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5
6 **UNITED STATES DISTRICT COURT**
MIDDLE DISTRICT OF FLORIDA
7

8 JONATHAN ALEXANDER ROSALES
AVILEZ,

Case No.

9 Petitioner,

10 v.

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS AND REQUEST
FOR DECLARATORY AND
INJUNCTIVE RELIEF FOR AN
ORDER TO SHOW CAUSE**

11 JUAN AGUDELO, Acting Field Office
Director of Enforcement and Removal
12 Operations, Miami Field Office, Immigration
and Customs Enforcement;
13 KRISTI NOEM, Secretary, U.S. Department of
Homeland Security; U.S. DEPARTMENT OF
14 HOMELAND SECURITY;
15 PAMELA JO BONDI, U.S. Attorney General;
EXECUTIVE OFFICE FOR IMMIGRATION
16 REVIEW;
DAVID HARDEN, Sheriff of GLADES
17 COUNTY DETENTION CENTER,

18 Respondents.
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INTRODUCTION

1. Petitioner JONATHAN ALEXANDER ROSALES AVILEZ has been residing in the United States since February 2, 2014, and was apprehended by immigration authorities on or about October 1, 2025. Petitioner was in a vehicle traveling for work when the vehicle was pulled over by authorities resulting in the arrest of Petitioner and four (4) other passengers.
2. Petitioner is currently in the physical custody of Respondents at the Glades County Detention Center in Glades County, Florida. He now faces unlawful detention because the Department of Homeland Security (DHS), in direct collaboration with the adjudicative body with jurisdiction over immigrants (the Executive Office of Immigration Review) (EOIR) during contested removal proceedings, have concluded Petitioner is subject to mandatory detention.
3. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i), (7)(A)(i)(I).
4. On July 8, 2025, DHS rolled out a new policy, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
5. Section 1225(b)(2)(A) states that an applicant for admission seeking admission shall be detained for a removal proceeding. It is the position of the Executive Office for Immigration Review (EOIR), which houses both the BIA and immigration judges, that 8 U.S.C. § 1225(b)(2)(A) applies to all individuals who arrived in the United States without

1 documents, regardless of how long they have lived in the United States and regardless of
2 how far they were apprehended from the border.

3 6. This position was recently affirmed, on September 5, 2025, by the Board of Immigration
4 Appeals (BIA or Board). The BIA issued a precedent decision, binding on all immigration
5 judges, holding that an immigration judge has no authority to consider bond requests for
6 any person who entered the United States without admission. *See Matter of Yajure Hurtado*,
7 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject
8 to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

9 7. Petitioner's detention on this basis violates the plain language of the Immigration and
10 Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
11 previously entered and are now residing in the United States. Instead, such individuals are
12 subject to a different statute, § 1226(a), that allows for release on conditional parole or
13 bond. That statute expressly applies to people who, like Petitioner, are charged as
14 inadmissible for having entered the United States without inspection.

15 8. Despite the existence of an order certifying a nationwide class of noncitizens who are in
16 immigration detention and being denied access to a bond hearing based on the
17 government's allegation that they entered the United States without admission or
18 inspection, *see Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM, Central
19 District of California, (Nov. 2025), DHS and Immigration Judges have still maintained that
20 non-citizens, like Petitioner, are subject to mandatory detention and are ineligible for bond.

21 9. On or about December 02, 2024, Petitioner, through counsel, applied for Bond with the
22 Immigration Court which was denied on the premise Petitioner is "an applicant for
23 admission" and the Court did not have jurisdiction per *Matter of Yajure Hurtado*, 29 I&N
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1 Dec. 216 (BIA 2025), and that the class certification under *Bautista v. Noem*, 5:25-cv-
2 01873-SSS-BFM (C.D. Cal.) was not final.

3 10. On or about December 23, 2025, after the protected class certification was final in *Lazaro*
4 *Maldonado Bautista et al*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), Petitioner, through
5 counsel, re-filed a request for Bond with the Immigration Court. On or about January 02,
6 2026, the Immigration Court, without a hearing and without an express order, found “no
7 action required.”

8 11. Respondents’ new legal interpretation is plainly contrary to the statutory framework and
9 contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

10 12. Indeed, the Government itself has made an abrupt about-face on this issue. Respondents
11 should be judicially estopped from asserting their current interpretation of 8 U.S.C. §
12 1225(b)(2)(A), because they previously prevailed in litigation after asserting the opposite
13 interpretation. As explained in *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial
14 estoppel applies when a party assumes a position in a legal proceeding, succeeds in
15 maintaining that position, and then adopts a contrary position in a subsequent proceeding
16 to gain an unfair advantage. Here, Respondents previously, and successfully, argued that
17 individuals who entered the United States without inspection were subject to detention
18 under § 1226(a), and not § 1225(b)(2)(A), and courts accepted that position. Respondents
19 now reverse course and assert that such individuals are subject to mandatory detention
20 under § 1225(b)(2)(A), thereby denying them bond hearings. This shift in legal position
21 undermines the integrity of the judicial process and imposes an unfair detriment on
22 Petitioners who relied on the prior interpretation. Accordingly, Respondents should be
23 estopped from asserting this inconsistent position.
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1 13. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless
2 Respondents provide a bond hearing under § 1226(a) within seven days.

3 **JURISDICTION**

4 14. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Glades
5 County Detention Center in Glades County, Florida.

6 15. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) and (5) (habeas corpus), 28 U.S.C.
7 § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution
8 (the Suspension Clause).

9 16. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,
10 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Administrative
11 Procedure Act at 5 U.S.C.A. § 704.

12 **VENUE**

13 17. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500
14 (1973), venue lies in the United States District Court for the MIDDLE DISTRICT OF
15 FLORIDA, the judicial district in which Petitioner currently is detained.

16 18. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents
17 are employees, officers, and agencies of the United States, and because a substantial part
18 of the events or omissions giving rise to the claims occurred in the MIDDLE DISTRICT
19 OF FLORIDA.

20 **REQUIREMENTS OF 28 U.S.C. § 2243**

21 19. The Court must grant the petition for writ of habeas corpus or order Respondents to show
22 cause “forthwith” why the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order
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1 to show cause is issued, Respondents must file a return “within three days unless for good
2 cause additional time, not exceeding twenty days, is allowed.” *Id.*

3 20. Habeas corpus is “perhaps the most important writ known to the constitutional law . . .
4 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
5 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application
6 for the writ usurps the attention and displaces the calendar of the judge or justice who
7 entertains it and receives prompt action from him within the four corners of the application.”
8 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

9 **PARTIES**

10 21. Petitioner, JONATHAN ALEXANDER ROSALES AVILEZ, is a resident of Miami,
11 Florida.

12 22. Respondent JUAN AGUDELO is the Acting Director of the Miami Field Office of ICE’s
13 Enforcement and Removal Operations division; however, on information and belief, the
14 DHS is rotating their Field Office Director without publishing a schedule of rotation. As
15 such, JUAN AGUDELO or his unknown, unannounced provisional replacement is
16 Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal.
17 He or his acting counterpart is named in his or her official capacity.

18 23. Respondent KRISTI NOEM is the Secretary of the Department of Homeland Security. She
19 is responsible for the implementation and enforcement of the Immigration and Nationality
20 Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms. NOEM
21 has ultimate custodial authority over Petitioner and is sued in her official capacity.
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1 24. Respondent (through its agent Secretary Noem) DEPARTMENT OF HOMELAND
2 SECURITY (DHS) is the federal agency responsible for implementing and enforcing the
3 INA, including the detention and removal of noncitizens.

4 25. Respondent PAMELA JO BONDI is the Attorney General of the United States. She is
5 responsible for the Department of Justice, of which the Executive Office for Immigration
6 Review and the immigration court system it operates is a component agency. She is sued
7 in her official capacity.

8 26. Respondent (through its director Attorney General Bondi) EXECUTIVE OFFICE FOR
9 IMMIGRATION REVIEW (EOIR) is the federal agency responsible for implementing and
10 enforcing the INA in removal proceedings, including for custody redeterminations in bond
11 hearings.

12 27. Respondent, DAVID HARDEN, is the Sheriff of Glades County, Florida and is responsible
13 for the Glades County Detention Center in Moore Haven Florida. He has ultimate authority
14 over the facility where Petitioner is detained and is the immediate custodian responsible
15 for Petitioner's physical custody. Petitioner's present address, at the Glades County
16 Detention Center, is 1297 E. State Road 78, Moore Haven, FL, 33471. Sheriff HARDEN
17 is sued in his official capacity.

18 **LEGAL BACKGROUND**

19 28. The INA prescribes three basic forms of detention for the vast majority of noncitizens in
20 removal proceedings.

21 29. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
22 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are
23 generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§
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1 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or
2 convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

8 32. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

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

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

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

3 36. Judicial estoppel is an equitable doctrine designed to protect the integrity of the judicial
4 process by prohibiting parties from assuming inconsistent positions in litigation to gain
5 unfair advantage. It is “especially” applicable “if it be to the prejudice of the party who has
6 acquiesced in the position formerly taken by him.” *Davis v. Wakelee*, 156 U.S. 680, 689
7 (1895).

8 37. The Supreme Court reaffirmed this principle in *New Hampshire v. Maine*, holding that
9 judicial estoppel applies when: (1) a party’s later position is “clearly inconsistent” with its
10 earlier position; (2) the party succeeded in persuading a court to accept the earlier position,
11 such that acceptance of the later position would create the perception that the court was
12 misled; and (especially) when (3) the party would derive an unfair advantage or impose an
13 unfair detriment on the opposing party if not estopped. 532 U.S. 742, 749–51 (2001). The
14 Court emphasized that these factors are not “inflexible prerequisites or an exhaustive
15 formula,” and that “additional considerations may inform the doctrine’s application in
16 specific factual contexts.” *Id.* at 751.

17 38. In *New Hampshire*, the Court barred the state from asserting a boundary interpretation that
18 contradicted its prior position, which had been accepted by the Court and had yielded a
19 favorable outcome. The Court found that the reversal would “undermine the integrity of
20 the judicial process” and create a “risk of inconsistent court determinations.” *Id.* at 751,
21 755.

22 39. In *Jennings v. Rodriguez*, a case in which the government prevailed, the Department of
23 Homeland Security (DHS) explicitly acknowledged that individuals who have already
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1 entered the United States and are not apprehended within 100 miles of the border or within
2 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not
3 mandatory detention under § 1225(b).

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

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

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

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

18 44. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma,
19 Washington, immigration court stopped providing bond hearings for persons who entered
20 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
22 is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not

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24 ¹ 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.
2 3d 1239 (W.D. Wash. 2025).

3 45. A growing number of federal courts have rejected ICE and EOIR's expanded interpretation
4 of the Immigration and Nationality Act's detention provisions. These courts have
5 consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority
6 applicable in these cases. For example, courts in Florida, Massachusetts, Arizona, New
7 York, Minnesota, California, and Nebraska have reached this conclusion. *See Vasquez*
8 *Carcamo v. Noem*, No. 2:25-cv-00922-SPC-NPM (M.D.F.L. November 7, 2025);
9 *Hinojosa Garcia v. Noem*, No. 2:25-cv-00879-SPC-NPM (M.D.F.L. October 31, 2025);
10 *Grigorian v. Bondi*, No. 25-CV-22914-RAR (S.D.F.L. Sept. 9, 2025); *Gomes v. Hyde*, No.
11 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX
12 DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH)
13 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn.
14 Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez*
15 *Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*,
16 No. 8:25CV494 (D. Neb. Sept. 3, 2025); *Padilla Orellana v. Warden, Glades County*
17 *Detention Center*, 2:25-cv-01195-SPC (M.D.F.L. Jan. 06, 2026); *Mendoza Jacobo v. Ripa*,
18 No. 2:25-cv-1190-KCD (M.D.F.L. Jan. 20, 2026).

19 46. These decisions reflect a clear judicial consensus that the government's reliance on §
20 1225(b)(2) is misplaced in cases involving those whose immigration status lawfully falls
21 under § 1226(a).

22 47. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the
23 INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the
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1 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like
2 Petitioner.

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

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

14 50. Section 1226 therefore leaves no doubt that it applies to people who face charges of being
15 inadmissible to the United States, including those who are present without admission or
16 parole.

17 51. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently
18 entered the United States and were not free to mingle with the general population after
19 being free from official restraint. The statute’s entire framework is premised on inspections
20 at the border of people who are “seeking admission” to the United States. 8 U.S.C. §
21 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention
22 scheme applies “at the Nation’s borders and ports of entry, where the Government must
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determine whether a] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

52. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who is an uninspected entrant. This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

FACTS

53. Petitioner is currently detained by at the Glades County Detention Center in Moore Haven, Florida, at the direction of the U.S. Immigration and Customs Enforcement (ICE) pursuant to a 287(g) agreement between the Glades County Sheriff’s Office and the U.S. Department of Homeland Security.

54. On or about October 1, 2025, Petitioner was in a vehicle traveling for work when the vehicle was pulled over by authorities resulting in the arrest of Petitioner and four (4) other passengers. No criminal charges were filed against Petitioner and he was subsequently detained by ICE officials and confined at the Glades County Detention Center in Moore Haven, Florida.

55. Petitioner has been placed in removal proceedings² and charged with having entered the United States without inspection and being present without valid immigration documents. 8 U.S.C. § 1182(a)(6)(A)(i), § 1182(a)(7)(A)(i).

56. Petitioner has sought custody redetermination with the Immigration Judge twice. The first attempt, denied on December 15, 2025³, was denied by the Immigration Judge due to a

² The Petitioner’s Notice to Appear is attached and incorporated herein as **Exhibit 1**.

³ Order of the Immigration Judge, dated December 15, 2025, attached and incorporated herein as **Exhibit 2**.

1 purported lack of jurisdiction based on the Board of Immigration Appeals decision in
 2 *Matter of Yajure Hurtado*, 29 I&N Dec 216 (BIA 2025) and that the class certification
 3 under *Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal.) was not final.

4 57. On or about December 23, 2025, after the protected class certification was final in *Lazaro*
 5 *Maldonado Bautista et al*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), Petitioner, through
 6 counsel, re-filed a request for Bond with the Immigration Court. On or about January 02,
 7 2026, the Immigration Court, without a hearing and without an express order, found “no
 8 action required.”⁴

9 JENNINGS V. RODRIGUEZ ORAL ARGUMENTS

10 58. During oral argument before the Supreme Court, the government clarified that individuals
 11 who have already effected an entry into the United States are to be placed in INA § 236
 12 proceedings under 8 U.S.C. § 1226(a), rather than INA § 235 proceedings under 8 U.S.C.
 13 § 1225(b), unless they are apprehended within 100 miles of the border and within 14 days
 14 of entry. Justice Sotomayor specifically asked whether unadmitted aliens who are found in
 15 the U.S. illegally fall under mandatory detention under 1225(b) or discretionary detention
 16 under 1226(a). Solicitor General Gershengorn stated: “So they are held under -- if they are
 17 not -- if they are not detained within 100 miles of the border or within 14 days, so they've
 18 been there longer than those two things, then they are under 1226(a) and not 1226(c).”
 19 (Transcript of Oral Argument at 8, *Jennings v. Rodriguez*, No. 15-1204 (U.S. argued Nov.
 20 30, 2016)).

21 59. On page 8, lines 21–25, Solicitor General Gershengorn further clarified that an alien who
 22 entered illegally and resides 50 miles from the border for 20 years “is held under 1226(a)

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 24 ⁴ Screenshot from EOIR Courts & Appeals System (ECAS), reflecting the Immigration Judge finding “no action
 required” on January 2, 2026, attached and incorporated herein as **Exhibit 3**.

1 and that they get a bond hearing under -- and this is at page 156a of the appendix.”

2 (*Id.* at 8).

3 CLAIMS FOR RELIEF

4 COUNT I

5 Violation of 8 U.S.C. § 1226(a) 6 *Unlawful Denial of Bond Hearing*

6 60. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

7 61. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration

8 and Naturalization Service issued an interim rule to interpret and apply IIRIRA.

9 Specifically, under the heading of “Apprehension, Custody, and Detention of

10 [Noncitizens],” the agencies explained that “[d]espite being applicants for admission,

11 [noncitizens] who are present without having been admitted or paroled (formerly referred

12 to as [noncitizens] who entered without inspection) will be eligible for bond and bond

13 redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear

14 that individuals who had entered without inspection were eligible for consideration for

15 bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

16 62. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of

17 applying § 1225(b)(2) to individuals like Petitioner.

18 63. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention

19 and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

20 COUNT II

21 Violation of the Administrative Procedure Act (APA) 22 *Unlawful Denial of Bond*

22 64. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in

23 the preceding paragraphs as if fully set forth herein.

1 65. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens
2 residing in the United States who are subject to the grounds of inadmissibility because they
3 originally entered the United States without inspection or parole. Such noncitizens are
4 detained under § 1226(a), unless they are subject to another detention provision, such as §
5 1225(b)(1), § 1226(c) or § 1231).

6 66. The application of § 1225(b)(2) to bar Petitioner from receiving a bond redetermination
7 hearing before an immigration judge is arbitrary, capricious, and not in accordance with
8 law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

9 **COUNT III**

10 **Violation of Procedural Due Process**

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

13 68. The government may not deprive a person of life, liberty, or property without due process
14 of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody,
15 detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause
16 protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

17 69. Petitioner has a fundamental interest in liberty and being free from official restraint.

18 70. The government's detention of Petitioner without a bond redetermination hearing to
19 determine whether he is a flight risk or danger to others violates his right to due process.

20 **COUNT IV**

21 **Judicial Estoppel**

22 71. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in
23 the preceding paragraphs as if fully set forth herein.
24

1 72. The Government is judicially estopped from asserting that Petitioner is subject to
 2 mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation,
 3 including *Jennings v. Rodriguez*, the Government prevailed, and in doing so argued that
 4 individuals who entered without inspection and were not apprehended near the border or
 5 within 14 days were subject to discretionary detention under § 1226(a), not mandatory
 6 detention under § 1225(b)(2)(A). See *Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg.
 7 at 7–8 (Nov. 30, 2016).

8 73. The Courts historically accepted this asserted position. Now, the Government reverses
 9 course and asserts the opposite interpretation to deny bond hearings. Under *New*
 10 *Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies where a party assumes
 11 a position, prevails, and then adopts a contrary position to gain an unfair advantage. The
 12 Government's reversal undermines the integrity of the judicial process and prejudices
 13 Petitioners who relied on the prior interpretation.

14 PRAYER FOR RELIEF

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

- 16 (1) Assume jurisdiction over this matter;
- 17 (2) Order that Petitioner shall not be transferred outside the MIDDLE DISTRICT OF
 18 FLORIDA while this habeas petition is pending;
- 19 (3) Issue an Order to Show Cause ordering Respondents to show cause why this
 20 Petition should not be granted within three days;
- 21 (4) Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
 22 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
 23 1226(a) within seven days;

- 1 (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
2 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
3 law; and
4 (6) Any further relief the Court deems proper.
5

6 DATED this 26th day of January, 2026.

7 Respectfully Submitted,
8

9 *Nayela Esmail Giga*

10 Nayela Esmail Giga, Esq.

11 Attorney for Petitioner

12 Florida Bar No. 103289

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18

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

20 I represent Petitioner, Jonathan Alexander Rosales Avilez, and submit this verification on
21 his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of
22 Habeas Corpus are true and correct to the best of my knowledge.
23

24 DATED this 26th day of January, 2026.

Nayela Esmail Giga

Nayela Esmail Giga, Esq.

Attorney for Petitioner