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8 UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF ARIZONA  
10 PHOENIX, ARIZONA

11 Diana Laura Espinosa Castillo


12 Plaintiff,

13 v.

14 Kristi Noem, Secretary, U.S. Department  
15 of Homeland Security; Pamela Bondi,  
16 Attorney General of the United States,  
17 Executive Office for Immigration Review  
18 (EOIR); Corina Almeida, Chief Counsel,  
19 Immigration and Customs Enforcement  
20 (ICE), Office of Principal Legal Advisor,  
21 Eloy; John Cantu, Field Office Director,  
22 ICE Enforcement and Removal Operations,  
23 Phoenix; Fred Figueroa, Warden, Eloy  
24 Detention Center,


25 Defendants.

Case No. \_\_\_\_\_

Immigration Number: 

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

26 I. INTRODUCTION

27 1. Plaintiff Diana Laura Espinosa Castillo () by and through  
28 undersigned counsel, respectfully requests this Honorable Court respectfully requests this  
Honorable Court order Defendants to schedule a bond custody hearing within five (5) days  
and failure to do so, order Plaintiff's release. Defendants deny Plaintiff's release by asserting  
she is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), a new policy argument  
contrary to decades of EOIR and ICE practice of releasing similarly situated non-citizens

1 pursuant to 8 U.S.C. § 1226(a). Defendants' action during the pendency of Plaintiff's civil  
2 immigration proceedings subjects Plaintiff to prolonged detention in violation of law. By  
3 the plain language of the statute, 8 U.S.C. § 1225(b)(2)(A) only applies to persons being  
4 inspected by immigration officers at the time of seeking admission. Admission being defined  
5 by the lawful entry into the United States. 8 U.S.C. § 1101(a)(13)(A). Without  
6 directly interpreting the statutory definition of "admission", Defendants issued *Matter*  
7 *of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that all non-citizens present  
8 without inspection, regardless of how many years they have been in the country, are subject  
9 to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Pursuant to *Loper Bright Enterprises*  
10 *v. Raimondo*, 603 U.S. 369 (2024), this Court is not bound by the Agency's interpretation of  
11 the INA. Indeed, one Federal District Court already interpreted the statute, making contrary  
12 findings to *Yajure Hurtado*. See *Rodriguez v. Bostock, et al.*, Case No. 3:25-cv-05240-TMC  
13 Preliminary Injunction (W.D. Wash., April 24, 2025). Plaintiff's detention is unlawful.

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17 2. Plaintiff is a 30-year-old married female, citizen of Mexico, who is eligible  
18 for relief from removal in the form of cancellation of removal pursuant to INA §240A(b)(1).

19  
20 3. Plaintiff currently has valid status under Deferred Action for Childhood  
21 Arrivals ("DACA"), which is valid until June 27, 2026,

22 4. Plaintiff entered the United States on or about September 2000, as a child, at  
23 the age of 5 years old. She was never encountered by Border Patrol. He has continuously  
24 lived in the United States since that time, more than 25 years.

25  
26 5. On or about December 1, 2025, Immigration and Customs Enforcement  
27 ("ICE") detained Plaintiff.

1           6.       Prior to her detention, Plaintiff resided in Bullhead City with her United States  
2 citizen husband, three (3) United States citizen children, ages 6, 2 and 1. Plaintiff's father  
3 also lives in Bullhead City and Plaintiff has four (4) United States citizen brothers and  
4 citizens.  
5

6           7.       Plaintiff had been at liberty in the United States for over 25 years prior to her  
7 detention.  
8

9           8.       On or about December 1, 2025, ICE took Plaintiff into custody and placed her  
10 into removal proceedings by filing a Notice to Appear. She was then transferred to the Eloy  
11 Detention Center located at 1705 E Hanna Road, Eloy, Arizona 85131. Plaintiff requested  
12 a bond redetermination and on December 16, 2025, the Immigration Judge denied her  
13 release request based on jurisdiction, as compelled by the recent decision of *Matter of Yajure*  
14 *Hurtado*, 29 I&N Dec. 216 (BIA 2025) ("*Matter of Hurtado*"). Defendants continue to  
15 detain the Plaintiff in violation of law.  
16

17           9.       *Matter of Hurtado* is unlawful and cannot justify Plaintiff's ongoing  
18 confinement: it misreads the statute, conflicts with binding regulations that limit expedited-  
19 removal custody to classes designated by Federal Register notice and raises grave  
20 constitutional concerns the avoidance canon requires courts to steer away from. *See* INA §  
21 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A); 8 C.F.R. § 235.3(b)(1)-(2); 62 Fed. Reg. 10,312,  
22 10,314, 10,318 (Mar. 6, 1997); 69 Fed. Reg. 48,877, 48,880-81 (Aug. 11, 2004); 84 Fed.  
23 Reg. 35,409, 35,412 (July 23, 2019); *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Zadvydas*  
24 *v. Davis*, 533 U.S. 678 (2001); *Clark v. Martinez*, 543 U.S. 371 (2005).  
25

26           10.       Defendants violated Plaintiff's right to be released upon payment of a bond  
27  
28

1 under the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1226(a), and agency  
2 regulations, 8 C.F.R. §§ 1003.19(a), 1236.1(d). Defendants’ coordinated action to hold  
3 Plaintiff under mandatory detention is not in accordance with law and violates Plaintiff’s right  
4 to due process.  
5

6 11. Plaintiff will suffer irreparable and immediate injury from continued unlawful  
7 detention unless the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 is granted.  
8

### 9 I. JURISDICTION

10 12. This action arises under the Constitution of the United States and the  
11 Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*

12 13. This Court has jurisdiction over petitions for Habeas Corpus pursuant to 28  
13 U.S.C. § 2241. The Plaintiff is in the custody of the United States.  
14

15 14. This Court has jurisdiction over civil actions brought under 28 U.S.C. § 1331  
16 because this action arises under the Constitution and laws of the United States. This Court  
17 has jurisdiction pursuant to 28 U.S.C. § 1361 which authorizes actions in district court, “to  
18 compel an officer or employee of the United States or agency thereof to perform a duty  
19 owed to the Petitioner.”  
20

21 15. The aid of the Court is invoked under 28 U.S.C. § 2201 and 2202, authorizing  
22 a declaratory judgement.

23 16. This Court has jurisdiction pursuant to the Administrative Procedures Act  
24 (APA) to set aside agency action not in accordance with law and order the agency to perform  
25 a duty owed to Plaintiff under 5 U.S.C. § 706.  
26  
27  
28

1 **II. VENUE**

2 17. Venue is proper because Plaintiff is in the custody of the Immigration and  
3 Customs Enforcement in Eloy, Arizona, which is within the jurisdiction of this District.  
4

5 18. Venue is asserted pursuant to 28 U.S.C. § 1391(e) because the Plaintiff is  
6 being detained in Eloy, Arizona. Defendants are the U.S. Government, and no real property  
7 is involved in the action.  
8

9 **III. EXHAUSTION**

10 19. Exhaustion is a prudential rather than a jurisdictional requirement. *Singh v.*  
11 *Holder*, 638 F.3d 1196, 1203 n. 3 (9th Cir. 2011). Waiver of exhaustion is appropriate  
12 “where administrative remedies are inadequate or not efficacious, pursuit of administrative  
13 remedies would be a futile gesture, irreparable injury will result, or the administrative  
14 proceedings would be void.” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation  
15 and quotation marks omitted).  
16

17 20. In the instant case, Plaintiff requested a bond hearing and the Immigration  
18 Judge denied Plaintiff’s release request solely based on jurisdiction. While the Plaintiff may  
19 file an appeal of the custody redetermination to the Board of Immigration Appeals (“BIA”),  
20 the appellate division of EOIR, that would be futile in light of *Matter of Hurtado*. Plaintiff  
21 has no other means of challenging her ongoing prolonged detention in violation of law.  
22

23 **IV. REQUIREMENTS OF 28 U.S.C. § 2243 AND APPLICATION FOR AN**  
24 **ORDER OF SHOW CAUSE**

25 21. The Court must grant the petition for writ of habeas corpus or issue an order  
26 to show cause (OSC) to the Defendants “forthwith,” unless the Plaintiff is not entitled to  
27 relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require  
28

1 defendants to file a return “within *three days* unless for good cause additional time, not  
2 exceeding twenty days, is allowed.” *Id.* (emphasis added).

3  
4 22. Courts have long recognized the significance of the habeas statute in  
5 protecting individuals from unlawful detention. The Great Writ has been referred to as  
6 “perhaps the most important writ known to the constitutional law of England, affording as  
7 it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay*  
8 *v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

9  
10 23. Pursuant to 28 U.S.C. § 2243, Plaintiff respectfully requests that the Court  
11 issue an order to all Defendants requiring them to show cause why the Plaintiff’s Petition  
12 for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to  
13 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution;  
14 the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701; and  
15 the Declaratory Judgment Act, 28 U.S.C. § 2201 should not be granted and why Defendants  
16 should not be ordered to release Plaintiff from detention.

17  
18 24. Pending adjudication of these claims, Plaintiff asks for an order enjoining  
19 Defendants from transferring Plaintiff from the jurisdiction of the Phoenix Field Office of  
20 the Immigration & Customs Enforcement (“ICE”) Office of Enforcement and Removal  
21 Operations (“ERO”) and this District.

## 22 23 V. PARTIES

24  
25 25. Plaintiff, Diana Espinosa Castillo is a married native and citizen of Mexico,  
26 and is currently detained by ICE in Eloy, Arizona. She is not subject to expedited removal  
27 under 8 U.S.C. § 1225(b)(1).



1 her into removal proceedings before EOIR by issuing a Notice to Appear charging her as  
2 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). The Notice to Appear does not allege  
3 Plaintiff is an arriving alien, but rather that she is present in the United States without  
4 inspection. DHS detained Plaintiff at the Eloy Detention Center, in Eloy, Arizona.  
5

6 33. Plaintiff is eligible for cancellation of removal pursuant to INA §240A(b)(1).  
7 Cancellation of removal is available to nonpermanent residents who (a) have been  
8 physically present in the United States for a continuous period of not less than 10 years  
9 immediately preceding the date of such application; (b) have been persons of good moral  
10 character during such period; (c) have not been convicted of certain disqualifying offenses;  
11 (d) establishes that removal would result in exceptional and extremely unusual hardship to  
12 their spouse, parent, or child who is a citizen or lawful permanent resident.  
13  
14

15 34. Plaintiff meets all eligibly requirements, namely, (a) she has been physically  
16 present in the United States for a continuous period of 25 years; (b) she is a person of good  
17 moral character; (c) she has never been convicted of any criminal offenses anywhere in the  
18 world; (d) her United States citizen husband and her three (3) minor United States citizen  
19 children would suffer exceptional and extremely unusual hardship in her absence.  
20

21 35. Plaintiff is currently in the custody of ICE, as she is detained at the Eloy  
22 Detention Center in Eloy, Arizona.

23 36. In the United States, Plaintiff has worked to support herself and her children.  
24 She worked at Western Arizona Regional Medical Center at the time she was detained by  
25 ICE and prior to that, the Phoenix Cancer Institute. She is described by her employers as  
26 hardworking and reliable.  
27  
28



1 governs the general detention and release of non-citizens in removal proceedings: “an alien  
2 may be arrested and detained pending a decision on whether the alien is to be removed from  
3 the United States . . . and (2) may release the alien on- (A) bond of at least \$1500 . . . or (B)  
4 conditional parole.”  
5

6 45. 8 U.S.C. § 1226(c), amended by the Laken Riley Act, Pub. L. No. 119-1, 139  
7 Stat. 3 (2025), provides for the mandatory detention of inadmissible non-citizens with  
8 certain criminal convictions and conduct. The statute and the amendments made by the  
9 Laken Riley Act intentionally precludes some, but not all, aliens inadmissible under 8  
10 U.S.C. 1182(a)(6)(A)(i) from being granted bond. 8 C.F.R. §§ 1003.19(a), 1236.1(d),  
11 provide the parameters for EOIR to provide bond hearings to non-citizens pending removal  
12 proceedings.  
13  
14

15 46. The INA provides for mandatory detention of certain non-citizens with final  
16 orders of removal under 8 U.S.C. § 1231, suspected terrorists under 8 U.S.C. § 1226a,  
17 noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1), and those “seeking  
18 admission” and being reviewed for admissibility at the time of arrival under 8 U.S.C. §  
19 1225(b)(2).  
20

21 47. Plaintiff seeks release under 8 U.S.C. § 1226(a) as a non-citizen domiciled in  
22 the United States subject to removal proceedings under 8 U.S.C. § 1229a. Defendants  
23 purport to deny Plaintiff release under 8 U.S.C. § 1225(b)(2)(A).  
24

25 48. Plaintiff’s case concerns important distinctions between § 1226(a) and §  
26 1225(b)(2). Those provisions were enacted as part of the Illegal Immigration Reform and  
27 Immigrant Responsibility Act (IIRIRA) of 1996. Pub. L. No. 104-208, Div. C, § § 302-03,  
28

1 110 Stat. 2009-546, 3009-582 to 3009-583, 3009-585. Section 1226 was most recently  
2 amended earlier this year by the Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025).

3  
4 49. Following the enactment of the IIRIRA, the Executive Office for Immigration  
5 Review (“EOIR”) drafted new regulations explaining that, in general, people who entered  
6 the country without inspection were not considered detained under § 1225 and that they  
7 were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens;  
8 Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,  
9 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens  
10 who are present without having been admitted or paroled (formerly referred to as aliens who  
11 entered without inspection) will be eligible for bond and bond redetermination.”)

12  
13  
14 50. Thus, in the decades that followed, most people who entered without  
15 inspection and were thereafter arrested and placed in standard removal proceedings were  
16 considered for release on bond and also received bond hearings before an IJ, unless their  
17 criminal history rendered them ineligible. That practice is consistent with many more  
18 decades of prior practice, in which noncitizens who had entered the United States, even if  
19 without inspection, were entitled to a custody hearing before an IJ or other hearing officer.  
20 In contrast, those who were stopped at the border were only entitled to release on parole.  
21 *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting  
22 that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).  
23

24  
25 51. 8 U.S.C. § 1225 governs the processing of arriving aliens and recent entrants  
26 and is not a detention statute. The only mention of “mandatory detention” comes under 8  
27 U.S.C. § 1225(b)(1)(B)(IV) stating that applicants for admission pending asylum interviews  
28

1 “subject to the procedures under this clause shall be detained pending final determination of  
2 credible fear of persecution . . . .” 8 U.S.C. § 1225(b)(1)(A)(iii)(II) explicitly excludes from  
3 expedited removal non-citizens who can show they have been “physically present in the  
4 United States continuously for the 2-year period immediately prior to the date of the  
5 determination of inadmissibility.”  
6

7 52. 8 U.S.C. § 1225(b)(2)(A) applies to a non-citizen “who is an applicant for  
8 admission, if the examining officer determines that an alien seeking admission is not clearly  
9 and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under  
10 1229a of this title.”  
11

12 53. In July 2025, Defendants adopted an entirely new interpretation of the statute,  
13 concluding that all noncitizens who entered the United States without admission or parole  
14 are considered applicants for admission, and are therefore ineligible for bond hearings  
15 before an Immigration Judge under 8 U.S.C. § 1225(b)(2)(A). Around the same time, ICE  
16 “in coordination with the Department of Justice” announced a corresponding policy that  
17 rejected the well-established understanding of the statutory and regulatory framework and  
18 reversed decades of practice. That policy claims that all persons who entered the United  
19 States without inspection shall now be deemed to be subject to mandatory detention under  
20 § 1225(b)(2)(A). The policy applies regarding of when a person is apprehended, the section  
21 of law under which they were previously released and affects those who have resided in the  
22 United States for years.  
23  
24  
25

26 54. Cementing the policy and making it binding on all IJs, the Board of  
27 Immigration Appeals (“BIA”) recently issued a precedent decision: *Matter of Hurtado*, 29  
28

1 I&N Dec. 216 (BIA 2025). In *Hurtado*, the BIA found that any noncitizen who is present in  
2 the United States without having been inspected and admitted is subject to detention under  
3 8 U.S.C. § 1225(b)(2), not §1226(a).  
4

5 55. There is no Ninth Circuit precedent to support the Defendants' holding  
6 Plaintiff subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

7 56. The Ninth Circuit has previously interpreted the statutes in question. In *Torres*  
8 *v. Barr*, 976 F.3d 918, 923-926 (9th Cir. 2020)(en banc), the Ninth Circuit provides a  
9 thorough analysis, finding that applying for admission means doing so from outside the  
10 United States or at a port of entry, seeking physical entry into the country. The *Torres*  
11 decision holds that the idea of seeking admission is limited in time and cannot continue  
12 without limit once the non-citizen is already in the United States. *Id.* at 926. "Accordingly,  
13 inadmissibility must be measured at the point in time that an immigrant actually submits an  
14 application for entry into the United States." *Id.*; *See also Negrete-Ramirez v. Holder*, 741  
15 F.3d 1047, 1051 (9th Cir. 2014) ("The definition refers expressly to entry into the United  
16 States, denoting by its plain terms passage into the country from abroad at a port of entry.")  
17 Based on the Ninth Circuit's statutory analysis, the term "seeking admission" cannot apply  
18 to a person already inside the United States for over 3 years.  
19  
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21

22 57. Since Defendants adopted their new policies, dozens of federal courts have  
23 uniformly rejected their newly invented misclassification as illegal and because it defies the  
24 INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which  
25 adopts the same reading of the statute as ICE, ruling that the BIA's decision is not entitled  
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28

1 to any deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024).<sup>1</sup>

2 58. The Western District of Washington has also agreed. In the Tacoma,  
3 Washington, immigration Court, IJs previously stopped providing bond hearings for persons  
4 who entered the United States without inspection and who have since resided here,  
5 reasoning such people are subject to mandatory detention under § 1225(b)(2)(A). There, in  
6 granting preliminary injunctive relief, the U.S. District Court for the Western District of  
7 Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not  
8 § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States.  
9  
10 *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, -- F. Supp. 3d ---, 2025 WL  
11 1193850 (W.D. Wash. Apr. 24, 2025).

12  
13  
14  
15 <sup>1</sup> See, e.g., *Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK (S.D. Ind. Oct. 11, 2025); *B.D. V.S. v.*  
16 *Forestal*, No. 1:25-cv-01968-SEB-TAB (S.D. Ind. Oct. 8, 2025); *Campos Leon v. Forestal*, No.  
17 1:25-cv-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Ochoa Ochoa v. Noem*,  
18 No. 25 C 10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025) (Jenkins, J.), *H.G.V.U. v. Smith*, No.  
19 25 C 10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2020) (Coleman, J.), *Mariano Miguel v. Noem*,  
20 No. 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025) (Alonso, J.), and *G.Z.T. v. Smith*, No.  
21 25 C 12802 (N.D. Ill. Oct. 21, 2025) (Ellis, J.), *Corona Diaz v. Olson, et al.*, No. 25-cv-12141 (N.D.  
22 Illinois 2025), *Belsai v. Bondi, et al.*, No. 25-cv-3862 (KMM/EMB), 2025 WL 2802947 (D. Minn.  
23 Oct. 1, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal.  
24 Sept. 23, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, --- F.Supp.3d ---, 2025 WL  
25 2712417 (N.D. Iowa Sept. 23, 2025); *Salazar v. Dedos*, No. 1:25- cv-00835-DHU-JMR, 2025 WL  
26 2676729 (D. N.M. Sept. 17, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3,  
27 2025); *Lopez-Campos v. Raycraft*, No. 2:25- cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29,  
28 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-*  
*Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero*  
*v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v.*  
*Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado*  
*v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No.  
1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No.  
CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted  
2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL  
2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238,  
at \*9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at \*8  
(D. Mass. July 7, 2025).

1           59. On December 18, 2025, the United States District court for the Central District  
2 of California issued a final nationwide declaratory judgment in *Maldonado Bautista et al. v*  
3 *Santacruz Jr. et al.*, Case No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025), that  
4 directly governs the legality of Plaintiff’s present detention. In that decision, the court held  
5 the underlying policy in the 2025 BIA precedent of *Matter of Yajure Hurtado*, which  
6 allowed DHS to classify all noncitizens who entered without admission or inspection as  
7 detained under INA § 235(b)(2)(A) regardless of where or how they were apprehended, is  
8 unlawful. The court further determined that DHS’s long-standing policy mirroring that  
9 approach- treating every “EWI” (“entered without inspection”) noncitizen as an applicant  
10 for admission subject to mandatory detention- likely violates the statutory framework  
11 enacted by Congress.

12           60. As the district court explained, Congress drew a clear distinction between  
13 individuals apprehended at or near the border and those arrested inside the United States.  
14 For noncitizens who entered without inspection but were arrested in the interior and placed  
15 into regular § 240 removal proceedings, the statutory authority governing detention is INA  
16 § 236(a), not § 235(b)(2)(A). The court therefore held that such individuals are not subject  
17 to mandatory detention and are instead entitled to the bond procedures Congress created  
18 under § 236(a).

19           61. The Court entered an order of Final Judgment on December 18, 2025. *See*  
20 *attached.*

21           62. The Bond Eligible Class is nationwide and encompasses:

22           All noncitizens in the United States without lawful status who (1) have entered  
23 or will enter the United States without inspection; (2) were not or will not be  
24  
25  
26  
27  
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1 apprehended upon arrival; and (3) are not or will not be subject to detention  
2 under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department  
3 of Homeland Security makes an initial custody determination.

4 *Id.*

5 63. Under the December 18, 2025 court order, DHS must treat all members of the  
6 certified nationwide class as eligible for individualized custody determination before an  
7 Immigration Judge.

8 64. Plaintiff in this matter is squarely within the class certified by *Maldonado*  
9 *Bautista*. First, Plaintiff entered the United States without admission or inspection in 2000.  
10 Second, she was not apprehended at the border or immediately after lawful entry; rather, she  
11 was arrested in the interior of the United States, well after her entry. Third, DHS did not  
12 process her through expedited removal or any other § 235 procedure, but instead properly  
13 placed her in ordinary § 240 removal proceedings before the Immigration Court. These are  
14 the exact conditions that define class membership under the *Maldonado Bautista* declaratory  
15 judgment.  
16 judgment.

17 65. Because Plaintiff meets each element of the class definition, the nationwide  
18 judgment applies to her fully and directly. As a matter of binding Federal law, Plaintiff  
19 cannot be detained under § 235(b)(2)(A) or any variant of the *Hurtado* framework. Her  
20 detention must now be treated as arising under INA § 236(a), and she is entitled to the  
21 procedural protections associated with the statute, including an individualized bond hearing  
22 before an Immigration Judge.  
23 before an Immigration Judge.

24 66. As the *Maldonado Bautista et al.* and *Rodriguez Vazquez* court and others  
25 have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not §  
26 1225(b), applies to people like Plaintiff.  
27  
28

1           67.     DHS’s and DOJ’s interpretation defies the INA. As the *Rodriguez Vazquez*  
2 court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not §  
3 1225(b), applies to people like Plaintiff in this matter.  
4

5           68.     Section 1226(a) applies by default to all persons “pending a decision on  
6 whether the [noncitizen] is to be removed from the United States.” These removal hearings  
7 are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”  
8

9           69.     The text of § 1226 also explicitly applies to people charged as being  
10 inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E).  
11 Subparagraph (E)’s reference to such people makes clear that, by default, such people are  
12 afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained,  
13 “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that  
14 absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d  
15 at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400  
16 (2010)). Section 1226 therefore leaves no doubt that it applies to people who face charges  
17 of being inadmissible to the United States, including those who are present without  
18 admission or parole.  
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20  
21           70.     By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
22 very recently entered the United States. The statute’s entire framework is premised on  
23 inspections at the border of people who are “seeking admission” to the United States. 8  
24 U.S.C. § 1225(b)(2)(A); *see also* *Diaz Martinez*, 2025 WL 2084238, at \*8 (“[O]ur  
25 immigration laws have long made a distinction between those [noncitizens] who have come  
26 to our shores seeking admission . . . and those who are within the United States after an  
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1 entry, irrespective of its legality.” (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187  
2 (1958))). Indeed, the Supreme Court has explained that this mandatory detention scheme  
3 applies “at the Nation’s borders and ports of entry, where the Government must determine  
4 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*,  
5 583 U.S. 281, 287 (2018).  
6

7 71. It must be restated, § 1225(b)(2)(A) expressly applies only to the “applicant  
8 for admission” “seeking admission.” The BIA’s interpretation of the law specifically holds  
9 that applicants for admission are always “seeking admission,” but if this were true, there  
10 would be no need for § 1225(b)(2)(A) to limit its application to those “seeking admission.”  
11 It renders the language superfluous. Seeking admission explicitly indicates an affirmative  
12 request or action on the part of the applicant for admission. *Yajure Hurtado* repeatedly  
13 accuses non-citizens present without admission as evading inspection but then turns around  
14 to say they are seeking admission. It cannot be both ways, a person who evades inspection,  
15 cannot be considered seeking admission. *Yajure Hurtado* lacks any validity or  
16 persuasiveness due to its outright failure to interpret the statutory definition of “admission”  
17 under 8 U.S.C. § 1101(a)(4), (a)(13)(A). The BIA’s decision in *Yajure Hurtado* is written  
18 with the outcome in mind, rather than with a sincere intent to explore and understand the  
19 law. The BIA, as a part of the Executive Branch, is a political creature, and the Courts must  
20 subject them to the law. Releasing non-citizens present without admission on a bond is not  
21 about “rewarding” the evasion of apprehension for more than two years, but rather about  
22 protecting the interests accrued in establishing domicile: property, children, family, friends,  
23 community, career, and economic interests. There is logic to mandatory detention of persons  
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1 just arriving to the United States. They have not established any kind of record in the  
2 country, making it difficult to determine whether they pose a danger or flight risk while they  
3 face removal proceedings. However, people who have been in the United States for over  
4 two years should be given an opportunity to demonstrate they not a danger or flight risk,  
5 pending removal proceedings. There is a record of their behavior in the United States.  
6 Defendants' desired implementation of the law leads to absurd results very likely never  
7 intended by congress. Indeed, in the 28 years since the implementation of IIRIRA, congress  
8 never stepped in to correct the ongoing practice and interpretation of the Immigration  
9 Courts, BIA, and Federal Courts allowing release under § 1226(a) of those present without  
10 admission.  
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13 72. Defendants' application of § 1225(b) to Plaintiff renders all references to  
14 inadmissible non-citizens under § 1226 superfluous.  
15

16 73. Accordingly, the mandatory detention provision of § 1225(b)(2) does not  
17 apply to people like Plaintiff, who have already entered and were residing in the United  
18 States at the time they were apprehended and detained. This is made clear by the nationwide  
19 judgment in *Maldonado Bautista*, that Plaintiff must be treated as detained under INA §  
20 236(a).  
21

## 22 VIII. CLAIMS FOR RELIEF.

23 74. Plaintiff realleges paragraphs 1 through 74 herein as fully set forth.  
24

25 75. Plaintiff's continued detention is a violation of Due Process rights under the  
26 Fifth Amendment, which provides that no person shall "be deprived of life, liberty, or  
27 property without due process of law" along with the U.S. Constitution and not in accordance  
28

1 with the INA.

2 76. “Freedom from imprisonment – from government custody, detention, or other  
3 forms of physical restraint – lies at the heart of the liberty that Clause protects.” *Zadvydas*  
4 *v. Davis*, 533 U.S. 678, 690 (2001). Moreover, “[t]he Due Process clause applies to all  
5 ‘persons’ within the United States, including aliens, whether their presence here is lawful,  
6 unlawful, temporary or permanent.” *Id.* at 693.

7  
8 77. Pursuant to the APA, the Defendants refusal to release Plaintiff on bond is  
9 arbitrary, capricious, and not in accordance with the law.

10  
11 78. The APA provides that a “reviewing court shall . . . hold unlawful and set  
12 aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an  
13 abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

14  
15 79. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to  
16 all noncitizens residing in the United States who are subject to the grounds of  
17 inadmissibility. As relevant here, it does not apply to those who previously entered the  
18 country and have been residing in the United States prior to being apprehended and placed  
19 in removal proceedings by Defendants. Such noncitizens are detained under § 1226(a) and  
20 are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

21  
22 80. Nonetheless, the DHS and the Immigration Court will apply § 1225(b)(2) to  
23 Plaintiff.

24  
25 81. The application of 1225(b)(2) to Plaintiff, who should be bond eligible,  
26 unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and  
27 1003.19.

1           82. This Court has jurisdiction to review the Defendants' action and order  
2 Plaintiff's release on bond.

3           83. Defendants' mandatory detention of Plaintiff without consideration for release  
4 on bond or access to a bond hearing violates her due process rights.  
5

6           84. Plaintiff is eligible for payment of attorney's fees, related expenses, and costs  
7 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

8           **IX. PRAYER FOR RELIEF.**

9  
10          WHEREFORE, Plaintiff prays that the Court grant the following relief:

- 11          1) Assume jurisdiction over this cause pursuant to 28 U.S.C. § 2241;
- 12          2) Issue an Order to Show Cause ordering Defendants to show cause why this Petition  
13             should not be granted within three days;
- 14          3) Order Defendants not to remove Plaintiff from the State of Arizona;
- 15          4) Issue a Writ of Habeas Corpus ordering Defendants to provide an individualized  
16             bond hearing within five (5) days of this Court's order;
- 17          5) Declare that Plaintiff's detention violates the Due Process Clause of the Fifth  
18             Amendment as well as the relevant statute and regulations governing detention of  
19             noncitizens;
- 20          6) Award Plaintiff's attorney's fees and costs under the Equal Access to Justice Act,  
21             and on any other basis justified under law; and
- 22          7) That the Court grant further relief as this Court deems just and proper under the  
23             circumstances.  
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RESPECTFULLY SUBMITTED this 24th day of December 2025.

By: s/ Jessica Anleu, Esq.

Jessica Anleu, Esq.  
Attorney for Plaintiff

**LIST OF ATTACHED EXHIBITS**

Exhibit	Description
A	December 16, 2025 Immigration Judge Bond Order
B	December 18, 2025 <i>Maldonado Bautista</i> Order granting In Part and Denying In Part Petitioners' Ex Parte Application for Reconsideration or Clarification (Order for Final Judgement)
C	November 25, 2025 <i>Maldonado Bautista</i> Order granting Plaintiff Petitioner's Motion for Class Certification

CERTIFICATE OF SERVICE

On the 24th day of December 2025, I, Jessica Anleu, the undersigned, served via certified U.S. Mail, the attached **Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241**, on each person/entity listed below addressed as follows:

Civil Clerk  
United States Attorney's Office  
District of Arizona  
Two Renaissance Square  
40 N. Central Avenue, Suite 1200  
Phoenix, AZ 85004-4408

Fred Figueroa  
Warden, Eloy Detention Center  
1705 E Hanna Rd  
Eloy, Arizona 85131

Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Office of the General Counsel  
U.S. Department of Homeland Security  
245 Murray Lane, SW  
Mail Stop 0485 Washington, DC 20528

*s/ Jessica Anleu, Esq.*