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

12 **Gustavo Castaneda Hernandez,**
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 Service Processing Center, in his official
25 capacity,

26 **Respondents.**

Case No.

Agency No. 

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

27 **INTRODUCTION**

28 The Respondents are unlawfully detaining Petitioner Gustavo Castaneda Hernandez, at the Florence Service Processing 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

1 Bureau of Immigration Appeals (BIA) issued a precedential decision on September 5,
2 2025, holding that all noncitizens present in the United States without admission – no
3 matter how long they have resided here – are still “applicants for admission” under 8
4 U.S.C. § 1225(a) and not entitled to bond hearings because they are subject to mandatory
5 detention under § 1225(b)(2)(A). *See, Matter of Yajure Hurtado*, 29 I&N Dec. 216
6 (B.I.A. 2025) filed herewith as Exhibit 2.
7

8
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 filed an Application for Asylum and for Withholding of Removal on
18 November 4, 2025. *See*, Petitioner’s Application for Asylum and for Withholding of
19 Removal, filed herewith as Exhibit 6. Petitioner has no criminal history. *See*, Declaration
20 of Counsel in Support of Petition for Writ of Habeas Corpus, filed herewith as Exhibit
21 4. Further, when Respondents issued a Notice to Appear, it identified Petitioner as an
22 “alien present in the United States” despite “arriving alien” being an option. *See*,
23 Petitioner’s Notice to Appear, filed herewith as Exhibit 5.
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25
26 In addition to BIA decisions not being binding precedent upon this Court, the
27 Supreme Court decision last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S.
28 369, 400 (2024), made clear that federal courts must independently interpret statutes and

1 no longer defer under so-called “Chevron deference.” This Court is therefore in the best
2 position to determine whether the Respondents are misinterpreting the relevant federal
3 statutes and improperly denying alien detainees bond hearings on the grounds that they
4 are all subject to mandatory detention under § 1225(b)(2)(A). The petition for writ of
5 habeas corpus should be granted.
6

7 **JURISDICTION & CUSTODY**

8
9 1. Petitioner Gustavo Castaneda Hernandez, is in the physical custody of
10 Respondents and Immigration and Customs Enforcement (ICE), an agency within the
11 Department of Homeland Security.
12

13 2. Petitioner is currently detained at Florence Service Processing Center
14 and is under the direct control of Respondents and their agents.
15

16 3. This action arises under the Constitution of the United States and 8
17 U.S.C. § 1101 et seq.
18

19 4. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of
20 the United States Constitution, 28 U.S.C. § 1331, and the common law. This Court may
21 grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. §
22 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
23

24 5. Congress has preserved judicial review of challenges to immigration
25 detention. *See Jennings v. Rodriguez*, 583 U.S. 122, 130-131 (2018) (holding that 8
26 U.S.C. §§ 1226(e) and 1252(b)(9) do not bar review of challenges to prolonged
27 immigration detention).
28

1 12. Respondent DHS is a federal executive agency responsible for, among
2 other things, enforcing federal immigration laws and overseeing lawful immigration to
3 the United States. Respondent DHS is a legal custodian of Petitioner.
4

5 13. Respondent Todd M. Lyons is Acting Director and Senior Official
6 Performing the Duties of the Director of U.S. Immigration and Customs Enforcement
7 (“ICE”). Respondent Lyons is responsible for ICE’s policies, practices, and procedures,
8 including those relating to the detention of immigrants during their removal procedures.
9 Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in his
10 official capacity.
11

12 14. Respondent ICE is a federal law enforcement agency within DHS.
13 Respondent ICE is responsible for the enforcement of immigration laws, including the
14 detention and removal of immigrants. Respondent ICE is a legal custodian of Petitioner.
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16 15. Respondent John Cantu is Field Office Director for ICE’s Enforcement
17 and Removal Operation’s (“ERO”) Field Office. Respondent Cantu is a legal custodian
18 of Petitioner and is sued in his official capacity.
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20 16. Respondent Luis Rosa, Jr. is the Warden of the Florence Service
21 Processing Center. Respondent Rosa, Jr. is a legal custodian of Petitioner. Respondent
22 Rosa, Jr. is sued in his official capacity.
23

24 17. Respondent Sirce Owen is the Acting Director of the Executive Office
25 for Immigration Review (EOIR), a federal agency within the U.S. Department of Justice.
26 Respondent EOIR is responsible for the administration of immigration courts, and
27
28

1 acceptance of forms and petitions related to adjudication of immigration claims, as well
2 as motions for bond. Respondent Sirce Owen is sued in her official capacity.

3
4 **STATEMENT OF FACTS**

5 18. Petitioner Gustavo Castaneda Hernandez was born on 
6  in Granada, Nicaragua.

7
8 19. Petitioner Gustavo Castaneda Hernandez last entered the United States
9 on March 27, 2022. *See*, Declaration of Counsel in Support of Petition for Writ of
10 Habeas Corpus, filed herewith as Exhibit 4.

11 20. Respondents arrested Petitioner and issued a notice to appear on
12 October 16, 2025 . *See*, Petitioner’s Notice to Appear, filed herewith as Exhibit 5.

13
14 21. Petitioner file a Application for Asylum and for Withholding of
15 Removal on November 4, 2025. *See*, Petitioner’s Application for Asylum and for
16 Withholding of Removal, filed herewith as Exhibit 6.

17
18 22. The Notice to Appear identified him as an “alien present in the United
19 States” even though “arriving alien” was an alternate option.

20
21 23. Petitioner is detained at the Florence Service Processing Center where
22 he remains in custody. *See* ICE Online Detainee Locator Printout, filed herewith as
23 Exhibit 3.

24 24. Petitioner has no criminal history. *See*, Declaration of Counsel in
25 Support of Petition for Writ of Habeas Corpus, filed herewith as Exhibit 4.

26
27 **LEGAL FRAMEWORK**

1 25. The length of time that a petitioner has been living in the United States
2 is a constitutionally relevant consideration, because “once an alien enters the country,
3 the legal circumstance changes, for the Due Process Clause applies to all ‘persons’
4 within the United States, including aliens, whether their presence here is lawful,
5 unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It
6 is therefore reasonable to read these statutes “against [that] backdrop.” *See Hewitt v.*
7 *United States*, 605 U.S. —, 145 S. Ct. 2165, 2173 (2025).

10 26. Due process thus requires “adequate procedural protections” to ensure
11 that the government’s asserted justification for a noncitizen’s physical confinement
12 “outweighs the individual’s constitutionally protected interest in avoiding physical
13 restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

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

21 28. Congress has granted the Attorney General discretion to decide
22 whether to detain or release certain noncitizens pending a removal decision. *See* 8 U.S.C.
23 § 1226(a). The Attorney General has delegated that authority to IJs. 8 C.F.R. §§ 1003.19,
24 1236.1.

26 29. On July 8, 2025, DHS adopted a new policy on mandatory detention
27 for noncitizens who have been residing in the United States. *See*, ICE Memo: Interim
28

1 Guidance Regarding Detention Authority for Applications for Admission filed herewith
2 as Exhibit 1.

3
4 30. On September 5, 2025, the BIA entered the precedential decision
5 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed herewith as Exhibit 2,
6 which holds that all noncitizens who enter without inspection are “applicants for
7 admission” under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under
8 § 1225(b)(2), without regard for the length of time they have lived in the United States.
9

10 31. The Ninth Circuit has held that § 1226(a) is the “default” detention
11 statute for aliens in removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the
12 default detention statute for noncitizens in removal proceedings and applies to
13 noncitizens “[e]xcept as provided in [Subsection C].” 8 U.S.C. § 1226(a).” *Avilez v.*
14 *Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*,
15 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD
16 Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-*
17 *Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).
18
19

20 32. Almost every Federal District Court that has considered the issue has
21 found that DHS’s interpretation defies the INA. In Arizona, the following decisions so
22 find and collect the cases from other district courts around the country:
23

- 24
25 a. 12/12/2025 Order granting habeas in *Gonzalez-Gonzalez v. Noem*, et al.,
26 Case No. 25-cv-04478-DWL (D. Ariz 12-12-25)(The court declined to
27 revisit the conclusion it reached in *Echevarria*).
28 b. 11/26/2025 Order granting habeas in *Luna-Gonzalez v. Noem*, et al., Case
No. 25-cv-03794-PHX (D. Ariz 11-26-25)(The court rejected the
government’s argument that the petitioner is an “arriving alien” subject to

1 mandatory detention under § 1225 and agrees instead with the growing
2 majority of courts that people like the petitioner—who were arrested
3 inside the United States long after entering—are detained under § 1226(a),
4 not § 1225.), gathering cases, filed with the Habeas Petition as Exhibit 7;

5 c. 11/24/25 Order granting habeas in *Padron-Carreron v. Noem*, et al., Case
6 No. 25-cv-04204-PHX (D. Ariz. 11-25-25)(“Respondents correctly
7 acknowledge that their view still represents the minority position—in the
8 weeks since the Court considered the issue in *Echevarria*, dozens of other
9 courts have reached the same conclusion... [that] § 1226(a)’s application
10 for the past three decades supports its application to noncitizens in
11 petitioner’s position”), gathering cases, filed with the Habeas Petition as
12 Exhibit 8;

13 d. 11/18/2025 Order granting habeas in *Rodrigues da Silva v. Figueroa*, et
14 al., Case No. 25-cv-04015-PHX (D. Ariz. 11-18-25)(“dozens of other
15 district courts have concluded individuals like Petitioner are subject to §
16 1226 and not § 1225 and, therefore, are not subject to mandatory
17 detention”), gathering cases, filed with the Habeas Petition as Exhibit 9;

18 e. 11/13/2025 Order granting habeas in *Perez Rodriguez v. Noem*, et al., Case
19 No. 25-cv-03921-PHX (D. Ariz. 11/13/2025)(“the vast majority of courts
20 concluded individuals like Petitioner are subject to § 1226 and not § 1225
21 and, therefore, are not subject to mandatory detention”), gathering cases,
22 filed with the Habeas Petition as Exhibit 10

23 f. 11/6/25 Order granting habeas in *Gonzalez Rodriguez v. Bondi*, et al., Case
24 No. 25-cv-03917-PHX (D. Ariz. 11-6-25)(“dozens of other district courts
25 have concluded individuals like Petitioner are subject to § 1226 and not §
26 1225 and, therefore, are not subject to mandatory detention”), gathering
27 cases, filed with the Habeas Petition as Exhibit 11

28 g. 11/6/2025 Order Granting Habeas in *Abrego-Zarate v. Noem*, et al., Case
No. 25-cv-03564-KML (D. Ariz. 11-6-25)(“the great weigh of authority
is that individuals like petitioner are not subject to mandatory detention.
This court agrees with the majority view. For these reasons, the petition is
granted, and petitioner must receive a bond hearing without application of

1 *Matter of Yajure Hurtado*, 29 I&N 216 (B.I.A. 2025.”), filed herewith as
2 Exhibit 12.

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4 h. 11/03/25 Order granting habeas petition in *Lopez-Cruz v. Noem, et al*, No.
5 2:25-cv-03566-DJH--ASB (D. Ariz. 11/3/2025)(“dozens of other district
6 courts have concluded individuals like Petitioner are subject to § 1226 and
7 not § 1225 and, therefore, are not subject to mandatory detention. This
8 Court agrees with this conclusion.”), filed herewith as Exhibit 13.
- 9 i. 10/22/2025 Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No.
10 2:25-cv-03391-SHD-DMF at page 2 (D. Ariz. Oct. 22, 2025)(“while
11 Respondents point to two district court opinions adopting their
12 interpretation of § 1225(b)(2)(A), myriad other district courts have
13 reached the same conclusion as *Echevarria* and held individuals like
14 Petitioner are not subject to mandatory detention under 1225(b)(2)(A)”
15), filed herewith as Exhibit 14.
- 16 j. 10/17/2025 Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et*
17 *al.*, No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)(“individuals like
18 Petitioner are not “arriving aliens” subject to mandatory detention but,
19 rather, are subject to the general removal statute, 8 U.S.C. § 1226(a)”
20), filed herewith as Exhibit 15.
- 21 k. 10/09/2025 Order granting habeas entered in *Hector Lopez-Melo v. Bondi,*
22 *et. al.*, Case No. Case 2:25-cv-03394-DJH--JZB (D. Ariz.
23 10/9/2025)(“petitioner, who had been present in the United States for
24 years, was not an applicant for admission under 1225(b)(2)(A) or subject
25 to mandatory detention”), filed herewith as Exhibit 16.
- 26 l. 10/07/2025 Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No.
27 CV-25-02989-PHX-SPL (D Arizona 10/07/2025)(“Respondents maintain
28 he is subject to mandatory detention under 1225(b)(2). Again,
 Respondents are mistaken.”), filed herewith as Exhibit 17.
- m. 10/3/2025 Order granting habeas corpus in *Echevarria v. Bondi, et al.*, No.
 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3,
 2025)(“Court agrees with the majority of courts that have concluded that

1 § 1226(a), rather than § 1225(b)(2)(A), applies in this circumstance.”),
2 filed herewith as Exhibit 18.

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

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

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14 34. In 1997, after Congress amended the INA through the Illegal
15 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and
16 the then-Immigration and Naturalization Service issued an interim rule to interpret and
17 apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and
18 Detention of Aliens," the agencies explained that:
19

20
21 Despite being applicants for admission, aliens who are
22 present without having been admitted or paroled (formerly
23 referred to as aliens who entered without inspection) ***will be***
eligible for bond and bond redetermination.

24 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that
25 individuals who had entered without inspection ***were*** eligible for consideration for
26 bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing
27 regulations.
28

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

I represent Petitioner Gustavo Castaneda Hernandez 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 day December 18, 2025.

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

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LIST OF EXHIBITS

Exhibit 1	<u>ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission</u> (last visited September 8, 2025).
Exhibit 2	<i>Matter of Yajure Hurtado</i> , 29 I&N Dec. 216 (B.I.A. 2025).
Exhibit 3	ICE Online Detainee Locator Printout
Exhibit 4	Declaration of Counsel in Support of Petition for Writ of Habeas Corpus
Exhibit 5	Notice to Appear
Exhibit 6	Cover: Application for Asylum and for Withholding of Removal
Exhibit 7	Order granting habeas in <i>Gonzalez-Gonzalez v. Noem</i> , et al., Case No. 25-cv-04478-DWL (D. Ariz. 12-12-25)
Exhibit 8	Order granting habeas in <i>Luna-Gonzalez v. Noem</i> , et al., Case No. 25-cv-03794-PHX (D. Ariz. 11-26-25)
Exhibit 9	Order granting habeas in <i>Padron-Carreron v. Noem</i> , et al., Case No. 25-cv-04204-PHX (D. Ariz. 11-24-25)
Exhibit 10	Order granting habeas in <i>Rodrigues da Silva v. Figueroa</i> , et al., Case No. 25-cv-04015-PHX (D. Ariz. 11-18-25)
Exhibit 11	Order entered <i>Perez Rodriguez v. Noem</i> , et al., Case No. 25-cv-03921-PHX (D. Ariz. 11/13/2025)
Exhibit 12	Order entered <i>Gonzalez Rodriguez v. Bondi</i> , et al., Case No. 25-cv-03917-PHX (D. Ariz. 11-6-25)
Exhibit 13	Order entered in <i>Abrego-Zarate v. Noem</i> , et al., Case No. 25-cv-03564-KML (D. Ariz. 11-6-25)
Exhibit 14	Order entered in <i>Lopez-Cruz v. Noem</i> , et al, No. 2:25-cv-03566-DJH--ASB (D. Ariz. 11/3/2025)
Exhibit 15	Order entered in <i>Garcia-Rosales v. Noem</i> , et al., No. 2:25-cv-03391-SHD—DMF (D. Ariz. Oct. 22, 2025)
Exhibit 16	Order granting habeas corpus in <i>Benitez-Cornejo v. Cantu</i> , et al., No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)
Exhibit 17	Order entered in <i>Hector Lopez-Melo v. Bondi</i> , et. al., Case No. Case 2:25-cv-03394-DJH--JZB [docket no. 11] (D.C. Ariz. 10/9/2025)
Exhibit 18	Order granting habeas corpus in <i>Bo Li v. Cantu</i> , et al., No. CV-25-02989-PHX-SPL (D Arizona 10/07/2025)

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Exhibit 19	Order entered in <i>Francisco Echevarria v. Pam Bondi, et al.</i> , CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025)
Exhibit 20	Magistrate’s Report and Recommendation in <i>Rocha Rosado v. Figueroa</i> , No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025)