
24 under the direct control of Respondents and their agents.  
25

26 3. This action arises under the Constitution of the United States and 8  
27 U.S.C. § 1101 et seq.  
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**PARTIES**

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2           10.       Petitioner Javier Lopez Penaloza was born on  in  
3  
4       Estado de Mexico, Mexico. Petitioner is currently detained by ICE at Florence  
5       Correctional Center. *See*, ICE Online Detainee Locator, filed herewith as Exhibit 3.

6           11.       Respondent Kristi Noem is the Secretary of the U.S. Department of  
7       Homeland Security (“DHS”). In this capacity, Respondent Noem is a legal custodian of  
8       Petitioner. Respondent Noem is sued in her official capacity.

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10          12.       Respondent DHS is a federal executive agency responsible for, among  
11       other things, enforcing federal immigration laws and overseeing lawful immigration to  
12       the United States. Respondent DHS is a legal custodian of Petitioner.

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14          13.       Respondent Todd M. Lyons is Acting Director and Senior Official  
15       Performing the Duties of the Director of U.S. Immigration and Customs Enforcement  
16       (“ICE”). Respondent Lyons is responsible for ICE’s policies, practices, and procedures,  
17       including those relating to the detention of immigrants during their removal procedures.  
18       Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in his  
19       official capacity.

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22          14.       Respondent ICE is a federal law enforcement agency within DHS.  
23       Respondent ICE is responsible for the enforcement of immigration laws, including the  
24       detention and removal of immigrants. Respondent ICE is a legal custodian of Petitioner.  
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1 “outweighs the individual’s constitutionally protected interest in avoiding physical  
2 restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

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4 27. In the immigration context, the Supreme Court has recognized only  
5 two valid purposes for civil detention: to mitigate the risks of danger to the community  
6 and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. The government may not detain a  
7 noncitizen based on any other justification.

8  
9 28. Congress has granted the Attorney General discretion to decide  
10 whether to detain or release certain noncitizens pending a removal decision. *See* 8 U.S.C.  
11 § 1226(a). The Attorney General has delegated that authority to IJs. 8 C.F.R. §§ 1003.19,  
12 1236.1.

13  
14 29. On July 8, 2025, DHS adopted a new policy on mandatory detention  
15 for noncitizens who have been residing in the United States. *See*, ICE Memo: Interim  
16 Guidance Regarding Detention Authority for Applications for Admission filed herewith  
17 as Exhibit 1.

18  
19 30. On September 5, 2025, the BIA entered the precedential decision  
20 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed herewith as Exhibit 2,  
21 which holds that all noncitizens who enter without inspection are “applicants for  
22 admission” under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under  
23 § 1225(b)(2), without regard for the length of time they have lived in the United States.  
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26 31. The Ninth Circuit has held that § 1226(a) is the “default” detention  
27 statute for aliens in removal proceedings “[8 U.S.C. §1226(a) ("Subsection A")] is the  
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1 default detention statute for noncitizens in removal proceedings and applies to  
2 noncitizens "[e]xcept as provided in [Subsection C]." 8 U.S.C. § 1226(a)." *Avilez v.*  
3 *Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*,  
4 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD  
5 Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-*  
6 *Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

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9 32. Almost every Federal District Court that has considered the issue has  
10 found that DHS's interpretation defies the INA. In Arizona, the following decisions so  
11 find and collect the cases from other district courts around the country:

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13 a. 12/12/2025 Order granting habeas in *Gonzalez-Gonzalez v. Noem*, et al.,  
14 Case No. 25-cv-04478-DWL (D. Ariz 12-12-25)(The court declined to  
15 revisit the conclusion it reached in *Echevarria*).
- 16 b. 11/26/2025 Order granting habeas in *Luna-Gonzalez v. Noem*, et al., Case  
17 No. 25-cv-03794-PHX (D. Ariz 11-26-25)(The court rejected the  
18 government's argument that the petitioner is an "arriving alien" subject to  
19 mandatory detention under § 1225 and agrees instead with the growing  
20 majority of courts that people like the petitioner—who were arrested  
21 inside the United States long after entering—are detained under § 1226(a),  
22 not § 1225.), gathering cases, filed with the Habeas Petition as Exhibit 7;
- 23 c. 11/24/25 Order granting habeas in *Padron-Carreron v. Noem*, et al., Case  
24 No. 25-cv-04204-PHX (D. Ariz. 11-25-25)("Respondents correctly  
25 acknowledge that their view still represents the minority position—in the  
26 weeks since the Court considered the issue in *Echevarria*, dozens of other  
27 courts have reached the same conclusion... [that] § 1226(a)'s application  
28 for the past three decades supports its application to noncitizens in  
petitioner's position"), gathering cases, filed with the Habeas Petition as  
Exhibit 8;

- 1 d. 11/18/2025 Order granting habeas in *Rodrigues da Silva v. Figueroa*, et  
2 al., Case No. 25-cv-04015-PHX (D. Ariz. 11-18-25)(“dozens of other  
3 district courts have concluded individuals like Petitioner are subject to §  
4 1226 and not § 1225 and, therefore, are not subject to mandatory  
5 detention”), gathering cases, filed with the Habeas Petition as Exhibit 9;
- 6 e. 11/13/2025 Order granting habeas in *Perez Rodriguez v. Noem*, et al., Case  
7 No. 25-cv-03921-PHX (D. Ariz. 11/13/2025)(“the vast majority of courts  
8 concluded individuals like Petitioner are subject to § 1226 and not § 1225  
9 and, therefore, are not subject to mandatory detention”), gathering cases,  
10 filed with the Habeas Petition as Exhibit 10
- 11 f. 11/6/25 Order granting habeas in *Gonzalez Rodriguez v. Bondi*, et al., Case  
12 No. 25-cv-03917-PHX (D. Ariz. 11-6-25)(“dozens of other district courts  
13 have concluded individuals like Petitioner are subject to § 1226 and not §  
14 1225 and, therefore, are not subject to mandatory detention”), gathering  
15 cases, filed with the Habeas Petition as Exhibit 11
- 16 g. 11/6/2025 Order Granting Habeas in *Abrego-Zarate v. Noem, et al.*, Case  
17 No. 25-cv-03564-KML (D. Ariz. 11-6-25)(“the great weigh of authority  
18 is that individuals like petitioner are not subject to mandatory detention.  
19 This court agrees with the majority view. For these reasons, the petition is  
20 granted, and petitioner must receive a bond hearing without application of  
21 *Matter of Yajure Hurtado*, 29 I&N 216 (B.I.A. 2025.”), filed herewith as  
22 Exhibit 12.
- 23 h. 11/03/25 Order granting habeas petition in *Lopez-Cruz v. Noem, et al*, No.  
24 2:25-cv-03566-DJH--ASB (D. Ariz. 11/3/2025)(“dozens of other district  
25 courts have concluded individuals like Petitioner are subject to § 1226 and  
26 not § 1225 and, therefore, are not subject to mandatory detention. This  
27 Court agrees with this conclusion.”), filed herewith as Exhibit 13.
- 28 i. 10/22/2025 Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No.  
2:25-cv-03391-SHD-DMF at page 2 (D. Ariz. Oct. 22, 2025)(“while  
Respondents point to two district court opinions adopting their  
interpretation of § 1225(b)(2)(A), myriad other district courts have  
reached the same conclusion as *Echevarria* and held individuals like

1 Petitioner are not subject to mandatory detention under 1225(b)(2)(A)”),  
2 filed herewith as Exhibit 14.

3 j. 10/17/2025 Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et*  
4 *al.*, No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)(“individuals like  
5 Petitioner are not “arriving aliens” subject to mandatory detention but,  
6 rather, are subject to the general removal statute, 8 U.S.C. § 1226(a)”),  
7 filed herewith as Exhibit 15.

8 k. 10/09/2025 Order granting habeas entered in *Hector Lopez-Melo v. Bondi,*  
9 *et. al.*, Case No. Case 2:25-cv-03394-DJH--JZB (D. Ariz.  
10 10/9/2025)(“petitioner, who had been present in the United States for  
11 years, was not an applicant for admission under 1225(b)(2)(A) or subject  
12 to mandatory detention”), filed herewith as Exhibit 16.

13 l. 10/07/2025 Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No.  
14 CV-25-02989-PHX-SPL (D Arizona 10/07/2025)(“Respondents maintain  
15 he is subject to mandatory detention under 1225(b)(2). Again,  
16 Respondents are mistaken.”), filed herewith as Exhibit 17.

17 m. 10/3/2025 Order granting habeas corpus in *Echevarria v. Bondi, et al.*, No.  
18 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3,  
19 2025)(“Court agrees with the majority of courts that have concluded that  
20 § 1226(a), rather than § 1225(b)(2)(A), applies in this circumstance.”),  
21 filed herewith as Exhibit 18.

22 n. 08/11/2025 Magistrate’s Report and Recommendation in *Rocha Rosado*  
23 *v. Figueroa*, No. CV-25-02157-PHX-DLR 2025 WL 2349133 at \*10 (D.  
24 Ariz. Aug. 13, 2025)(Magistrate’s Report and Recommendation Adopted  
25 at 2025 WL 2349133)([t]he text of § 1226, the canons of statutory  
26 interpretation, this section's legislative history, and longstanding agency  
27 practice indicate that Rosado is subject to § 1226(a)’s ‘default’ rule for  
28 discretionary detention rather than § 1225’s mandatory detention  
requirement, and that the IJ erred by finding they did not have jurisdiction  
to consider Rosado's detention.”) *report and recommendation adopted sub*  
*nom.* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025), filed herewith as  
Exhibit 19.

1           33.           Petitioner has located only 6 cases holding to the contrary. In *Vargas*  
2 *Lopez v. Trump*, --F. Supp. 3d--, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), the court  
3 held that Vargas Lopez failed to meet his burden to show that he falls under § 1226(a),  
4 so “his Petition fails regardless of the parties’ arguments about the scope of § 1225(b)  
5 and § 1226(a).” *Vargas Lopez v. Trump*, 2025 WL 2780351 at \*7 (emphasis added). In  
6 *Chavez v. Noem*, -- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), the  
7 court denied a temporary restraining order on the grounds that the petitioners had “not  
8 demonstrated serious questions about the application of Section 1225 to aliens present  
9 in the United States.” *Chavez v. Noem*, 2025 WL 2730228 at \*4. However, the court  
10 spent less than 2 pages analyzing the statutory language and caselaw before concluding  
11 that “Petitioners have not shown either a likelihood of success or serious questions going  
12 to the merits [therefore] we do not address the remaining Winter factors.” *Chavez v.*  
13 *Noem*, 2025 WL 2730228 at \*5. *Mejia Olalde v. Noem*, 2025 U.S. Dist. LEXIS 221830  
14 (E.D. Mo. Nov. 10, 2025) was concerned with whether the habeas petition had been  
15 properly filed in that court’s jurisdiction and never reached the application of § 1225(b)  
16 to the petitioner. *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657 (E.D. Va. Aug.  
17 5, 2025) and *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025)  
18 were each shorter than two pages long and neither contained any significant analysis.  
19 Lastly, in *Lauren-Ayala v. Noem*, No. 25-cv- 04425-KML--JFM (D. Ariz. 12/12/2025).  
20 the court did not reach the merits of the habeas claim or analyze the governing statute;  
21 instead, it dismissed the petition for lack of jurisdiction, concluding that, because  
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1 petitioner failed to address the immigration court’s alternative dangerousness finding, it  
2 could not order any effective relief. Thus, none of these cases are particularly instructive.

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4 34. In 1997, after Congress amended the INA through the Illegal  
5 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and  
6 the then-Immigration and Naturalization Service issued an interim rule to interpret and  
7 apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and  
8 Detention of Aliens,” the agencies explained that:  
9

10           Despite being applicants for admission, aliens who are  
11 present without having been admitted or paroled (formerly  
12 referred to as aliens who entered without inspection) *will be*  
13 *eligible* for bond and bond redetermination.

14 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that  
15 individuals who had entered without inspection *were* eligible for consideration for  
16 bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing  
17 regulations.

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19 35. Thus, for almost 30 years, all participants in the immigration system  
20 have understood that people arrested inside the United States generally fall within §  
21 1226 for detention purposes and are therefore required to receive a bond hearing upon  
22 request—even if they initially entered the country without permission. *See Martinez v.*  
23 *Hyde*, No. 25-11613, 2025 WL 2084238, at \*4 n.9 (D. Mass. July 24, 2025) (citing the  
24 United States Solicitor General’s representation to the Supreme Court at oral argument  
25 that “DHS’s long-standing interpretation has been that 1226(a) applies to those who  
26 have crossed the border between ports of entry and are shortly thereafter apprehended”).  
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1 5. Grant any further relief the Court deems just and proper.  
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3 Dated this 18 day of December, 2025.  
4

5 By: /s/ *Erica Sanchez*  
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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner Javier Lopez Penaloza 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 18 day of December, 2025.

By: */s/ Erica Sanchez*  
Erica Sanchez, Esq.