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9 UNITED STATES DISTRICT COURT  
10 FOR THE DISTRICT OF NEVADA

11 Gustavo MORA-SILVA,

12 Petitioner-Plaintiff,

13 v.

14 Kristi NOEM, in her Official Capacity, Secretary,  
15 U.S. Department of Homeland Security;

16 Pam BONDI, in her Official Capacity, Attorney  
17 General of the United States;

18 Todd M. LYONS, Acting Director, Immigration and  
19 Customs Enforcement, U.S. Department of Homeland  
20 Security;

21 Jason KNIGHT, Salt Lake City Field Office Director  
22 for Detention and Removal, U.S. Immigration and  
23 Customs Enforcement, Department of Homeland  
24 Security; and

25 Darin BALAAM, Sherriff, Washoe County Detention  
26 Center.

27 Respondents-Defendants.  
28


Agency No.



**PETITION FOR WRIT OF  
HABEAS CORPUS AND  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Challenge to Unlawful  
Incarceration Under Color of  
Immigration Detention Statutes;  
Request for Declaratory and  
Injunctive Relief

**INTRODUCTION**

1  
2 1. Petitioner Gustavo Mora-Silva (“Mr. Mora-Silva”), Agency Number , by and  
3 through his undersigned counsel, respectfully submits this petition for a writ of habeas corpus and  
4 a complaint for declaratory and injunctive relief to stop the U.S. Department of Homeland  
5 Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) from unlawfully  
6 detaining him in immigration custody while his removal proceedings are pending.  
7

8 2. Petitioner seeks his immediate release from the Washoe County Detention Center, where  
9 he is being unlawfully held by ICE. Although the Immigration Judge concluded that she lacked  
10 jurisdiction over his case, she nonetheless found that, if jurisdiction existed, Petitioner posed  
11 neither a danger to the community nor a flight risk and would have ordered his release on a \$1,500  
12 bond. Petitioner therefore requests that the court uphold the judge’s alternative determination.  
13

14 3. By way of background, Mr. Mora-Silva came to the attention of Immigration and Customs  
15 Enforcement (“ICE”) after his arrest on October 22, 2025, on a charge of Obstructing or Resisting  
16 a Peace Officer. He was booked into the county jail and later appeared before the criminal court  
17 where he pled nolo contendere to Reno Municipal Code § 8.06.010(b)(1) – Obstructing or  
18 Resisting a Peace Officer; and NRS § 485.187 – Proof of Insurance Required. Subsequently on  
19 October 28, 2025, ICE took Mr. Mora-Silva into their custody and transferred him to the ERO  
20 Salt Lake City – Reno Sub Office for processing. Today, he continues to be detained at the  
21 Washoe County Detention Center.  
22

23  
24 4. A bond hearing was held on January 16, 2026. At the hearing, the Department of  
25 Homeland Security argued that the Court lacked jurisdiction to set bond and that Mr. Mora-Silva  
26 was subject to *Matter of Yahure Hurtado* notwithstanding the order on *Maldona Bautista*.  
27 Immigration Judge Lindsay Roberts agreed and concluded, pursuant to *Matter of Yahure Hurtado*,  
28

1 that she lacked authority to set bond. Nevertheless, she made an alternative finding that, if she did  
2 have jurisdiction, she would authorize Mr. Mora-Silva's release on a \$1,500 bond, having  
3 determined that he posed neither a danger to the community nor a flight risk.

4 5. In light of the published decision of *Matter of Yahure Hurtado*, an appeal to the Board of  
5 Immigration Appeals would be futile, as it was the Board itself that issued that precedent.

6 6. Mr. Mora-Silva's prolonged detention violates the Due Process Clause of the Fifth  
7 Amendment, as DHS has failed to establish, by clear and convincing evidence, that Mr. Mora-  
8 Silva is either a danger to the community or a flight risk. Furthermore, Mr. Mora-Silva is not  
9 subject to mandatory detention and therefore entitled to bond.

10 7. Mr. Mora-Silva respectfully requests his immediate release from detention or, in the  
11 alternative, that this Court order the Immigration Judge's alternative determination to be upheld.

#### 12 CUSTODY

13 8. Mr. Mora-Silva is currently in custody of ICE at the Washoe County Detention  
14 Center in Reno, Nevada. Mr. Mora-Silva is therefore in "custody" of [the DHS] within the  
15 meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

#### 16 JURISDICTION

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

19 10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 2241  
20 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. §§ 2201 et seq.  
21 (Declaratory Judgment Act), the All Writs Act, 28 U.S.C. § 1651, Article I, Section 9, Clause 2  
22 of the U.S. Constitution (the Suspension Clause), Article III of the U.S. Constitution, and under  
23 the common law.  
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**REQUIREMENTS OF 28 U.S.C. § 2243**

1  
2 11. The Court must grant the petition for writ of habeas corpus or issue an order to show  
3 cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C.  
4 § 2243. If an order to show cause is issued, the Court must require Respondents to file a return  
5 “within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed.”  
6 *Id.* (emphasis added).  
7

8 12. Courts have long recognized the significance of the habeas statute in protecting  
9 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most  
10 important writ known to the constitutional law of England, affording as it does a *swift* and  
11 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,  
12 400 (1963) (emphasis added).  
13

14 13. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs  
15 courts to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious  
16 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations  
17 omitted). The Ninth Circuit warned against any action creating the perception “that courts are  
18 more concerned with efficient trial management than with the vindication of constitutional  
19 rights.” *Id.*  
20

21 **VENUE**

22 14. Venue is proper in this Court under 28 U.S.C. § 1391(e) because the Respondents are  
23 officers or employees of the United States acting in their official capacities.  
24

25 15. Mr. Mora-Silva is currently under the supervision of the ERO Salt Lake City – Reno  
26 Sub Office, which falls within the jurisdiction of this District. This action does not involve any  
27 real property.  
28

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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2 16. In the context of habeas corpus claims, exhaustion of administrative remedies is a  
3 *prudential* requirement rather than a *jurisdictional* one, as it is not explicitly required by statute.  
4 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Courts have discretion to waive  
5 prudential exhaustion where administrative remedies are inadequate or ineffective, when  
6 pursuing them would be futile, when irreparable harm would result, or where the administrative  
7 process would be void. *Id.* (citing *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). The  
8 burden is on the party seeking waiver of prudential exhaustion to demonstrate that at least one of  
9 the *Laing* factors applies. *Aden v. Nielsen*, 2019 WL 5802013, at 2 (W.D. Wash. Nov. 7, 2019).  
10

11 17. In this case, any appeal to the Board is futile in light of *Matter of Yajure Hurtado*, 29  
12 I&N Dec. 216 (BIA 2025)." The Ninth Circuit has made clear that exhaustion is not required  
13 where administrative recourse would be futile—such as when the agency’s position on the  
14 relevant issue is already established and the outcome of the appeal is certain. *El Rescate Legal*  
15 *Servs., Inc. v. Exec. Off. of Imm. Rev.*, 959 F.2d 742, 747 (9th Cir. 1992).  
16

17 18. The *Matter of Yajure Hurtado* was issued as a precedential decision by the BIA. Under 8  
18 C.F.R. § 1003.1(g)(1), such decisions are binding in all cases involving the same issue(s); *see*  
19 also 8 C.F.R. § 1003.1(d)(1)(i). Because the BIA has already exercised its expertise and reached  
20 a conclusive determination in *Yajure Hurtado*, further exhaustion is unnecessary. The decision  
21 establishes that individuals found inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—that is, those  
22 present in the U.S. without being admitted or paroled—are subject to mandatory detention  
23 without bond under 8 U.S.C. § 1225(b)(2) upon BIA review.  
24

25 19. BIA decisions are binding on immigration judges, and *Hurtado* thus precludes an  
26  
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1 Immigration Judge from finding jurisdiction over noncitizens like Mr. Mora-Silva to hold a  
2 custody redetermination hearing. Therefore, judicial intervention enjoining Respondents from  
3 preventing Mr. Mora-Silva from having a bond hearing pursuant to the holding in *Hurtado* is  
4 necessary to enable him to avail himself of his administrative remedies.

5  
6 20. Therefore, Mr. Mora-Silva respectfully requests that the Court waive the prudential  
7 exhaustion requirement on grounds of futility. As established in *Aden*, 2019 WL 5802013, at 2,  
8 satisfying just one of the *Laing* factors is sufficient; therefore, analysis of the remaining factors is  
9 unnecessary.

#### 10 PARTIES

11  
12 21. Mr. Mora-Silva is a citizen and national of Mexico who last entered the United  
13 States in February 2008 and has continuously resided in the country since that time. He is a  
14 resident of Reno, Nevada, and is currently detained and under the direct custody and control of  
15 Respondents and their agents.

16  
17 22. Respondent Darin Balaam is the Sherriff of the Washoe County Detention Center,  
18 where Petitioner is currently held. He has immediate physical custody of Petitioner pursuant to  
19 the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and,  
20 as such, serves as one of Petitioner's legal custodians.

21  
22 23. Respondent Jason KNIGHT is sued in his official capacity as the Acting Director of the  
23 Salt Lake City Field Office of U.S. Immigration and Customs Enforcement. Respondent  
24 KNIGHT is a legal custodian of Petitioner and has authority to release him.

25  
26 24. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official  
27  
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1 capacity. Among other things, ICE is responsible for the administration and enforcement of the  
2 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,  
3 he is the legal custodian of Mr. Mora-Silva.

4 25. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity.  
5 DHS is the federal agency encompassing ICE, which is responsible for the administration and  
6 enforcement of the INA and all other laws relating to the immigration of noncitizens. In her  
7 capacity as Secretary, Respondent Noem has responsibility for the administration and  
8 enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland  
9 Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. §  
10 1103(a). Respondent Noem is the ultimate legal custodian of Mr. Mora-Silva.  
11

12 26. Respondent Pam BONDI is the Attorney General of the United States and the most senior  
13 official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the  
14 authority to interpret immigration laws and adjudicate removal cases. The Attorney General  
15 delegates this responsibility to the Executive Office for Immigration Review (EOIR), which  
16 administers the immigration courts and the BIA.  
17





#### 18 **STATEMENT OF FACTS**

19  
20 Mr. Mora Silva is a 36-year-old native and citizen of Mexico. He entered the United States  
21 on or around February 2008 through Nogales, Arizona, without inspection, admission, or parole.  
22 Since his entry in 2008, Mr. Mora Silva has remained continuously present in the United States  
23 and has never departed the country.  
24

25 Mr. Mora Silva has resided continuously in the Reno–Sparks area since 2008, a period  
26 exceeding sixteen years. During this time, he established permanent ties to the community.  
27 Importantly, even after prior contact with immigration authorities and earlier removal  
28

1 proceedings that were ultimately terminated, Mr. Mora Silva did not abscond, evade proceedings,  
2 or depart the United States, strongly indicating that he will continue to comply with immigration  
3 court obligations.

4 Mr. Mora Silva is also the father of four United States citizen children with his ex-wife:

5  (age 16),  (age 14),  (age 11), and  (age 2). He shares custody of  
6 his children and remains actively involved in their lives. His custodial responsibilities require his  
7 ongoing physical presence in the Reno area. In addition, Mr. Mora Silva has a long and stable  
8 employment history in the landscaping industry. If released, he will immediately return to work  
9 with Green Diamond Landscaping, a local landscaping agency. Mr. Mora Silva has also filed  
10 federal tax returns since 2008, demonstrating long-term responsibility and compliance with legal  
11 obligations. Such sustained tax compliance over more than a decade is a significant indicator of  
12 stability and reliability.  
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14

15 ***Commencement of immigration proceedings***

16 On October 22, 2025, Mr. Mora Silva was arrested in Reno, Nevada, and charged under the  
17 Reno Municipal Code and Nevada Revised Statutes with the following offenses:  
18

- 19
- Reno Municipal Code § 8.06.010(b)(1) – Obstructing or Resisting a Peace Officer  
20 (Physical);
  - NRS § 485.187 – Owner Required to Provide Proof of Insurance; and  
21
  - NRS § 482.545.2 – Display of Bogus Vehicle Registration / Plate / Title.  
22  
23

24 At the time of the arrest, Mr. Mora Silva was with his fiancée and traveling to the grocery  
25 store. He maintains that he had not committed any substantive criminal offense prior to the  
26 encounter with law enforcement, but rather was targeted by ICE.

27 Subsequently, Mr. Mora-Silva pled nolo contendere to the following charges:  
28

- 1 • Reno Municipal Code § 8.06.010(b)(1) – Obstructing or Resisting a Peace Officer; and
- 2 • NRS § 485.187 – Proof of Insurance Required.

3 The charge under NRS § 482.545.2 for display of bogus vehicle registration or plate was  
4 dismissed.

5 On October 28, 2025, the Department of Homeland Security (DHS) initiated removal  
6 proceedings against Mr. Mora-Silva by filing a Notice to Appear (NTA), charging him as  
7 removable pursuant to INA § 212(a)(6)(A) for being present in the United States without  
8 admission or parole. He was additionally charged as removable pursuant to INA § (a)(7)(A)(i)(I).

9 The NTA stated:  
10

- 11 1. You are not a citizen or national of the United States;
- 12 2. You are a native of Mexico and a citizen of Mexico;
- 13 3. You entered the United States at or near UNKNOWN, on or about unknown date;
- 14 4. You were not then admitted or paroled after inspection by an Immigration Officer.
- 15 5. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry  
16 permit, border crossing card, or other valid entry document required by the  
17 Immigration and Nationality Act; and/or
- 18 6. You are an immigrant not in possession of a valid unexpired passport, or other suitable  
19 travel document, or document of identity and nationality.
- 20

21 The NTA further charged him as being an alien present in the United States who has not  
22 been admitted or paroled.

23 After detaining Mr. Mora-Silva, ICE did not initially set a bond. On January 5, 2026, Mr.  
24 Mora-Silva filed a request for a bond redetermination hearing before the Immigration Court in  
25 Las Vegas, Nevada. In support of his request, he submitted evidence demonstrating that he did  
26 not pose a danger to the community or a flight risk.  
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1 A bond hearing was conducted on January 16, 2026, before Immigration Judge Lindsay  
2 Roberts. At that time, the Department asserted that Mr. Mora-Silva was subject to mandatory  
3 detention pursuant to 8 U.S.C. § 1225(b) notwithstanding the *Maldonado Bautista* decision,  
4 thereby precluding the Court from exercising bond jurisdiction. The Immigration Judge  
5 ultimately agreed that was the position of EOIR and that she lacked jurisdiction pursuant to *Matter*  
6 *of Yajure Hurtado*. However, in the alternative, she explicitly stated that if jurisdiction were  
7 proper, she would find that Mr. Mora-Silva does not pose a flight risk nor a danger to the  
8 community. She further indicated that she would have set bond in the amount of \$1,500.  
9

10 Mr. Mora-Silva's ongoing detention has caused significant hardship to his U.S. citizen  
11 minor children, who are suffering emotional distress as a result of the prolonged separation  
12 from their father. His absence has disrupted their daily stability and well-being, as they depend  
13 on him for both emotional and financial support, resulting in substantial financial strain and  
14 emotional hardship.  
15

16 Additionally, Mr. Mora-Silva's detention has impeded his ability to meaningfully  
17 participate in his removal proceedings by restricting his access to legal counsel, relevant  
18 documents, potential witnesses, and other critical evidence. He himself has endured  
19 considerable mental and emotional distress due to the separation from his family, particularly  
20 given his awareness of the hardships they continue to face in his absence.  
21

## 22 LEGAL FRAMEWORK

### 23 **Right to Liberty and Due Process**

24 The Fifth Amendment of the U.S. Constitution guarantees that "[no] person shall... be  
25 deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.  
26 Importantly, the supreme court has clarified that this protection extends to noncitizens, stating:  
27  
28

1 “Once an alien enters the country, the legal circumstances change, for the Due Process clause  
2 applies to all ‘persons’ within the United States. *Zadvydas v. Davis*, 533 U.S. 678, 699–701  
3 (2001).

4 Civil immigration detention is meant to serve limited regulatory purposes: ensuring  
5 appearance at proceedings and protecting the community. The Supreme Court in *Demore v. Kim*,  
6 538 U.S. 510 (2003), emphasized that detention may only last for the “brief period necessary  
7 for... removal proceedings” and cannot be punitive.  
8

9 Where detention extends beyond those limited purposes or rests on mere allegations, it  
10 violates due process. As the Court stressed in *Zadvydas*: “freedom from imprisonment – from  
11 government custody, detention, or other forms of physical restraint – lies at the heart of the liberty  
12 that the Clause protects.” 533 U.S. at 690.  
13

#### 14 **Civil Nature of Immigration Detention**

15 The Supreme Court has repeatedly held that immigration detention is civil, not punitive. In  
16 *Bell v. Wolfish*, 441 U.S. 520, 535 (1979), the Court explained: “If a restriction or condition is not  
17 reasonably related to a legitimate governmental objective, it amounts to punishment.”  
18

### 19 **FIRST CAUSE OF ACTION**

#### 20 **I. Procedural Due Process**

21 Under the Due Process Clause of the Fifth Amendment to the United States Constitution,  
22 no person shall be “deprived of life, liberty, or property, without due process of law.” U.S. Const.  
23 amend. V. That interest is particularly weighty when government detention is at issue. “Freedom  
24 from imprisonment—from government custody, detention, or other forms of physical restraint—  
25 lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533  
26 U.S. 678, 690, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).  
27  
28

1 These due process rights apply to noncitizens residing in the United States. The Supreme  
2 Court has firmly established that "the Due Process Clause applies to all 'persons' within the  
3 United States, including aliens, whether their presence here is lawful, unlawful, temporary, or  
4 permanent." *Zadvydas*, 533 U.S. at 693; *see also Trump v. J.G.G.*, 604 U.S. 670, 673, 145 S. Ct.  
5 1003, 221 L. Ed. 2d 529 (2025) ("It is well established that the Fifth Amendment entitles aliens  
6 to due process of law in the context of removal proceedings." (*citation omitted*)). Indeed, once a  
7 noncitizen is present in the United States, they have a "weighty" liberty interest in remaining in  
8 the United States, as they stand to lose rights to "stay and live and work" in the country and "to  
9 rejoin [their] immediate family." *Landon v. Plasencia*, 459 U.S. 21, 34, 103 S. Ct. 321, 74 L. Ed.  
10 2d 21 (1982) (*citation omitted*). This is true "regardless of how someone entered the country:  
11 '[O]nce passed through our gates, even illegally,' noncitizens 'may be expelled only after  
12 proceedings conforming to traditional standards of fairness encompassed in due process of law.'" *Make the Rd.*,  
13 2025 WL 2494908, at 10 (*quoting Shaughnessy v. United States ex rel. Mezei*, 345  
14 U.S. 206, 212, 73 S. Ct. 625, 97 L. Ed. 956 (1953)).

15 **a. Petitioner Is Not Subject to Mandatory Detention Under 8 U.S.C. § 1225.**

16 **8 U.S.C. § 1225**

17 Section 1225 applies to "applies to 'applicants for admission,' who are, as relevant here,  
18 noncitizens 'present in the United States who [have] not been admitted.'" *Gomes v. Hyde*, 2025  
19 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at 2 (D. Mass. July 7, 2025) (*quoting* 8 U.S.C. §  
20 1225(a)(1)). Under this Section, all applicants must be inspected by an immigration officer. 8  
21 U.S.C. § 1225(a)(3). Under subsection (b), certain applicants for admission may be subject to  
22 removal proceedings. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108-09, 140 S. Ct.  
23 1959, 207 L. Ed. 2d 427 (2020). Because Section 1225 is mandatory, a "noncitizen detained  
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1 under Section 1225(b)(2) may be released only if he is paroled 'for urgent humanitarian reasons  
2 or significant public benefit.'" Gomes, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at 1  
3 (emphasis added). However, Section 1225(b) only "authorizes the Government to detain certain  
4 aliens seeking admission into the country." 8 U.S.C. § 1225(b). (emphasis added).

5 **8 U.S.C. § 1226**

6 While section 1225 "authorizes the Government to detain certain aliens seeking  
7 admission into the country," section 1226 "authorizes the Government to detain certain aliens  
8 already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583  
9 *U.S.* 281, 289, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018) (emphasis added). Section 1226(a) sets  
10 out the "default rule" for noncitizens already present in the country. *Id.* at 288. It provides:  
11

12  
13 On a warrant issued by the Attorney General, an alien may be arrested and  
14 detained pending a decision on whether the alien is to be removed from the  
15 United States. . . [T]he Attorney General--(1) may continue to detain the arrested  
16 alien; and (2) may release the alien on--(A) bond . . . ; or (B) conditional parole . .

17 8 U.S.C. § 1226(a). "Section 1226(a), therefore, establishes a discretionary detention  
18 framework." *Lopez Benitez*, 2025 WL 2371588, at 3 (*internal citations omitted*). An immigration  
19 officer makes the initial determination to either detain or release the noncitizen, but after that  
20 decision has been made, the noncitizen may request a bond hearing before an immigration judge.  
21 8 C.F.R. § 1236.1(c)(8), (d)(1). At any such bond hearing, "the burden is on the non-citizen to  
22 'establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger  
23 to persons or property, is not a threat to the national security, and does not pose a risk of flight.'" *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017) (*citing In re Guerra*, 24 I. & N. Dec.  
24 37, 38 (BIA 2006)).  
25  
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1 Recently, Congress amended 8 U.S.C. § 1226. While Section 1226(a) is a discretionary  
2 framework, Congress added two new mandatory detentions to Section 1226 codified in Section  
3 1226(c) through the Laken Riley Act. Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025). Added as a  
4 two-step process, the Attorney General must detain a noncitizen if (1) they are inadmissible  
5 because they are in the United States without being admitted or paroled, obtained documents or  
6 admission through misrepresentation or fraud, or lacks valid documentation and (2) "is charged  
7 with, is arrested for, is convicted of, admits having committed, or admits committing acts which  
8 constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law  
9 enforcement officer offense, or any crime that results in death or serious bodily injury to another  
10 person." U.S.C. §§ 1226(c)(1)(E)(i)-(ii).

11  
12  
13 "Summarizing the relevant distinctions. . . noncitizens detained under Section 1225(b)(2)  
14 must remain in custody for the duration of their removal proceedings, while those detained under  
15 Section 1226(a) are entitled to a bond hearing before an [immigration judge] at any time before  
16 entry of a final removal order." *Vazquez v. Bostock*, 779 F. Supp.3d 1239, 1247 (W.D. Wash.  
17 2025). In other words, Section 1225(b) "supplement[s] § 1226's detention scheme." *Rodriguez*  
18 *Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022).

19  
20 **i. Section 1225(b)(2)(A) Does Not Apply to Mr. Mora-Silva.**

21 Here, the government contends that Mr. Mora-Silva is properly detained under Section  
22 1225 because he is "seeking admission" into the United States, even though he has been in the  
23 United States for the last seventeen years.

24  
25 The text of Section 1225 reads as, an "applicant for admission" is "an alien present in the  
26 United States who has not been admitted or who arrives in the United States." 8 U.S.C. §  
27 1225(a)(1). "Admission" and "admitted" are defined as "the lawful entry of the alien into the  
28

1 United States after inspection and authorization by an immigration officer." 8 U.S.C. §  
2 1101(a)(13). Section 1226 more broadly states that a noncitizen can be detained on "a warrant  
3 issued by the Attorney General." 8 U.S.C. § 1226(a).

4 The question before the Court is whether "an alien present in the United States who has  
5 not been admitted" includes someone like Mr. Mora-Silva, who is not presently seeking  
6 admission and has been in the United States for the last seventeen years without inspection or  
7 authorization. In other words, present without admittance.

9 Section 1225 is titled "*Inspection by immigration officers; expedited removal of*  
10 *inadmissible arriving aliens; referral for hearing,*" and the inclusion of the term "*arriving*"  
11 indicates that the statute applies specifically to noncitizens who are arriving at the border, rather  
12 than those already present in the United States. *Pizarro Reyes*, 2025 U.S. Dist. LEXIS 175767,  
13 2025 WL 2609425, at 5. This interpretation is supported by the statutory text, which centers on  
14 inspection procedures for individuals entering as "crewmen" or "stowaways." 8 U.S.C. §  
15 1225(b)(2). These narrow and specific categories of entry suggest that § 1225 applies only to  
16 noncitizens at the border or a port of entry who are actively seeking admission to the United  
17 States. *See Pizarro Reyes*, 2025 WL 2609425, at 5 (citing *Dubin v. United States*, 599 U.S. 110,  
18 118, 143 S. Ct. 1557, 216 L. Ed. 2d 136 (2023)). This analysis supports a more limited  
19 interpretation of § 1225. *Id.*

22 Beyond its title, the placement and context of Section 1225 within the broader statutory  
23 framework offer further interpretive guidance. Courts are instructed to interpret statutes as a  
24 whole, not as isolated provisions. *King v. Burwell*, 576 U.S. 473, 486, 135 S. Ct. 2480, 192 L.  
25 Ed. 2d 483 (2015). In this context, the Supreme Court has identified Section 1226 as the "default  
26 rule" governing the detention of noncitizens who are already physically present in the United  
27 States.  
28

1 States. *Jennings v. Rodriguez*, 583 U.S. 281, 288, 301, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018).  
2 As noted in *Pizarro Reyes*, the structure of the statute suggests that Congress intentionally placed  
3 the broader, catchall provision of Section 1226 after the more specific and narrowly focused  
4 Section 1225 to encompass noncitizens who do not fall within the categories defined in Section  
5 1225. *Pizarro Reyes*, 2025 U.S. Dist. LEXIS 175767, 2025 WL 2609425, at 5; *see also Vazquez*,  
6 779 F. Supp. 3d at 1258.  
7

8 Recent Congressional amendments must also be taken into account—specifically, the  
9 Laken Riley Act, which modified Section 1226, as discussed above. As the Supreme Court has  
10 recognized, “when Congress acts to amend a statute, we presume it intends the amendment to  
11 have real and substantive effect.” *Stone v. I.N.S.*, 514 U.S. 386, 397, 115 S. Ct. 1537, 131 L. Ed.  
12 2d 465 (1995). The Laken Riley Act introduced a new subsection under Section 1226(c),  
13 imposing mandatory detention for certain individuals, within an otherwise discretionary  
14 detention framework. As other courts have observed, this amendment reflects Congress’s intent  
15 to expand specific mandatory detention provisions without altering the default applicability of  
16 Section 1226 to noncitizens already present in the United States.  
17  
18

19 If § 1225(b)(2) already mandated detention of any alien who has not been  
20 admitted, regardless of how long they have been here, then adding §  
21 1226(c)(1)(E) to the statutory scheme was pointless' and this Court, too, 'will not  
22 find that Congress passed the Laken Riley Act to 'perform the same work' that  
23 was already covered by § 1225(b)(2).  
24

25 *Lopez-Campos v. Raycraft*, 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379 at 8 (E.D.  
26 Mich. Aug. 29, 2025) (*quoting Maldonado v. Olsen*, 2025 U.S. Dist. LEXIS 158321, 2025 WL  
27 2374411, at 12 (D. Minn. Aug. 15, 2025)). If "Congress had intended for Section 1225 to govern  
28 all noncitizens present in the country, who had not been admitted, then it would not have recently

1 adopted an amendment to Section 1226 that prescribes a subset of noncitizens be exempt from  
2 the discretionary bond framework."

3 In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA described it as a  
4 "legal conundrum" for an individual to be physically present in the United States without having  
5 been admitted, yet no longer considered "seeking admission." *Id.* at 221. The BIA concluded that  
6 such individuals fall under Section 1225 because they fail to cite any legal authority establishing  
7 that, after residing unlawfully in the interior for an unspecified period, they are no longer  
8 applicants for admission. *Id.*

9  
10 We respectfully urge this Court to reject that interpretation for several reasons. First,  
11 courts are not required to defer to agency interpretations of law simply because a statute is  
12 ambiguous. As the Supreme Court recently held in *Loper Bright Enterprises v. Raimondo*, 603  
13 U.S. 369, 412–13, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024), "[c]ourts must exercise their  
14 independent judgment in deciding whether an agency has acted lawfully," and under the  
15 Administrative Procedure Act, deference is not warranted solely due to statutory ambiguity.  
16

17  
18 Second, the structure and context of the Immigration and Nationality Act make it difficult  
19 to classify a noncitizen as "seeking admission" when they have never presented themselves at a  
20 port of entry or made any affirmative attempt to enter. Interpreting the statute to cover  
21 individuals who have lived in the interior for years without lawful status stretches the meaning of  
22 "seeking admission" beyond recognition.

23  
24 Third, while the BIA in *Yajure Hurtado* maintained that its reading of Section 1225(b)  
25 does not render the Laken Riley Act superfluous, *id.* at 222, this position is unconvincing. As  
26 discussed above, if the BIA's interpretation were adopted, it would effectively nullify the recent  
27 statutory amendments enacted through the Laken Riley Act—contrary to the principle that  
28

1 congressional amendments are presumed to have meaningful effect. *See Lopez-Campos*, 2025  
2 U.S. Dist. LEXIS 169423, 2025 WL 2496379, at 8.

3 The Immigration Judge's holding that section 1225(b)(2)(A) applies to all noncitizens  
4 present in the United States without admission is erroneous as the interpretation of the statute (1)  
5 disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between  
6 sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous;  
7 and (4) is inconsistent with decades of prior statutory interpretation and practice.

9 Other district courts have reached a similar conclusion. *See, e.g., Lopez Benitez v.*  
10 *Francis*, No. 25-Civ-5937, 2025 U.S. Dist. LEXIS 153952, 2025 WL 2267803 (S.D.N.Y. Aug.  
11 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at 9 (D. Mass. July 24,  
12 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS 128085, 2025 WL  
13 1869299, at 8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 2025 U.S. Dist. LEXIS 171714,  
14 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486,  
15 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v.*  
16 *Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); Doc. 11, *Benitez v. Noem*,  
17 No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-  
18 JRR, 2025 U.S. Dist. LEXIS 165015, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v.*  
19 *Hyde*, No. 25-11631-BEM, 2025 U.S. Dist. LEXIS 160622, 2025 WL 2403827 (D. Mass. Aug.  
20 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal.  
21 Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn.  
22 Aug. 15, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488,  
23 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157,  
24 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted 2025 U.S.  
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1 Dist. LEXIS 156336, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Doc. 11, *Maldonado Bautista*  
2 *v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, (C.D. Cal. July 28, 2025).

3 Aside from the Board of Immigration Appeals' recent decision in *Matter of Yajure*  
4 *Hurtado*, no authority has been identified that holds noncitizens like Petitioner—who have  
5 resided in the United States for many years—subject to section 1225(b)(2)(A).  
6

## 7 SECOND CAUSE OF ACTION

### 8 **II. Substantive Due Process**

9  
10 Substantive due process forbids arbitrary or punitive detention. As the Supreme Court has  
11 emphasized, “Freedom from imprisonment—from government custody, detention, or other forms  
12 of physical restraint—lies at the heart of the liberty that the Due Process Clause protects.”  
13 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In the context of civil immigration proceedings,  
14 the government's authority to detain is limited to two legitimate purposes: (1) protecting the public  
15 from danger, and (2) ensuring the individual's appearance at future proceedings. *Demore v. Kim*,  
16 538 U.S. 510, 518–19 (2003). Detention that does not serve either purpose amounts to  
17 unconstitutional punishment.  
18

19 In this case, while Mr. Mora-Silva was taken into custody following an arrest the offense was  
20 minor and did not include injuries to anyone. He has submitted extensive evidence establishing  
21 that he is neither a danger to the community nor a risk of flight. Indeed, the Immigration Judge  
22 issued an alternative ruling expressly finding that he does not present a public-safety concern and  
23 is likely to comply with all future proceedings. The Court further stated that, absent the  
24 jurisdictional bar, she would have granted release on bond. As the Supreme Court held in *Bell v.*  
25 *Wolfish*, 441 U.S. 520, 535 (1979), “[i]f a restriction or condition is not reasonably related to a  
26 legitimate governmental objective, it amounts to punishment.” Petitioner's continued detention—  
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1 based on speculation rather than evidence—bears no reasonable relation to a lawful objective and  
2 is therefore punitive and unconstitutional.

3  
4 **a. Application of the *Mathews v. Eldridge* Balancing Test**

5 To determine whether a civil detention violates a detainee's due process rights, courts apply  
6 the three-part balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L.  
7 Ed. 2d 18 (1976). The Court must weigh: (1) the private interest that will be affected by the official  
8 action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and  
9 the probable value, if any, of additional or substitute procedural safeguards; and (3) the United  
10 States' interest, including the function involved and the fiscal and administrative burdens that the  
11 additional or substitute procedural requirement would entail. *Id.* at 335.

12  
13  
14 ***Private Interest***

15 It is beyond dispute that Mr. Mora-Silva has a compelling and constitutionally protected  
16 interest in avoiding continued detention. The right to be free from government-imposed  
17 confinement is among the most fundamental of all liberty interests. As the Supreme Court held in  
18 *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004), “[l]iberty is the most elemental of liberty interests.”  
19 Similarly, in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), the Court reaffirmed that “[f]reedom  
20 from imprisonment—from government custody, detention, or other forms of physical restraint—  
21 lies at the heart of the liberty the Due Process Clause protects.”

22  
23 In assessing due process violations, courts may also examine the conditions of confinement  
24 to determine whether civil detention is effectively indistinguishable from criminal incarceration.  
25 *Martinez v. Noem*, 2025 U.S. Dist. LEXIS 174415, 2025 WL 2598379, at 2 (W.D. Tex. Sep. 8,  
26 2025). Mr. Mora-Silva is currently confined at the Washoe County Detention Center under  
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28

1 conditions that mirror those of penal detention and is unjustly separated from his family. Such  
2 confinement, absent a lawful and individualized justification, is a grave intrusion on his liberty  
3 and runs afoul of due process protections.

#### 4 ***Risk of Erroneous Deprivation***

5 The second *Mathews* factor considers “the risk of an erroneous deprivation of [Petitioner’s]  
6 interest through the procedures used, and the probable value, if any, of additional or substitute  
7 procedural safeguards.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). In this case, that risk is  
8 substantial.  
9

10 Federal Respondents have failed to provide any evidence that Mr. Mora-Silva poses a  
11 danger to the community or is a flight risk. Without such a showing, the likelihood of an  
12 unjustified deprivation of his fundamental liberty interest is unacceptably high. It is important to  
13 reiterate that the Immigration Judge did not find Mr. Mora-Silva to present a danger to the  
14 community of a flight risk. The absence of meaningful procedural safeguards—such as a  
15 constitutionally adequate bond hearing—only amplifies the risk of error and underscores the  
16 urgent need for judicial intervention.  
17

#### 18 ***Government’s Interest***

19 The third and final *Mathews* factor examines “the Government’s interest, including the  
20 function involved and the fiscal and administrative burdens that the additional or substitute  
21 procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).  
22

23 While the government’s interests in protecting the public from dangerous noncitizens and  
24 ensuring an individual’s eventual removal are undeniably important, *Rodriguez Diaz*, 53 F.4th  
25 1189–90, those interests are fully addressed through an individualized bond determination by an  
26 Immigration Judge under § 1226. As the Ninth Circuit has made clear, “the government has no  
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28

1 legitimate interest in detaining individuals who have been determined not to be a danger to the  
2 community and whose appearance at future immigration proceedings can be reasonably ensured  
3 by a lesser bond or alternative conditions.” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir.  
4 2017).

5  
6 Where the government cannot articulate any specific justification for continuing to detain a  
7 noncitizen who has already prevailed—or would prevail—at a proper bond hearing, the  
8 detention ceases to serve a lawful immigration purpose. As Justice Kennedy warned in *Demore*  
9 *v. Kim*, such circumstances raise serious constitutional concerns: “[w]hether the detention is not  
10 to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate  
11 for other reasons.” *Demore*, 538 U.S. 510, 532–33 (Kennedy, J., concurring).

### 12 **Conclusion on Causes of Action**

13  
14 Mr. Mora-Silva’s continued detention violates both procedural and substantive due process.  
15 The Immigration Judge denied his liberty based on a misapplication of the law, and DHS failed  
16 to carry its burden of proving that Mr. Mora-Silva poses a flight risk or danger to the community.  
17 Despite this, his detention persists without any lawful or evidentiary basis.

18  
19 Accordingly, the Constitution requires either Petitioner’s immediate release or, at minimum,  
20 a custody redetermination hearing that fully complies with due process.

### 21 **PRAYER FOR RELIEF**

22 WHEREFORE, Mr. Mora-Silva prays that this Court grant the following relief:

23 (1) Assume jurisdiction over this matter;

24 (2) Declare that the Immigration Judge’s January 16, 2026, Order Denying

25  
26 Motion for Bond Determination and detention of Mr. Mora-Silva was an unlawful exercise of  
27 authority;

1 (3) Order ICE to immediately release Mr. Mora-Silva from his unlawful  
2 detention;

3  
4 (4) Declare that the Immigration Judge's alternative finding is proper and that  
5 jurisdiction exists.

6  
7 (5) Declare that Mr. Mora-Silva cannot be re-arrested unless and until he is  
8 afforded a hearing on the question of whether his incarceration would be lawful—i.e., whether  
9 the government has demonstrated to a neutral adjudicator that he is a danger or a flight risk by  
10 clear and convincing evidence;

11 (6) Award reasonable costs and attorney fees; and

12 (7) Grant such further relief as the Court deems just and proper.

13  
14 Dated this 21st day of January 2026

Respectfully submitted,

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