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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10	Jose Felix YUNGANLA LUCERO,	I	Case No. <u>'25CV3675 CAB JLB</u>
11		I	
12	Petitioner/Plaintiff,	I	PETITION FOR WRIT
13		I	OF HABEAS CORPUS
14	vs.	I	
15		I	
16	Pamela BONDI, Attorney General of the	I	
17	United States; Christopher J. LAROSE,	I	
18	Warden of Otay Mesa Detention Center;	I	
19	Gregory J. ARCHAMBEAULT, Field Office	I	
20	Director, San Diego Field Office, Immigration	I	
21	and Customs Enforcement; Kristi NOEM,	I	
22	Secretary, United States Department of	I	
23	Homeland Security; United States Department	I	
24	of Homeland Security, Immigration and	I	
25	Customs Enforcement;	I	
26		I	
27	Respondents/Defendants.	I	
28		I	

INTRODUCTION

1. PETITIONER/PLAINTIFF Jose Felix Yunganaula Lucero  (henceforth "Petitioner" or "Mr. Yunganaula"), is in the physical custody of the Respondents/Defendants at

1 the Otay Mesa Detention Center located in San Diego, California. He now faces unlawful,
2 prolonged and indefinite detention because the Department of Homeland Security (DHS) has
3 wrongfully concluded that the Petitioner is subject to mandatory detention.

4 2. Petitioner is charged with, inter alia, having entered the United States without inspection,
5 8 U.S.C. Section 1182(a)(6)(A)(i).

6 3. Based on this allegation in the Petitioner's removal proceedings, DHS denied Petitioner
7 release from immigration custody, consistent with a new DHS policy issued on July 8, 2025,
8 instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone
9 inadmissible under 8 U.S.C. Section 1182(a)(6)(A)(i) — that is, those who entered the United
10 States without inspection — to be an “applicant for admission” under 8 U.S.C. Section
11 1225(b)(2)(A) and therefore subject to mandatory detention.

12 4. Petitioner sought a bond redetermination hearing before Immigration Judge Guy Grande,
13 but on December 11, 2025, Judge Grande denied bond. The Immigration Judge based this
14 decision on the same flawed legal analysis. Indeed, the DHS policy states it was issued “in
15 coordination with the Department of Justice (DOJ).” The Immigration Judge concluded that
16 notwithstanding Petitioner's 23 years of residing in the United States, he is nevertheless an
17 “applicant for admission” and subject to mandatory detention under Section 1225(b)(2)(A).

18 5. Petitioner's detention on this basis violates the plain language of the statute. 8 U.S.C.
19 Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and
20 are now residing in the United States. Instead, such individuals are subject to discretionary
21 detention under the provisions of a different statute, 8 U.S.C. Section 1226(a), which allows for
22 release on conditional parole or bond. That statute expressly applies to individuals who, like the
23 Petitioner, are charged as inadmissible for having entered the United States without inspection.

24 6. Respondents' new legal interpretation is plainly contrary to the statutory framework, and
25 contrary to decades of agency practice applying Sec. 1226(a) to individuals like the Petitioner.

26 7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless
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1 the Respondents provide a bond hearing under Section 1226(a) within fourteen days.

2 **JURISDICTION**

3 8. Petitioner is in the physical custody of the Respondents. He is currently detained at the
4 Otay Mesa Detention Center in San Diego, California.

5 9. This Court has jurisdiction under 28 U.S.C. Section 2241(c)(5) (habeas corpus),
6 28 U.S.C. Section 1331 (federal question), and Article I, section 9, clause 2 of the United States
7 Constitution (the Suspension Clause).

8 10. This Court may grant relief pursuant to 28 U.S.C. Section 2241, the Declaratory
9 Judgment Act, 28 U.S.C. Sec. 2201 et. seq., and the All Writs Act, 28 U.S.C. Section 1651.

10 **VENUE**

11 11. Pursuant to Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493-500
12 (1973), venue lies in the United States District Court for the Southern District of California, the
13 judicial district in which Petitioner is currently detained.

14 12. Venue is also properly in this Court pursuant to 28 U.S.C. Section 1391(e) because the
15 Respondents are employees, officers and agencies of the United States, and because a substantial
16 part of the events giving rise to the claims occurred in the Southern District of California.


17 **REQUIREMENTS OF 28 U.S.C. SECTION 2243**

18 13. The Court must grant the petition for writ of habeas corpus or order Respondents to show
19 cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. Section 2243. If an
20 Order to Show Cause is issued, the Respondents must file a return “within three days unless for
21 good cause additional time, not exceeding twenty days, is allowed.” Id.

22 14. Habeas corpus is “perhaps the most important writ known to the constitutional law . . .
23 affording as it does a **swift** and imperative remedy in all cases of illegal restraint or
24 confinement.” Fay v. Noia, 372 U.S. 391, 400 (1963) (emphasis added). “The application for
25 the writ usurps the attention and displaces the calendar of the judge or justice who entertains it
26 and receives prompt action from him within the four corners of the application.” Yong v. I.N.S.,

1 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

2 **PARTIES**

3 15. Petitioner Jose Felix Yunganaula Lucero,  is a citizen of Ecuador who has
4 been living in the United States since March 2002. ICE has held him in immigration detention
5 since November 18, 2025. After his arrest by ICE, Mr. Yunganaula requested redetermination of
6 his custody by an Immigration Judge. On December 11, 2025, Immigration Judge Guy Grande at
7 the Otay Mesa Immigration Court denied his motion for release on bond, because he was deemed
8 to be an “applicant for admission.”

9 16. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the
10 United States. The Attorney General has powers under 8 U.S.C. Section 1103(g) to take
11 necessary actions related to immigration and naturalization: including, but not restricted to,
12 authority over the detention and removal of aliens.

13 17. Respondent Christopher J. LaRose is employed by CoreCivic as the Warden of the Otay
14 Mesa Detention Center. The Warden has chief executive authority over the administration of the
15 Otay Mesa Detention Center, and in this capacity, has direct responsibility over the confinement
16 of Jose Felix Yunganaula Lucero.

17 18. Respondent Gregory J. Archambeault is the Field Office Director, San Diego Field
18 Office, Immigration and Customs Enforcement, and is sued in his official capacity. In this
19 capacity, the Field Office Director has responsibility for determining at which detention facility
20 the petitioner will be held, deciding whether petitioner can be paroled from custody or on any
21 other condition of supervised release, administering the enforcement and administration of the
22 immigration laws, and is empowered to carry out an order of removal against petitioner.

23 19. Respondent Kristi Noem is the Secretary of the Department of Homeland Security and is
24 sued in her official capacity. She is responsible for the implementation and enforcement of the
25 Immigration and Nationality Act (INA) and oversees ICE, which is responsible for the
26 Petitioner’s detention. Secretary Noem has ultimate custodial authority over the Petitioner.

1 20. Respondent Department of Homeland Security Immigration and Customs Enforcement
2 (DHS-ICE) is the federal agency responsible for implementing and enforcing the INA, including
3 detention and the physical removal of noncitizens from the United States.

4 LEGAL FRAMEWORK

5 21. The INA specifies three basic forms of detention for noncitizens in removal proceedings.

6 22. First, 8 U.S.C. Section 1226 authorizes the detention of noncitizens in standard removal
7 proceedings before an Immigration Judge. See 8 U.S.C. Section 1229a. Individuals subject to
8 Section 1226(a) discretionary detention are generally entitled to a bond hearing at the outset of
9 their detention. refer 8 C.F.R. Sections 1003.19(a), 1236.1(d); while noncitizens who have been
10 arrested, charged with, or convicted of certain crimes are subject to mandatory detention, refer
11 8 U.S.C. Section 1226(c).

12 23. Second, the INA provides for mandatory detention of noncitizens subject to expedited
13 removal under 8 U.S.C. Section 1225(b)(1) and for other recent arrivals seeking admission under
14 Section 1225(b)(2).

15 24. Last, the INA also provides for the detention of noncitizens who have been ordered
16 removed, including individuals in withholding-only proceedings, under 8 U.S.C. Section 1231.

17 25. This case concerns the detention provisions at Section 1226(a) and 1225(b)(2).

18 26. The detention provisions at Section 1226(a) and 1225(b)(2) were enacted as part of the
19 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
20 104-208, Div. C, Sections 302-303, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.
21 Section 1226(a) was most recently amended early in 2025 by the Laken Riley Act, Pub. L. No.
22 119-1, 139 Stat. 3 (2025).

23 27. Following the enactment of IIRIRA, the government drafted new regulations explaining
24 that, in general, individuals who entered the country without inspection were not considered
25 detained under Section 1225, but were detained under Section 1226(a), discretionary detention.
26 Refer Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct

1 of Removal Proceedings: Asylum Procedures, 62 Fed. Reg. 10312, 10323 (March 6, 1997).

2 28. In the decades that followed, most individuals who entered without inspection and were
3 placed in standard removal proceedings received bond hearings, unless their criminal history
4 rendered them ineligible. That practice was consistent with many more decades of prior practice,
5 in which noncitizens who were not deemed to be “arriving aliens” were entitled to an
6 individualized custody hearing before an Immigration Judge or other hearing officer. Refer
7 former 8 U.S.C. Section 1252(a) (1994; ended 3/31/97); see also H.R. Rep. No. 104-469, pt. 1 at
8 229 (1996) (noting that the new Section 1226(a) simply “restates” the detention authority
9 previously found at former Section 1252(a)).

10 29. On July 8, 2025, ICE (in coordination with the Department of Justice), announced a new
11 policy that rejected well-established understanding of the statutory framework and reversed
12 decades of practice.

13 30. The new policy, entitled “Interim Guidance Regarding Detention Authority for
14 Applicants for Admission,” claims that all persons who entered the United States without
15 inspection shall now be deemed “applicants for admission” under 8 U.S.C. Section 1225, and
16 therefore are subject to the mandatory detention provisions under Section 1225(b)(2)(A). The
17 policy applies regardless of when a person is apprehended, and affects those who have resided in
18 the United States for months, years and even decades.

19 31. In Matter of Yajure Hurtado, 29 I&N Dec. 216, decided on September 5, 2025, this
20 position was announced by the Board of Immigration Appeals as the official policy to be
21 followed by all Immigration Judges. Yajure Hurtado holds that all noncitizens who entered the
22 United States without inspection are considered applicants for admission under 8 U.S.C. Section
23 1225(b)(2)(A) and are therefore ineligible to request custody redetermination hearings by an
24 Immigration Judge for release from ICE detention on payment of bond.

25 32. Federal courts have rejected the Board’s ruling in Yajure Hurtado. After Immigration
26 Judges at the Tacoma, Washington Immigration Court stopped providing bond hearings for
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1 individuals who entered the United States without inspection and who have since resided here,
2 the United States District Court for the Western District of Washington found that such a reading
3 of the INA is likely contrary to law and that Section 1226(a) not Section 1225(b) applies to those
4 noncitizens who are not apprehended upon arrival in the United States. Rodriguez Vazquez v.
5 Bostock, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. 4/24/25); see also Gomes v. Hyde,
6 1:25-cv-11571-JEK, 2025 WL 1869299 at *8 (D. Mass., 7/7/25) (granting habeas petition based
7 on same conclusion).

8 33. DHS and the Department of Justice have deliberately misconstrued and misinterpreted the
9 relevant sections of the Immigration and Nationality Act. As the Rodriguez Vazquez court
10 explained, the plain text of the statutory provisions demonstrates that Section 1226(a), allowing
11 discretionary release from detention, applies to individuals like Mr. Yunganauga. Section
12 1226(a) applies by default to all persons “pending a decision on whether the alien is to be
13 removed from the United States.” These removal hearings are held under Section 1229a, to
14 “decid[e] the inadmissibility or deportability of an alien.”

15 34. The text of Section 1226 also explicitly applies to those individuals charged as being
16 inadmissible, including those who entered without inspection. Refer 8 U.S.C. Section
17 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such
18 people are afforded a bond hearing under subsection (a). As the Rodriguez Vazquez court
19 explained, “When Congress creates specific exceptions to a statute’s applicability, it proves that
20 absent those exceptions, the statute generally applies.” Rodriguez Vazquez, supra, at *12 (citing
21 Shady Grove Orthopedic Assocs., P.A., v. Allstate Ins. Co., 559 U.S. 393, 400 (2010)).

22 35. Wherefore, there is no doubt that Section 1226 applies to individuals who face charges of
23 being inadmissible to the United States, including those who are present without inspection.

24 36. By contrast, Section 1225 applies to people arriving at U.S. ports of entry or who recently
25 entered the United States. The statute’s entire framework is premised on inspections at the
26 border of those who are “seeking admission” to the United States. Refer Section 1225(b)(2)(A).

1 37. The Supreme Court of the United States has explained that this mandatory detention
2 scheme applies “at the nation’s borders and ports of entry, where the government must determine
3 whether an alien seeking to enter the country is admissible.” Jennings v. Rodriguez, 583 U.S.
4 281, 287 (2018).

5 38. Accordingly, the mandatory detention provision of Section 1225 (b)(2) does not apply to
6 individuals like the Petitioner, people who have entered the United States and were already
7 residing in this country at the time they were apprehended by ICE.

8 **FACTS**

9 39. Petitioner Jose Felix Yunganauga Lucero has resided in the United States since 2002,
10 residing in Hackensack, New Jersey. On November 18, 2025, Mr. Yunganauga was driving his
11 car when he was stopped by ICE. The ICE officer indicated that he was looking for someone
12 else, but then asked for Mr. Yunganauga’s identification and proof of status in the United States.
13 He was subsequently arrested and detained at Delaney Hall Detention Facility in Newark, New
14 Jersey. Petitioner was then transferred and is now detained at the Otay Mesa Detention Center in
15 San Diego, California.

16 40. Petitioner was placed into removal proceedings under 8 U.S.C. Section 1229a through the
17 issuance of a Notice To Appear charging him with inadmissibility under 8 U.S.C. Section
18 1182(a)(6)(A)(i) as an alien who entered the United States without inspection.

19 41. Jose Felix Yunganauga Lucero has been married to his wife for 25 years. They have an
20 eight-year-old United States citizen child. Mr. Yunganauga worked in restaurants for many years
21 and has always had stable employment. Since 2020 he has been working as a taxi driver. He
22 attends church regularly and has been filing taxes since 2013. Prior to this ICE arrest, Mr.
23 Yunganauga had no arrests, no encounters with law enforcement and no criminal history. The
24 Petitioner is neither a flight risk nor a danger to the community.

25 42. Following Petitioner’s arrest and transfer to the Otay Mesa Detention Center, ICE issued
26 a custody determination to continue his detention without the opportunity to post bond or to be
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1 released on other conditions. The Petitioner subsequently requested a custody redetermination
2 hearing before an Immigration Judge, to seek release from detention on payment of bond.

3 43. On December 11, 2025, Immigration Judge Guy Grande, presiding at the Otay Mesa
4 Immigration Court, issued his decision that he lacked jurisdiction to conduct a bond hearing
5 because the Petitioner was an applicant for admission under Section 1225(b)(2)(A).

6 44. Appeal to the Board of Immigration Appeals is futile. The September 5, 2025 precedent
7 decision of the Board in Yajure Hurtado held that those individuals like Mr. Yunganauga who
8 entered without inspection are subject to mandatory detention as applicants for admission under
9 Section 1225(b)(2)(A). In litigation across the country, the Department of Homeland Security
10 and the Department of Justice have made it clear that their position is that noncitizens like the
11 Petitioner who entered without inspection are ineligible for custody redetermination hearings,
12 and that the Immigration Courts have no jurisdiction to grant them release from detention.

13 **CLAIMS FOR RELIEF**

14 **COUNT I**

15 **Violation of the INA**

16 45. Petitioner incorporates by reference the allegations of fact set forth in the preceding
17 paragraphs.

18 46. The mandatory detention provision of 8 U.S.C. Section 1225(b)(2) does not apply to all
19 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
20 relevant here, it does not apply to those who previously entered the country and have been
21 residing in the United States prior to being apprehended and placed in removal proceedings by
22 the Respondents. Such noncitizens are detained under Section 1226(a), discretionary detention,
23 unless they are subject to Section 1225(b)(1) [expedited removal], Section 1226(c) [detention of
24 criminal aliens], or Section 1231 [post-order detention].

25 47. The application of Section 1225(b)(2) to the Petitioner unlawfully mandates his continued
26 and prolonged detention, and violates the intended meaning and purpose of the Immigration and
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1 Nationality Act (INA) of 1990, as amended.

2 **COUNT II**

3 **Violation of Due Process**

4 48. Petitioner repeats, re-alleges and incorporates by reference each and every allegation in
5 the preceding paragraphs as if fully set forth herein.

6 49. The government may not deprive a person of life, liberty or property without due process
7 of law. United States Constitution, Amendment V. “Freedom from imprisonment — from
8 government custody, detention or other forms of physical restraint — lies at the heart of the
9 liberty that the clause protects.” Zadvydas v. Davis, 533 U.S. 678, 690 (2001). “This Court
10 consistently has held that some form of hearing is required before an individual is finally
11 deprived of a property interest.” Mathews v. Eldridge, 424 U.S. 319, 333 (1976). Procedural
12 and substantive due process require a pre-deprivation hearing before a neutral trier of fact.

13 Denying Petitioner the right to a custody redetermination hearing is illegal and unconstitutional.

14 50. The Petitioner has a fundamental interest in liberty and being free from official restraint.
15 The government’s continuing and prolonged detention is causing great suffering to himself, to
16 his wife and to their child. Without relief from this court, he faces the prospect of indefinite
17 detention, spending months and even years in immigration custody, separated from his family
18 and his community, with no hope of release. He is entitled by the law and by the Constitution to
19 an individualized hearing, to determine whether he is a flight risk or a danger to others.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Petitioner prays that this Court grant the following relief:

22 Assume jurisdiction over this matter;

23 Issue a writ of habeas corpus requiring that the Respondents release Petitioner or provide
24 Petitioner with a bond hearing pursuant to 8 U.S.C. Section 1226(a) within 14 days;

25 Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act
26 (“EAJA”), as amended, 28 U.S.C. Section 2412, and on any other basis justified under law; and

Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,
JOSE FELIX YUNGANAUGA LUCERO
By his attorney:

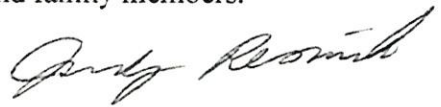
Dated: 12/19/2025

Signature: s/ Alexandra Fuxa Ramirez
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VERIFICATION OF COMPLAINT

I, Judy Resnick, Esq., state under penalty of perjury that I was the attorney for the petitioner Jose Felix Yunganauga Lucero in the foregoing petition, and declare the facts alleged here to be true, except those made on information and belief, which I believe to be true, and further state that the sources of my information and belief are documents and information provided to me by the petitioner and his associates and family members.

Far Rockaway, NY
Dated: 12/18/2025


Signed: s/ Judy Resnick
JUDY RESNICK, ESQ.
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2
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that a copy of the foregoing was served via CM/ECF:

5 Hon. Adam Gordon, Office of the United States Attorney, California Southern District, 800 Front Street, Room 6293, San Diego, CA 92101-8807;

6 Hon. Pamela Bondi, Attorney General of the United States, U.S. Dept. of Justice, Civil Division, 950 Pennsylvania Avenue, Washington, DC 20530;

7
8 Christopher J. LaRose, Warden, Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, CA 92154;

9 Gregory J. Archambeault, Field Office Director, San Diego Field Office, DHS-ICE, 880 Front Street, Room 2242, San Diego, CA 92101;

10
11 U.S. Dept of Homeland Security, Immigration and Customs Enforcement, 500 12 Street SW, Washington, DC 20536; upon the date given below.

12
13 Date: 12/19/2025

Signed: s/ Alexandra Fuxa Ramirez

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