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8 **UNITED STATES DISTRICT COURT**

9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 GALDINO VAZQUEZ,

11 Petitioner,

12 v.

13 Gregory J. Archambeault, Field Office Director  
14 of Enforcement and Removal Operations, San  
15 Diego Field Office, Immigration and Customs  
16 Enforcement; Kristi Noem, Secretary, U.S.  
17 Department of Homeland Security; U.S.  
18 Department of Homeland Security; Pamela  
19 Bondi, U.S. Attorney General; Executive Office  
for Immigration Review; Christopher J.  
LaRose, Warden of Otay Mesa Detention  
Facility,

Respondents.

Case No. '26CV0086 BJC DDL

**PETITION FOR WRIT OF  
HABEAS CORPUS**

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1 **INTRODUCTION**

2 1. Petitioner Galdino Vazquez is in the physical custody of Respondents at the Otay  
3 Mesa Detention Facility. He now faces unlawful detention because the Department of Homeland  
4 Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded  
5 Petitioner is subject to mandatory detention.

6 2. Petitioner is charged with, inter alia, having entered the United States without  
7 admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

8 3. Based on this allegation in Petitioner’s removal proceedings, DHS denied  
9 Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8,  
10 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone  
11 inadmissible under section 1182(a)(6)(A)(i)—i.e., those who entered the United States without  
12 admission or inspection—to be subject to detention under 8 U.S.C. section 1225(b)(2)(A) and  
13 therefore ineligible to be released on bond.

14 4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or  
15 Board) issued a precedent decision, binding on all immigration judges, holding that an  
16 immigration judge has no authority to consider bond requests for any person who entered the  
17 United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).  
18 The Board determined that such individuals are subject to detention under 8 U.S.C. section  
19 1225(b)(2)(A) and therefore ineligible to be released on bond.

20 5. Petitioner’s detention on this basis violates the plain language of the Immigration  
21 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who  
22 previously entered and are now residing in the United States. Instead, such individuals are  
23 subject to a different statute, section 1226(a), that allows for release on conditional parole or  
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1 bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible  
2 for having entered the United States without inspection.

3 6. Respondents' new legal interpretation is plainly contrary to the statutory  
4 framework and contrary to decades of agency practice applying section 1226(a) to people like  
5 Petitioner.

6 7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released  
7 unless Respondents provide a bond hearing under section 1226(a) within seven days.

### 8 JURISDICTION

9 8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the  
10 Otay Mesa Immigration Detention Facility in San Diego, California.

11 9. This Court has jurisdiction under 28 U.S.C. section 2241(c)(5) (habeas corpus),  
12 28 U.S.C. section 1331 (federal question), and Article I, section 9, clause 2 of the United States  
13 Constitution (the Suspension Clause).

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

### 16 VENUE

17 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-  
18 500 (1973), venue lies in the United States District Court for the Southern District of California,  
19 the judicial district in which Petitioner currently is detained.

20 12. Venue is also properly in this Court pursuant to 28 U.S.C. section 1391(e)  
21 because Respondents are employees, officers, and agencies of the United States, and because a  
22 substantial part of the events or omissions giving rise to the claims occurred in the Southern  
23 District of California.



1 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.  
2 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

3 18. Respondent Department of Homeland Security (DHS) is the federal agency  
4 responsible for implementing and enforcing the INA, including the detention and removal of  
5 noncitizens.

6 19. Respondent Pamela Bondi is the Attorney General of the United States. She is  
7 responsible for the Department of Justice, of which the Executive Office for Immigration Review  
8 and the immigration court system it operates is a component agency. She is sued in her official  
9 capacity.

10 20. Respondent Executive Office for Immigration Review (EOIR) is the federal  
11 agency responsible for implementing and enforcing the INA in removal proceedings, including  
12 for custody redeterminations in bond hearings.

13 21. Respondent Christopher J. LaRose is employed by Core Civic as Warden of the  
14 Otay Mesa Detention Facility where Petitioner is detained. He has immediate physical custody of  
15 Petitioner. He is sued in his official capacity.

16 **LEGAL FRAMEWORK**

17 22. The INA prescribes three basic forms of detention for the vast majority of  
18 noncitizens in removal proceedings.

19 23. First, 8 U.S.C. section 1226 authorizes the detention of noncitizens in standard  
20 removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in section 1226(a) detention  
21 are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. sections  
22 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of  
23 certain crimes are subject to mandatory detention, *see* 8 U.S.C. section 1226(c).

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

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

7 26. This case concerns the detention provisions at sections 1226(a) and 1225(b)(2).

8 27. The detention provisions at section 1226(a) and section 1225(b)(2) were enacted  
9 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996,  
10 Pub. L. No. 104–208, Div. C, sections 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583,  
11 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act,  
12 Pub. L. No.119-1, 139 Stat. 3 (2025).

13 28. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining  
14 that, in general, people who entered the country without inspection were not considered detained  
15 under section 1225 and that they were instead detained under section 1226(a). *See* Inspection and  
16 Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal  
17 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

18 29. Thus, in the decades that followed, most people who entered without inspection  
19 and were placed in standard removal proceedings received bond hearings, unless their criminal  
20 history rendered them ineligible pursuant to 8 U.S.C. section 1226(c). That practice was  
21 consistent with many more decades of prior practice, in which noncitizens who were not deemed  
22 “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. §  
23  
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1 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that section 1226(a)  
2 simply “restates” the detention authority previously found at section 1252(a)).

3 30. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
4 rejected well-established understanding of the statutory framework and reversed decades of  
5 practice.

6 31. The new policy, entitled “Interim Guidance Regarding Detention Authority for  
7 Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without  
8 inspection shall now be subject to mandatory detention provision under section 1225(b)(2)(A).  
9 The policy applies regardless of when a person is apprehended, and affects those who have  
10 resided in the United States for months, years, and even decades.

11 32. On September 5, 2025, the BIA adopted this same position in a published  
12 decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the  
13 United States without admission or parole are subject to detention under section 1225(b)(2)(A)  
14 and are ineligible for IJ bond hearings.

15 33. Since Respondents adopted their new policies, dozens of federal courts have  
16 rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected  
17 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

18 34. Even before ICE or the BIA introduced these nationwide policies, IJs in the  
19 Tacoma, Washington, immigration court stopped providing bond hearings for persons who  
20 entered the United States without inspection and who have since resided here. There, the U.S.  
21 District Court in the Western District of Washington found that such a reading of the INA is  
22 likely unlawful and that section 1226(a), not 1225(b), applies to noncitizens who are not

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24 <sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d  
2 1239 (W.D. Wash. 2025).

3 35. Subsequently, court after court has adopted the same reading of the INA's  
4 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*,  
5 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,  
6 No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025);  
7 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,  
8 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL  
9 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025  
10 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE,  
11 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-  
12 ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-  
13 BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH),  
14 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-  
15 BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-  
16 02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-  
17 JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051  
18 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v.*  
19 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);  
20 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,  
21 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.  
22 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.  
23 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.

1 Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2  
2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not §  
3 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL  
4 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-  
5 RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).

6 36. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it  
7 defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the  
8 statutory provisions demonstrates that section 1226(a), not 1225(b), applies to people like  
9 Petitioner.

10 37. Section 1226(a) applies by default to all persons “pending a decision on whether  
11 the [noncitizen] is to be removed from the United States.” These removal hearings are held under  
12 section 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

13 38. The text of section 1226 also explicitly applies to people charged as being  
14 inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E).  
15 Subparagraph (E)’s reference to such people makes clear that, by default, such people are  
16 afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained,  
17 “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent  
18 those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257  
19 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see*  
20 *also Gomes*, 2025 WL 1869299, at \*7.

21 39. Section 1226 therefore leaves no doubt that it applies to people who face charges  
22 of being inadmissible to the United States, including those who are present without admission or  
23 parole.

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1 40. By contrast, section 1225(b) applies to people arriving at U.S. ports of entry or  
2 who recently entered the United States. The statute’s entire framework is premised on  
3 inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C.  
4 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme  
5 applies “at the Nation’s borders and ports of entry, where the Government must determine  
6 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583  
7 U.S. 281, 287 (2018).

8 41. Accordingly, the mandatory detention provision of section 1225(b)(2)(A) does not  
9 apply to people like Petitioner, who have already entered and were residing in the United States  
10 at the time they were apprehended.

11 **FACTS**

12 42. Petitioner entered the United States since 1991 and resides in Escondido,  
13 California.

14 43. On October 22, 2012, DHS filed a Notice to Appear placing Petitioner in removal  
15 proceedings before the San Diego Immigration Court pursuant to 8 U.S.C. § 1229a. ICE charged  
16 Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. section 1182(a)(6)(A)(i) as  
17 someone who entered the United States without inspection.

18 44. Thereafter, Petitioner requested and was granted Prosecutorial Discretion from  
19 DHS. A joint motion for administrative closure was filed, and granted in 2013.

20 45. On May 8, 2025, DHS filed a motion to re-calendar. On June 27, 2025, the Court  
21 granted the motion.

1 46. Petitioner was not aware of the granting of the motion, nor the fact that a master  
2 calendar hearing had been calendared. Petitioner's counsel did not receive the hearing notice due  
3 to a change of address.

4 47. As a result, Petitioner, through no fault of his own, did not appear at the master  
5 calendar hearing and was ordered removed *in absentia*.

6 48. Petitioner received a call-in letter from ICE to present himself at the field office  
7 on October 7, 2025. Petitioner, along with counsel attended his appointment.

8 49. Petitioner had filed a motion to reopen, the deportation officer acknowledged that  
9 the motion was pending.

10 50. Petitioner was placed on Alternative to Detention ("ATD"), a monitoring program  
11 which allows noncitizen to remain out of custody during removal proceedings.

12 51. Petitioner was informed he would need to check in via a phone application he was  
13 instructed to download. The following week, ICE called Petitioner in for an appointment.

14 52. On October 15, 2025, Petitioner appeared for his appointment along with counsel.  
15 Noting a recent policy change, the deportation officer informed Petitioner he would be arrested  
16 and taken into custody. Petitioner was not at all prepared to be arrested at that point.

17 53. Petitioner was and remains detained at the Otay Mesa Detention Facility.

18 54. On November 7, 2025, Petitioner's motion to reopen was granted.

19 55. Petitioner has two U.S. citizen children, both of whom are adults. Petitioner was  
20 self-employed as a handyman.

21 56. Petitioner has one criminal conviction for Petty Theft, in violation of Cal. Penal  
22 Code section 488/484. His custody sentence was just one day, which reflects the petty nature of  
23 his offense. He was sentenced to three years probation, which was terminated early. Otherwise,  
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1 he has had no arrests either before or after and has no outstanding arrest warrants. He has  
2 essentially lived a crime-free and law-abiding life. Petitioner is neither a flight risk nor a danger  
3 to the community.

4 57. Following Petitioner's arrest and transfer to the Otay Mesa Detention Facility,  
5 ICE issued a custody determination to continue Petitioner's detention without an opportunity to  
6 post bond or be released on other conditions.

7 58. Petitioner subsequently requested a bond redetermination hearing before an IJ.

8 59. Pursuant to *Matter of Yajure Hurtado*, the immigration judge found she was  
9 unable to consider Petitioner's bond request.

10 60. As a result, Petitioner remains in detention. Without relief from this court, he  
11 faces the prospect of months, or even years, in immigration custody, separated from his family  
12 and community.

13 **CLAIMS FOR RELIEF**

14 **COUNT I**

15 **Violation of the INA**

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

18 62. The mandatory detention provision at 8 U.S.C. section 1225(b)(2) does not apply  
19 to all noncitizens residing in the United States who are subject to the grounds of inadmissibility.  
20 As 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 Respondents. Such noncitizens are detained under section 1226(a), unless they are subject to  
23 sections 1225(b)(1), 1226(c), or 1231.

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

3 **COUNT II**

4 **Violation of Due Process**

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

7 65. The government may not deprive a person of life, liberty, or property without due  
8 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government  
9 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the  
10 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

11 66. Petitioner has a fundamental interest in liberty and being free from official  
12 restraint.

13 67. The government’s detention of Petitioner without a bond redetermination hearing  
14 to determine whether he is a flight risk or danger to others violates his right to due process.

15 **PRAYER FOR RELIEF**

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

- 17 a. Assume jurisdiction over this matter;
- 18 b. Order that Petitioner shall not be transferred outside the Southern District of  
19 California while this habeas petition is pending;
- 20 c. Issue an Order to Show Cause ordering Respondents to show cause why this  
21 Petition should not be granted within three days;
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- 1 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
- 2 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
- 3 1226(a) within seven days;
- 4 e. Declare that Petitioner’s detention is unlawful;
- 5 f. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act
- 6 (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under
- 7 law; and
- 8 g. Grant any other and further relief that this Court deems just and proper.

9 DATED this 6th of January, 2026.

10 s/Jamahl C. Kersey  
11 Jamahl C. Kersey, Esq.  
12 Attorney for Petitioner

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

14 I represent Petitioner, Galdino Vazquez, and submit this verification on his behalf. I  
15 hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas  
16 Corpus are true and correct to the best of my knowledge.

17  
18 Dated this 6th day of January, 2026.

19 s/Jamahl C. Kersey  
20 Jamahl C. Kersey, Esq.