IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CRISTIAN CANAN ESPINOZA Petitioner v. **JACOB WELSH,** Chase County, KS Sheriff and Warden Of Chase County jail (in his official capacity only); **CHRISTOPHER CHAMBERLAIN** Asst. Director Kansas City Field Office, Immigration and Customs Enforcement (in his official capacity only); and **PAMELA BONDI,** Attorney General of the United States, (in her official capacity only); **KRISTI NOEM,** Secretary of Homeland Security, (in her official capacity only); Defendants	Civil No. 26-3001-JWL **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR AN ORDER TO SHOW CAUSE**

PRELIMINARY STATEMENT

1. Petitioner Cristian Canan Espinoza brings this petition for a writ of habeas corpus to release from immigration detention. Petitioner is in the physical custody of

Respondents at the Chase County Jail. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have unlawfully determined that he is subject to mandatory detention under 8 U.S.C. § 1225(b).

2. Factually speaking, the Department has, for more than eight years, treated Mr. Canan Espinoza as someone who is subject to 8 U.S.C. § 1226(a). According to the Respondents' own records, Mr. Canan Espinoza entered the country without authorization on October 24, 2017, when he was about 15 years old. The Department of Homeland Security then issued a warrant for his arrest under 8 U.S.C. § 1226(a) on October 26, 2017. The Department then issued a form I-862, "Notice to Appear," on October 26, 2017, of proceedings under INA § 240, alleging he was removable under INA § 212(a)(6).

3. Mr. Canan Espinoza was processed by the Office of Refugee Resettlement as an Unaccompanied Minor and released to his mother, on November 18, 2017. Mr. Canan Espinoza applied for asylum on or about July 30, 2018, and has appeared at all of his scheduled hearings before the Immigration Court. He was even set for a final "merits" hearing before the Immigration Court, before it was taken off the Court's calendar and then placed back on there for a hearing in a non-detained setting on January 6, 2027. That is, he fully complied with the terms of his release under 8 U.S.C. § 1226(a)(2).

4. All of this is consistent with his detention being under 8 U.S.C. § 1226(a): "On a warrant issued by the Attorney General, an alien may be arrested and detained

pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General- (1) may continue to detain the arrested alien; and (2) may release the alien on- (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole."

5. Mr. Canan Espinoza was then taken into custody by Respondents on or about December 16, 2025, and is being held by them now under 8 U.S.C. § 1225(b), based on the analysis of the Board of Immigration Appeals in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

6. The Court should expeditiously grant this petition.

7. Alternatively, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

JURISDICTION

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

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Chase County jail.

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

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE AND TRIAL LOCATION DESIGNATION

12. Venue is proper because Petitioner is detained at Chase County Jail in Cottonwood Falls, Kansas which is within the jurisdiction of this District.

13. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States reside and a substantial part of the events or omissions giving rise to his claims occurred in this District. No real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243 AND

APPLICATION FOR AN ORDER TO SHOW CAUSE

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

15. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already been resolved for class members in *Maldonado Bautista v. Santacruz,* Case No. 5:25-cv-01873-SSS-BFM (C.D. Cal. August 11, 2025).

16. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or

confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

17. Pursuant to 28 U.S.C. § 2243, Petitioner, ("Petitioner or Mr. Canan Espinoza") respectfully requests that the Court issue an order to all Respondents requiring them to show cause why the Petitioner's Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; 28 U.S.C § 1331; Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701; and the Declaratory Judgment Act, 28 U.S.C. § 2201 should not be granted and why Respondents should not be ordered to release Petitioner from detention.

18. Pending adjudication of these claims, Petitioner asks for an order enjoining Respondents from transferring Petitioner from the jurisdiction of the Kansas City Field Office of the Immigration & Customs Enforcement ("ICE") Office of Enforcement and Removal Operations ("ERO") and this District.

PARTIES

19. Petitioner is currently detained in Chase County, Kansas. He entered the United States without authorization on or about the year 2013. He was then arrested by the Department of Homeland Security and placed in removal proceedings on or about

November 13, 2020. He was originally released on a $5000 bond, but then was re-detained in August 2025 and has been held in custody since then without a bond hearing.

20. Respondent Jacob Welsh is the Chase County, Kansas Sheriff and Warden of the Chase County Jail. He has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Arnott is the legal custodian of Petitioner.

21. Respondent Christopher Chamberlain is the Assistant Field Office Director of the Kansas City Field Office, Immigration and Customs Enforcement. Respondent Chamberlain is a legal custodian of Petitioner and has authority to release him.

22. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. In this capacity, Respondent Bondi is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees the Immigration Court system via the Executive Office for Immigration Review ("EOIR"), a part of the Department of Justice. This agency, under her control, is responsible for conducting Bond hearings, ordering the release of individuals in removal proceedings, like Petitioner.

23. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and

Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's arrest and detention. Respondent is a legal custodian of Petitioner.

STATEMENT OF THE CASE

Legal Background

Detention Provisions of the Immigration and Nationality Act

24. Congress drafted separate sections of the INA to deal with different bases for the detention of people coming to or already in the United States, who find themselves in removal proceedings.

25. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge (IJ). *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

26. Alternatively, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

27. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

28. The dispute here deals with sections §§ 1226(a) and 1225(b)(2). These detention provisions were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

29. After Congress enacted IIRIRA, EOIR promulgated its own regulations which stated that those who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

30. For almost thirty years, noncitizens who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

31. Congress itself has amended who is subject to mandatory detention under 8 U.S.C. § 1226, eliminating eligibility for release on bond for individuals in removal proceeding who commit certain crimes. See, Laken Riley Act. If Congress viewed all persons in the country without authorization subject to 8 U.S.C. § 1225, there would have been no need for the Laken Riley Act at all. Thus, under the Supreme Court's statutory interpretation canons, it follows that Congress did not intend for § 1225 to apply to noncitizens in the country who have not been inspected or admitted.

32. This year that all changed when ICE, "in coordination with" the Department of Justice (DOJ) issued a policy on July 8, 2025, that rejected the well-established understanding of the statutory framework and reversed decades of practice.

33. "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] states that anyone who entered the United States without inspection is to be deemed subject to the mandatory detention provisions of § 1225(b)(2)(A), regardless of when they entered, where they entered, or when they were arrested by DHS, even if they had been physically present in the United States for decades.

34. The BIA issued *Matter of Yajure Hurtado*, 29 I&N Dec 216 on September 5, 2025, which adopts this same argument, turning on its head decades of practice in the immigration courts. The Board found that any and all noncitizens placed in removal

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

proceedings who entered without inspection or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

35. At the present time, the Kansas City Immigration Court states that it is bound by *Matter of Yajure Hurtado*, and will not hear bond motions for those who entered the country without authorization, irrespective of when they are detained or arrested by the Department of Homeland Security. An exception is currently being made for those members of the certified class in *Maldonado Bautista v. Santacruz.*, which includes people who were not stopped at the border.

36. Several courts have already reviewed the issue we present, and determined that the Respondent's position is erroneous, and that people like Mr. Canan Espinoza are properly deemed detained pursuant to 8 U.S.C. § 1226(a), and therefore eligible for bonds before the Immigration Court. See, *Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB (HC), 2025 WL 2420390, (E.D. CA Aug. 21, 2025); *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 WL 1953796 (W.D. NY July 16, 2025).

37. The District of Massachusetts considered facts almost identical to this one, and determined that custody was still under 8 U.S.C. § 1226(a). In *Romero v. Hyde*, 1:25-cv-11631, (D. Mass 08/19/2025), the facts were that Romero was stopped at the border, two days later a warrant under 8 U.S.C. § 1226(a) was issued, then a Notice to Appear was issued and she was released on her own recognizance under 8 U.S.C. § 1226(a). While out on her release she reported to ICE as required, then was detained two years later. The court there rejected the Department of Homeland Security's claim

that under Board of Immigration Appeals precedent, she was subject to mandatory detention under 8 U.S.C. § 1225(b), in large part by looking at how she was treated by the Department itself throughout the process:

> The abstract statutory interpretation issues raised by this case must be considered against the backdrop of one uncontestable fact—Petitioner has always been treated by Respondents as subject to discretionary detention under section 1226, rather than mandatory detention under section 1225. *See* Compl. at 27 ("Warrant for Arrest of Alien . . . as authorized by section 236 of the Immigration and Nationality Act");23 *id.* at 29 ("Notice of Custody Determination," releasingPetitioner on her own recognizance, "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act");24 *see also Diaz Martinez*, 2025 WL 2084238, at *3 (explaining why these are not only facially but logically irreconcilable with an individual's having been previously detained or processed under section 1225).25 Indeed, *in this very litigation*, Respondents explained Petitioner's detention in terms of section 1226, rather than section 1225. *See* Dkt. 17 at 3–4 (repeatedly referencing section 1226, never once mentioning section 1225).
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> It was moreover correct for Respondents to treat Petitioner as subject to discretionary detention under 1226, rather than section 1225, given that she was then already "present in the United States"—or, perhaps more to the point, that she was no longer "an arriving alien." *See* Compl. at 23; 8 C.F.R. § 235.3(c)(1) ("Except as otherwise provided in this chapter, any ***arriving alien*** who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings pursuant to section [1229a] shall be detained in accordance with section [1225(b)]." (emphasis added)); *see also Diaz Martinez*, 2025 WL 2084238, at *3–7 (providing further elaboration). To be clear, that Petitioner was "present in the United States" and not "an arriving alien" are determinations made by Respondents' own agent. Compl. at 23. To the extent Respondents ask this Court to overrule that determination, *see* Dkt. 30 at 16 (arguing that the Court's ruling in *Diaz Martinez* was predicated on "a CBP officer's failure to tick a box"), they have provided no factual or legal basis for the Court to do so.
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> See, at 211-213.

38. Similarly, here Mr. Canan Espinoza has always been treated as being subject to 8 U.S.C. § 1226(a) rather than expedited removal under 8 U.S.C. § 1225(b). His detention today is therefore also under 8 U.S.C. § 1226(a), and he is therefore eligible for released on bond.

CAUSES OF ACTION

Count I - Violation of the Immigration and Nationality Act

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

40. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously were processed by the Respondents under 1226(a) and now due only to a flawed change in interpretation, being again apprehended and now subjected to mandatory detention despite no actual change in law or their circumstances warranting such a change. Noncitizens such as Mr. Canan Espinoza are properly detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

41. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

Count II- Violation of the Administrative Procedure Act

42. Mr. Canan Espinoza realleges and incorporates by reference the allegations above.

43. The Administrative Procedure Act provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

44. At all times since he was originally detained by the Department of Homeland Security in 2017, Mr. Canan Espinoza has been treated as being subject to detention under in a 8 U.S.C. § 1226(a), and now that has all changed where the Respondents are now holding him without bond alleging that he is properly detained under 8 U.S.C. § 1225(b), based on flawed legal analysis, which is inherently arbitrary and capricious.

45. Mr. Canan Espinoza's continued detention and the threat of removal has caused and continues to cause him irreparable harm.

Count III- Violation of Fifth Amendment Right to Substantive Due Process

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

47. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

48. Immigration detention is "civil, not criminal" and must be "nonpunitive in purpose and effect." *Id.* Accordingly detention is only permitted in order to serve two goals: "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Id.*

49. Mr. Canan Espinoza cannot be removed due to his grant of deferred action by USCIS. Accordingly, Respondents' detention of him cannot serve any lawful purpose.

50. Subjecting Mr. Canan Espinoza to unlawful detention violates his Fifth Amendment right to freedom from detention.

Count IV - Violation of Fifth Amendment Rights to Procedural Due Process

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

52. Under the Fifth Amendment to the United States Constitution, those threatened with the loss of liberty or property due to actions by the federal government are entitled to due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690 .

53. Mr. Canan Espinoza has a fundamental interest in liberty and being free from official restraint.

54. The government's detention of Mr. Canan Espinoza without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

RELIEF REQUESTED

55. WHEREFORE, Petitioner prays that this Court:

a. Assume jurisdiction over the matter;

b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;

c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;

d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

e. Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the District of Kansas pending the resolution of this case;

f. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 8 U.S.C. § 1101(a)(15)(U); see also 8 C.F.R. § 214.14, et al.

g. Grant any further relief this Court deems just and proper.

Respectfully submitted this 5th day of January, 2026:

By: */s/* Jonathan Willmoth
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Verification

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

/s/ Jonathan Willmoth
Jonathan Willmoth

Jan. 5, 2026