UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

Jorge Gonzalez Machuca, Petitioner-Plaintiff, v. Tony Normand, Warden, Folkston D. Ray ICE Processing Center, in his official capacity; LaDeon Francis, ICE Atlanta Field Office Director; U.S. Immigration and Customs Enforcement; U.S. Department of Homeland Security; Todd M. Lyons, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; Kristi Noem, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and Pamela Bondi, *in her official capacity* as Attorney General of the United States, Respondents-Defendants.	C/A No. CV 526-107 PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF Agency number [redacted]

INTRODUCTION

1. Petitioner, Jorge Gonzalez Machuca, is a citizen of Mexico who entered the United States in 2001 without inspection and lives in Baltimore. He is the devoted father of three U.S. citizen children, including a daughter who is now a middle school teacher. He is a welder who has worked for the same employer for thirteen years and is a respected and beloved member of his church and broader community. In April 2023, Petitioner rescued a woman who had been thrown from a bridge by carjackers—an act that was featured on Baltimore television station WBAL-TV.

2. On or about December 4, 2025 at about 6:15 AM, Petitioner left his house to get some items at a gas station before he left for work. Shortly after leaving the parking lot he noticed a car was following him and flashing its lights. Upon pulling over he was approached by a man who introduced himself as "ICE," but did not provide a warrant for Petitioner's arrest. He was told to get out of the car and when he did, he was handcuffed, put into a van with other men, and driven to the Baltimore ICE Field Office.
3. On December 4, 2025, ICE issued Respondent with a Notice to Appear, describing him as a noncitizen "present in the United States." He was transferred to the Folkston D Ray ICE Processing Center in Folkston, Georgia where he remains in detention.
4. This case is one of a flood of cases filed across the country challenging the federal government's authority to require mandatory detention for certain noncitizens while their removal proceedings are in progress. At issue in these cases is the proper interpretation and application of § 1225(b) and § 1226(a). Courts nationwide have rejected the government's new interpretation, concluding that noncitizen residents of the U.S. who are arrested and detained years after entry are subject to detention under § 1226(a) and therefore eligible for bond hearings.
5. Nonetheless, on September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedent decision that abruptly departed from more than three decades of settled law, policy, and practice recognizing that noncitizens arrested inside the United States are entitled to bond hearings under 8 U.S.C. § 1226(a). The BIA held that such individuals are now subject to mandatory detention under 1225(b) and directed Immigration Judges not to conduct bond hearings, concluding that they lack jurisdiction to do so even where bond eligibility would otherwise exist. See *Matter of Yajure Hurtado*, 29 I&N Dec. 216

(BIA 2025) (hereinafter "*Yajure Hurtado*").

6. In U.S. District Court litigation challenging *Yajure Hurtado,* the courts have overwhelmingly rejected the government's new position, concluding that individuals arrested in the interior are detained under § 1226(a) and therefore eligible for bond hearings.

7. On November 25, 2025, the U.S. District Court for the Central District of California certified a nationwide class of noncitizens who, despite having resided in the U.S. for years, were being denied bond hearings due to the government's implementation of the mandatory detention policy under *Yajure Hurtado*. See *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). On December 18, 2025, the District Court entered a Final Judgment declaring that members of the class are detained under 8 U.S.C. § 1226(a), are not subject to mandatory detention under § 1225(b)(2), and are entitled to bond consideration. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873, Doc. 94 at *2 (C.D. Cal. Dec. 18, 2025).

8. Because Petitioner has resided in the United States for almost twenty-five years and was only recently arrested, his detention is governed by 8 U.S.C. § 1226(a), under which he is eligible for release on bond or conditional parole. He seeks declaratory relief that he is detained pursuant to § 1226(a) and its implementing regulations and requests that this Court take judicial notice of the *Maldonado Bautista* class and Final Judgment. Petitioner requests a Writ of Habeas Corpus directing his immediate release from custody. In the alternative, he requests a prompt, full, and fair bond hearing under 8 U.S.C. § 1226(a).

CUSTODY, JURISDICTION, PROCEDURAL REQUIREMENTS, AND VENUE

9. Petitioner is currently in the custody of ICE at the Folkston D. Ray ICE Processing Center in Folkston, Georgia. He is therefore in the "'custody' of [ICE] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). Because Petitioner is detained within the Southern District of Georgia, Waycross Division, venue and personal jurisdiction are proper in this court.

10. The court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), the Fifth Amendment (Due Process), 8 U.S.C. § 1362, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.

11. The Court may grant relief under the habeas corpus statute, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, and the INA, 8 U.S.C. § 1252(e)(2).

12. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention. See *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. Petitioner is not required to exhaust administrative remedies before seeking habeas relief under 28 U.S.C. § 2241 because exhaustion in the immigration habeas context is prudential, not jurisdictional. Courts may excuse exhaustion where administrative remedies are futile, inadequate, or incapable of providing effective relief. See *Santiago-Lugo v. Warden*, 785 F.3d 467, 474–75 (11th Cir. 2015) (exhaustion is judge-made and non-jurisdictional and may be excused in exceptional circumstances); see also *Ali v. Ashcroft*, 346 F.3d 873, 877 (8th Cir. 2003) (prudential exhaustion may be excused where requiring it would serve no purpose).

15. Here, exhaustion would be futile because Immigration Judges lack authority to grant the relief Petitioner seeks. Immigration Judges are employees of the Executive Office for Immigration Review ("EOIR"), a component of the Department of Justice, and operate under the supervisory and precedential authority of the Board of Immigration Appeals ("BIA"). See 8 C.F.R. §§ 1003.1(d)(1), 1003.10(b). As a result, Immigration Judges are bound to follow precedential BIA decisions and may not disregard them. See *Matter of Anselmo*, 20 I. & N. Dec. 25, 31 (BIA 1989) (holding that Immigration Judges are required to follow the Attorney General's direction, which can occur through Board precedent).

16. The BIA's precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), forecloses bond eligibility as a matter of law for individuals in Petitioner's position. Because an Immigration Judge is legally prohibited from granting bond under that decision, any attempt to seek administrative relief would be futile. Requiring

exhaustion under these circumstances would merely prolong an unlawful deprivation of liberty without any possibility of meaningful relief, in violation of due process.

17. Indeed, in the *Maldonado Bautista* Final Judgment, Judge Sunshine S. Sykes found that the Department of Justice issued guidance instructing Immigration Judges to disregard related federal court orders and continue treating *Hurtado* as controlling law, further demonstrating that exhaustion of remedies would be futile and leave detainees without a meaningful path to relief. *Maldonado Bautista*, 2025 WL 3288403, at *9.

18. Requiring exhaustion under these circumstances would also raise serious due process concerns, as it would prolong Petitioner's deprivation of liberty without any meaningful opportunity to be heard. See *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (due process generally requires a hearing before the government deprives a person of liberty); *Mathews v. Eldridge*, 424 U.S. 319, 333–35 (1976). Where, as here, the agency has stripped adjudicators of discretion and predetermined the outcome, exhaustion would amount to a hollow formality inconsistent with fundamental principles of due process.

PARTIES

19. Petitioner, Jorge Gonzalez Machuca is a citizen of Mexico who has resided in the U.S. since 2001. He is currently detained at the Folkston ICE Processing Center in Folkston, Georgia. Without relief from this Court, he faces the prospect of continued detention without any access to a bond hearing.

20. Respondent Tony Normand is sued in his official capacity as Warden of the Folkston ICE Processing Center. In his official capacity, Mr. Cole is Petitioner's immediate custodian.

21. Respondent LaDeon Francis is sued in his official capacity as Field Office Director,

Atlanta Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement ("ICE"). In his official capacity, Respondent Hott is the legal custodian of Petitioner.

22. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

23. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

24. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

STATEMENT OF FACTS

25. Petitioner is a citizen of Mexico who entered the U.S. without inspection in 2001 and has never left. Exhibit A (Passport). He is the father of three U.S. citizen children, one of whom is a middle school teacher. Exhibits B-D (U.S. Birth Certificates). He is beloved in his home, church, volunteer organizations, and workplace, and was the subject of a television news story in 2023 when he rescued a woman who had been thrown over a bridge during a carjacking. Exhibit E (WBALTV Newspaper Article). He has paid his taxes annually since 2002.

26. On information and belief, on December 4, 2025 at about 6:15 AM, Petitioner stopped at a gas station before work to fill up his tank. Upon leaving he noticed that a car seemed to be following him and when it started flashing its lights, Petitioner pulled over on the highway. He was approached by a person who identified himself as ICE and told

Petitioner to get out of the car. When he refused, the person pointed a gun at his face and told him to get out. Petitioner exited his car and was immediately handcuffed and pushed into a van where other men were also being held. Over the next few days he was strongly urged to sign papers but he refused to sign anything until he had a lawyer.

27. Petitioner was served with a Notice to Appear for removal proceedings on December 4, 2025 but has not appeared before an Immigration Judge yet. Shortly thereafter he was transferred to the Folkston ICE Processing Center and continues to be detained there.

28. Although he has now been detained for seven weeks, Petitioner has yet to see an immigration judge. His first scheduled appearance on December 26, 2025 was cancelled, and his second appearance on January 21, 2026 was also cancelled.

29. Consistent with the text of the INA, its implementing regulations, and longstanding agency practice in the interior of the United States, for decades the statutory detention scheme has distinguished between recent border arrivals, who are subject to mandatory detention under 8 U.S.C. § 1225, and noncitizens apprehended well after entry, who are detained pursuant to 8 U.S.C. § 1226 and generally eligible for bond consideration.

30. The government's current position, treating all individuals who entered without inspection as "applicants for admission" subject to mandatory detention under § 1225(b)(2)(A), regardless of the timing or circumstances of their apprehension–represents a sharp departure from that framework.

31. Absent relief from this Court, Petitioner faces the prospect of continued detention without any opportunity for a bond hearing.

LEGAL HISTORY

32. The INA prescribes three basic forms of detention for noncitizens in removal

proceedings.

33. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

34. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

35. Third, the INA authorizes detention of noncitizens who have received a final order of removal for purposes of effectuating their removal. *See* 8 U.S.C. § 1231(a)–(b).

36. Sections 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Following IIRIRA, the Executive Office for Immigration Review ("EOIR"), which houses the Board of Immigration Appeals and Immigration Courts, clarified by regulation that individuals who entered without inspection are not detained under § 1225, but rather under § 1226(a). See *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)

37. Respondent's interpretation is also inconsistent with recent amendments to 8 U.S.C. § 1226. In 2025, Congress passed the Laken Riley Act, which added § 1226(c)(1)(E) and requires detention of aliens who are inadmissible pursuant to § 1182(a)(6)(A), (D), or (E).

Laken Riley Act, Pub. L. No. 119-1, 139 Stat. __ (2025) (amending § 1226(c)(1)(E)). But under the Respondent's interpretation of these provisions, such aliens are already subject to mandatory detention under § 1225(b)(2), which means the 2025 amendments to § 1226 have no purpose. "Well-established principles of statutory construction require courts to give meaning to each phrase in a statute rather than construing the statute in a way that renders parts of it superfluous." *Arenas-Santoyo v. Dickey*, No. 4:25-cv-05555, ECF No. 12 at 11 (S.D. Tex. Dec. 23, 2025). Accordingly, § 1226(a) is the default detention provision and applies to noncitizens charged as inadmissible but not falling within the mandatory detention grounds.

38. The Supreme Court has made the same distinction between §§ 1225(b)(2) and 1226(a), finding that the government is authorized to detain "aliens seeking admission into the country" under § 1225(b) while detaining "aliens already in the country" under§ 1226(a). See *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018); see also, *Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (interpreting "is arriving" as denoting an ongoing process).

ARGUMENT

39. **8 U.S.C. § 1226(a) Governs Petitioner's Detention**

40. Discretionary detention under 8 U.S.C. § 1226(a) governs noncitizens already present in the United States pending removal proceedings. See *Jennings v. Rodriguez*, 583 U.S. 281, 289, 297–98 (2018). Although neither the Eleventh Circuit nor the Southern District of Georgia has issued a published decision squarely addressing whether 8 U.S.C. § 1225(b)(2) applies to long-present noncitizens apprehended in the interior, district courts within the Eleventh Circuit have consistently held that § 1226(a), not § 1225(b)(2),

governs the detention and bond eligibility of noncitizens who have entered and been released into the United States.

41. In *Hernandez Lopez v. Hardin*, the U.S. District Court for the Middle District of Florida explained, "It is undisputed that Lopez has been in the United States since at least 2013. His detention is thus governed by § 1226. And as a noncitizen detained under § 1226, Lopez is entitled to a bond hearing. Lopez has shown that he is being held in violation of his rights under the INA. He is thus entitled to habeas relief....§ 1226(a) governs detention of those already present in the country, entitling them to bond hearings." *Hernandez Lopez v. Hardin*, No. 2:25-cv-00830-KCD-NPM, slip op. at 11 (M.D. Fla. Oct. 29, 2025)

42. In the absence of controlling circuit authority, district courts may rely on persuasive authority from other federal courts nationwide that have come to the same conclusion, finding that § 1225(b) applies only to noncitizens "seeking admission" at the border or a port of entry, and that once a noncitizen is encountered in the interior after entry and release, DHS's detention authority arises under § 1226(a), which provides for individualized custody determinations and bond. See, e.g., *Fernando de la Cruz Castro v. Noem*, No. 6:25-cv-3388-MDH, U.S. Dist. LEXIS ___ (W.D. Mo. S.D. 2025) at *8 (granting habeas petition and finding Respondent's interpretation of §1225 unsupported by the plain language of the text, statutory construction, or legislative intent); *Barrajas v. Noem*, 2025 WL 2717650, at *3 (S.D. Iowa Sep. 23, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427, at *4 (N.D. Iowa Sept. 23, 2025); *Jose J.O.E. v. Bondi*, 2025 WL 2466670, at *6-7 (D. Minn. Aug. 27, 2025); *Echevarria v. Bondi*, 2025 WL 2821282, at *4 (D. Ariz. Oct. 3, 2025) ("(Many district courts across the country have grappled with the

same issue, and it appears that all but one of them has rejected Respondents' position."). *Hasan v. Crawford*, No. 1:25-cv-1408, 2025 WL 2682255, at *9-19 (E.D. Va. Sept. 19, 2025) ("§ 1225 applies to arriving aliens whereas § 1226 generally governs the process of arresting and detaining aliens present in the United States pending their removal."); *Garcia v. AUew*, No. 1:25-cv-1712, 2025 WL 3111223, at *3 (E.D. Va. Nov. 6, 2025).

43. These decisions align with the Supreme Court's interpretation in *Jennings v. Rodriguez*, which explained that § 1225 governs detention of noncitizens "seeking admission" at the border or port of entry, while § 1226 applies to noncitizens who are "already present in the United States" pending removal proceedings. See *Jennings v. Rodriguez*, 583 U.S. 281, 289 ("Section 1225(b) applies to 'applicants for admission,' while § 1226 applies to aliens already present in the United States who are awaiting the outcome of removal proceedings.").These decisions align with the Supreme Court's interpretation in *Jennings v. Rodriguez* that § 1225 primarily governs those appearing at ports of entry and § 1226 governs those present in the United States pending removal.

44. Petitioner, who entered without inspection and has lived in the U.S. for almost twenty-five years before being apprehended, is neither "seeking admission" nor an "arriving alien." 8 U.S.C. § 1225(b)(2); 8 C.F.R. § 1.2. He is a longtime resident of the U.S., subject to discretionary detention under § 1226(a), and entitled to a hearing at which his request for release on bond must be considered.

46. **§ 1225(b)(2) Governs Only Arriving Aliens Seeking Admission**

A basic canon of statutory construction is that "differences in languages ... convey differences in meaning." *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 698 (2022) (quoting *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017)). In *Hurtado*,

however, the BIA is directing immigration judges to treat the different phrases within the statute as synonymous, in contradiction of this maxim. The statutory language is unambiguous: § 1225(b)(2) applies only to noncitizens "seeking admission" at the border or ports of entry. 8 U.S.C. § 1225(b)(2); 8 C.F.R. § 1.2. Petitioner, who entered the U.S. decades ago and was arrested and detained only recently is not "coming or attempting to come into the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 297–98 (2018). He is a longtime resident who has established a home, livelihood, and community for his family.

48. Moreover, "well-established principles of statutory construction require courts to give meaning to each phrase in a statute rather than construing the statute in a way that renders parts of it superfluous." *Arenas Santoyo* at 11 (citing *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant"). But Respondent's interpretation of § 1225(b) would make certain portions of it superfluous. As another court recently explained:

> If, as Respondents argue, § 1225(b)(2)(A) were intended to apply to all "applicant[s] for admission," there would be no need to include the phrase "seeking admission" in the statute. That is, rather than stating that mandatory detention is required for any "applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted," § 1225(b)(2)(A), the statute would instead provide for mandatory detention for any "applicant for admission, if the examining immigration officer determines that [the] alien ~~seeking admission~~ is not clearly and beyond a doubt entitled to be admitted."

Lopez Benitez v. Francis, No. 25-CIV-5937(DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025) (emphasis and strike-through in original); see also,

Castanon-Nava v. US. Dep 't of Homeland Security, No. 25-3050, 2025 WL 3552514, at *8-9 (7th Cir. Dec. 11, 2025) (rejecting the respondents' proffered construction of§ 1225(b)(2)(A) as "violating one of the cardinal rules of statutory construction").

49. Similarly, 8 C.F.R. § 1.2, the implementing regulations for § 1225(b)(2)(A), addresses noncitizens who are "coming or attempting to come into the United States." The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer "seeking admission" or "coming [...] into the United States." *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in INA § 235(b)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

50. **§ 1226(c) Applies Only to Noncitizens With a Criminal Record**

In 2025, Congress amended § 1226(c) only to add mandatory detention grounds for noncitizens inadmissible under 8 U.S.C. § 1182(a)(6)(A). *Laken Riley Act*, Pub. L. No. 119-1, 139 Stat. __ (2025) (amending § 1226(c)(1)(E)). This demonstrates that mandatory detention under § 1226(c) is the exception to detention without access to a bond hearing. Petitioner, by contrast, was released into the United States, maintained authorized status while his asylum application was pending, and has committed no crimes. He therefore falls outside the class of individuals subject to mandatory detention

under § 1226(c) or § 1225(b).

51. **Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19**

The implementing regulations of 8 U.S.C. § 1226(a) confirm that noncitizens detained pending removal proceedings are presumptively eligible for release on bond or conditional parole, absent a specific statutory bar. Under 8 C.F.R. § 236.1(c)(8), ICE may release a detained noncitizen on bond unless the individual is subject to mandatory detention under § 1226(c) or another express statutory prohibition. Likewise, 8 C.F.R. § 1236.1(d) provides that a detained noncitizen "may request a redetermination of custody conditions by an Immigration Judge," and 8 C.F.R. § 1003.19(a) grants Immigration Judges jurisdiction to conduct bond redetermination hearings for noncitizens detained under § 1226(a).

52. Together, these regulations establish a comprehensive framework requiring individualized custody determinations and access to bond hearings for noncitizens detained under § 1226(a), including parolees placed in removal proceedings. Nothing in the regulations authorizes the categorical denial of bond eligibility based solely on a prior entry without inspection, nor do they permit ICE or the BIA to override § 1226(a) by recharacterizing interior detainees as subject to § 1225(b)(2).

53. *Yajure Hurtado* disregards this regulatory scheme by effectively eliminating bond eligibility for a broad class of noncitizens who are detained in the interior and placed in standard removal proceedings. By doing so, Hurtado conflicts with binding DHS and EOIR regulations that remain in force and require that individuals like Petitioner be afforded the opportunity to seek release on bond before an Immigration Judge. Because agency adjudications must conform to duly promulgated regulations, *Yajure Hurtado*

cannot lawfully be applied to deny Petitioner the bond protections guaranteed by § 1226(a) and its implementing regulations.

54. **The Court Need Not Give Deference to Agency Interpretations of Law**

The Board of Immigration Appeals is an administrative agency within the Department of Justice and its decisions are not binding. See 8 C.F.R. § 1003.1(a)(1). *Loper Bright Enters. v. Raimondo* establishes that courts, not agencies, must independently resolve "all relevant questions of law" and must reject agency constructions that conflict with the statute. 603 U.S. 369, 392 (2024) (quoting 5 U.S.C. § 706). As the issue in this case "boils down to a matter of statutory interpretation," it "belong[s] historically within the province of the courts," and this Court should give no deference to the Board's new legal interpretation. *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *3 (E.D. Mich. Sept. 9, 2025) (quoting *Shala/av. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000)). The BIA's expansive reading of § 1225(b)(2) in *Matter of Hurtado* therefore warrants no deference.

55. **Nationwide Class Action Confirms Petitioner's Bond Eligibility**

The nationwide class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025), reinforces that individuals detained under the government's current interpretation of *Hurtado* are entitled to bond under § 1226(a). Petitioner falls within the class, as he entered without inspection and has resided here for more than two decades. He is eligible for a bond hearing pursuant to § 1226(a).

CONCLUSION

Because Petitioner is detained under 8 U.S.C. § 1226(a) and is not subject to mandatory

detention under § 1225(b)(2) or § 1226(c), he is entitled to a bond hearing or immediate release from custody. The Court should grant the Writ of Habeas Corpus to enforce Petitioner's statutory and constitutional rights.

COUNT I
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

1. Petitioner restates and realleges all paragraphs as if fully set forth here.
2. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
3. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).
4. Petitioner has not been, and will not be, provided with a bond hearing as required by law.
5. Petitioner's continuing detention is therefore unlawful.

COUNT II
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19 Unlawful Denial of Release on Bond

1. Petitioner restates and realleges all paragraphs as if fully set forth here.
2. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Under the heading of *Apprehension, Custody, and Detention of [Noncitizens]*, the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323.
3. Immigration judges have the authority to grant bond to noncitizens in removal

proceedings under 8 C.F.R. § 1236.1(d)(1). The only exceptions to this authority are for noncitizens subject to final orders of removal or noncitizens referenced in 8 C.F.R. § 1003.19. There are five categories of noncitizens for whom immigration judges may not grant bond under 8 C.F.R. § 1003.19(h)(2): (1) noncitizens in exclusion proceedings; (2) "[a]rriving aliens in removal proceedings;" (3) noncitizens described in 8 U.S.C. § 1227(a)(4); (4) noncitizens subject to mandatory detention under § 1226(c); and (5) noncitizens in deportation proceedings under former 8 U.S.C. § 1252(a)(2). 8 C.F.R. § 1003.19(h)(2)(i)(A)-(E).

4. Noncitizens who are present without admission are eligible for bond unless they fall under one of these categories. Petitioner does not have a final order of removal and does not fall under any of the categories listed in 8 C.F.R. § 1003.19(h) and is therefore entitled to a bond hearing.

5. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Violation of Fifth Amendment Right to Due Process

6. Petitioner restates and realleges all paragraphs as if fully set forth here.

7. The Fifth Amendment's Due Process Clause protects the right to counsel and prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

8. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (explaining that due process ordinarily requires notice

and an opportunity to be heard before a deprivation of liberty or property). Petitioner's private interest in freedom from detention is profound.

9. Petitioner's case easily satisfies the due process framework articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which requires balancing (1) the private interest affected; (2) the risk of erroneous deprivation under current procedures and the probable value of additional safeguards; and (3) the government's interest including burdens of additional procedures. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's access to a bond hearing. *Mathews v. Eldridge*, 334–35 (1976) (establishing that due process requires balancing the private interest, risk of erroneous deprivation, and government interest, including administrative burden).

10. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

11. The risk of erroneous deprivation is exceptionally high. Petitioner is the father of three U.S. citizen children and has been separated from them for more than two months. He is eligible for and pursuing a strong application for non-LPR cancellation of removal based on the exceptional and extremely unusual hardship his children will suffer if he is removed. He resides with his spouse and children, is the primary financial support for his family, and maintains deep ties to his community. The emotional, economic and mental trauma caused by Petitioner's forced separation from his children is extensive.

12. In contrast, the Government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be justified to prevent danger to the community or to ensure the noncitizen's appearance at immigration proceedings. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Here, the equities overwhelmingly support granting Petitioner a bond hearing or immediate release.

13. Moreover, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. Here, the equities overwhelmingly support granting Petitioner immediate release or in the alternative, a bond hearing.

14. Considering these factors, and because Petitioner's detention under 8 U.S.C. § 1226(a) without a bond hearing violates both the INA and his constitutional right to due process, he respectfully requests that this Court order his immediate release from custody.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

(1) Assume jurisdiction over this matter;

(2) Set this matter for expedited consideration;

(3) Order that Petitioner not be transferred outside of this District;

(4) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(5) Declare that Petitioner's detention is unlawful;

(6) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days; and

(7) Grant any further relief this Court deems just and proper.

Date: January 26, 2026

Respectfully Submitted,

/s/ Matthew Boles
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VERIFICATION OF PETITION

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

/s/ _Matthew O. Boles
Date: January 26, 2026