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8 UNITED STATES DISTRICT COURT

9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 **Vinod Kumar,**

11  
12 *Petitioner,*

13  
14 v.

15  
16 **PETITION FOR WRIT OF  
17 HABEAS CORPUS**

18 **Patrick Divver**, Field Office Director of  
19 Enforcement and Removal Operations, San  
20 Diego Field Office, Immigration and  
21 Customs Enforcement; **Christopher J.  
22 LaRose**, Warden, Otay Mesa Detention  
23 Center,

24 Case No. '26CV0502 BJC BLM

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*Respondents.*

1  
2 **INTRODUCTION**

3 1. Petitioner Vinod Kumar is in the physical custody of Respondents at  
4 the Otay Mesa Detention Center. He now faces unlawful detention because the  
5 Department of Homeland Security (DHS) and the Executive Office of Immigration  
6 Review (EOIR) have concluded Petitioner is subject to mandatory detention.  
7

8 2. Petitioner entered the United States on May 08, 2023, from Mexico  
9 without inspection. He was apprehended by Customs and Border Patrol (CBP)  
10 shortly thereafter and on May 10, 2023, DHS paroled him into the United States  
11 pursuant to INA 212(d)(5) [8 U.S.C. § 1182(d)(5)], which allows for discretionary  
12 parole into the United States “under such conditions as [DHS] may prescribe only  
13 on a case-by-case basis for urgent humanitarian reasons or significant public  
14 benefit.” His parole was valid until July 11, 2023. As a condition of his parole,  
15 Petitioner was required to report to the Immigration and Customs Enforcement (ICE)  
16 office near his final destination within 60 days or face removal from the United  
17 States.  
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21 3. On that same date, he was issued a Notice to Appear (NTA) in  
22 Immigration Court, charging him as being an alien present in the United States  
23 without admission or parole (8 U.S.C. § 1182(a)(6)(A)(i).  
24

25 4. Thereafter, Petitioner filed an I-589, Application for Asylum. That  
26 application remains pending. As an asylum applicant, Petitioner has work  
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1 authorization and a social security number. Since his entry into the United States,  
2 he has lived productive and law-abiding life.  
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4 5. On December 1, 2025, Petitioner was arrested by ICE without prior  
5 notice. As previously mentioned, petitioner is charged with, inter alia, having  
6 entered the United States without admission or inspection. *See* 8 U.S.C. §  
7 1182(a)(6)(A)(i).  
8

9 6. Based on this allegation, DHS has denied or will deny Petitioner release  
10 from immigration custody, consistent with a new DHS policy issued on July 8, 2025,  
11 instructing all Immigration and Customs Enforcement (ICE) employees to consider  
12 anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United  
13 States without admission or inspection—to be subject to detention under 8 U.S.C. §  
14 1225(b)(2)(A) and therefore ineligible to be released on bond.  
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17 7. Similarly, on September 5, 2025, the Board of Immigration Appeals  
18 (BIA or Board) issued a precedent decision, binding on all immigration judges,  
19 holding that an immigration judge has no authority to consider bond requests for any  
20 person who entered the United States without admission. *See Matter of Yajure*  
21 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such  
22 individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore  
23 ineligible to be released on bond.  
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1 8. Petitioner's detention on this basis violates the plain language of the  
2 Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to  
3 individuals like Petitioner who previously entered and are now residing in the United  
4 States. Instead, such individuals are subject to a different statute, § 1226(a), that  
5 allows for release on conditional parole or bond. That statute expressly applies to  
6 people who, like Petitioner, are charged as inadmissible for having entered the  
7 United States without inspection.  
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10 9. Respondents' new legal interpretation is plainly contrary to the  
11 statutory framework and contrary to decades of agency practice applying § 1226(a)  
12 to people like Petitioner.  
13

14 10. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he  
15 be immediately released.  
16

### 17 JURISDICTION

18 11. Petitioner is in the physical custody of Respondents. Petitioner is  
19 detained at the Otay Mesa Detention Center in San Diego, California.  
20

21 12. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas  
22 corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the  
23 United States Constitution (the Suspension Clause).  
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1 13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the  
2 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.  
3 § 1651.  
4

5 **VENUE**

6 14. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.  
7 484, 493- 500 (1973), venue lies in the United States District Court for the Southern  
8 District of California, the judicial district in which Petitioner currently is detained.  
9

10 15. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e)  
11 because Respondents are employees, officers, and agencies of the United States, and  
12 because a substantial part of the events or omissions giving rise to the claims  
13 occurred in the Southern District of California.  
14

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

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17 16. The Court must grant the petition for writ of habeas corpus or order  
18 Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief.  
19 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return  
20 “within three days unless for good cause additional time, not exceeding twenty days,  
21 is allowed.” *Id.*  
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24 17. Habeas corpus is “perhaps the most important writ known to the  
25 constitutional law . . . affording as it does a *swift* and imperative remedy in all cases  
26 of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis  
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1 added). “The application for the writ usurps the attention and displaces the calendar  
2 of the judge or justice who entertains it and receives prompt action from him within  
3 the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir.  
4 2000) (citation omitted).

## 6 PARTIES

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8 18. Petitioner Vinod Kumar is a citizen of India who has been in  
9 immigration detention since December 1, 2025. After arresting Petitioner ICE did  
10 not set bond and Petitioner is unable to obtain review of his custody by an IJ,  
11 pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216  
12 (BIA 2025).

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14 19. Respondent Patrick Divver is the Acting Director of the San Diego  
15 Field Office of ICE’s Enforcement and Removal Operations division. As such,  
16 Respondent Archambeault is Petitioner’s immediate custodian and is responsible for  
17 Petitioner’s detention and removal. He is named in his official capacity.

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20 20. Respondent Christopher J. LaRose is employed as the Warden of the  
21 Otay Mesa Detention Center, where Petitioner is detained. He has immediate  
22 physical custody of Petitioner. He is sued in his official capacity.

## 24 LEGAL FRAMEWORK

25 21. The INA prescribes three basic forms of detention for the vast majority  
26 of noncitizens in removal proceedings.

1           22. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in  
2 standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in §  
3 1226(a) detention are generally entitled to a bond hearing at the outset of their  
4 detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been  
5 arrested, charged with, or convicted of certain crimes are subject to mandatory  
6 detention, *see* 8 U.S.C. § 1226(c).  
7

9           23. Second, the INA provides for mandatory detention of noncitizens  
10 subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent  
11 arrivals seeking admission referred to under § 1225(b)(2).  
12

13           24. Last, the INA also provides for detention of noncitizens who have been  
14 ordered removed, including individuals in withholding-only proceedings, *see* 8  
15 U.S.C. § 1231(a)–(b).  
16

17           25. This case concerns the detention provisions at §§ 1226(a) and  
18 1225(b)(2).  
19

20           26. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as  
21 part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)  
22 of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582  
23 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this  
24 year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).  
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1 27. Following the enactment of the IIRIRA, EOIR drafted new regulations  
2 explaining that, in general, people who entered the country without inspection were  
3 not considered detained under § 1225 and that they were instead detained under §  
4 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal  
5 of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg.  
6 10312, 10323 (Mar. 6, 1997).

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9 28. Thus, in the decades that followed, most people who entered without  
10 inspection and were placed in standard removal proceedings received bond hearings,  
11 unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c).  
12 That practice was consistent with many more decades of prior practice, in which  
13 noncitizens who were not deemed “arriving” were entitled to a custody hearing  
14 before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R.  
15 Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the  
16 detention authority previously found at § 1252(a)).  
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20 29. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new  
21 policy that rejected well-established understanding of the statutory framework and  
22 reversed decades of practice.  
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1 30. The new policy, entitled “Interim Guidance Regarding Detention  
2 Authority for Applicants for Admission,”<sup>1</sup> claims that all persons who entered the  
3 United States without inspection shall now be subject to mandatory detention  
4 provision under § 1225(b)(2)(A). The policy applies regardless of when a person is  
5 apprehended, and it affects those who have resided in the United States for months,  
6 years, and even decades.  
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8  
9 31. On September 5, 2025, the BIA adopted this same position in a  
10 published decision, *Matter of Yajure Hurtado*. There, the Board held that all  
11 noncitizens who entered the United States without admission or parole are subject  
12 to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.  
13

14 32. Since Respondents adopted their new policies, dozens of federal courts  
15 have rejected their new interpretation of the INA’s detention authorities in over  
16 1,600 decisions. Courts have likewise rejected *Matter of Yajure Hurtado*, which  
17 adopts the same reading of the statute as ICE. In over 1,600 cases<sup>2</sup> decided by over  
18 300 different judges across the United States, the policy and/or *Matter of Yajure*  
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23 <sup>1</sup> Available at [https://www.aila.org/library/ice-memo-interim-guidance-regarding-](https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)  
24 [detention-authority-for-applications-for-admission](https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission).

25 <sup>2</sup> A January 5, 2026, Politico article notes that “More than 300 federal judges, including  
26 appointees of every president since Ronald Reagan, have now rebuffed the administration’s six-  
27 month-old effort to expand its so-called “mandatory detention” policy, according to a POLITICO  
28 analysis of court dockets from across the country. Those judges have ordered immigrants’ release  
or the opportunity for bond hearings in more than 1,600 cases.” See  
[https://www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-](https://www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-detention-00709494)  
[detention-00709494](https://www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-detention-00709494) (Last accessed January 6, 2026).

1 *Hurtado* have been completely rejected. *Barco Mercado v. Francis et al.*, No. 25-  
2 06582, ECF No. 28 at \*9-10, \*35-40 (S.D.N.Y. Nov. 26, 2025). *See also, Demirel*  
3 *v. Federal Detention Center Philadelphia, et al.*, No. 25-5488, 2025 WL 3218243,  
4 at \*1 (E.D. Pa. Nov. 18, 2025) (provided full list of cases as of November 18, 2025).  
5 Court after court has adopted the same reading of the INA's detention authorities  
6 and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-  
7 CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,  
8 No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24,  
9 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099  
10 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-  
11 PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v.*  
12 *Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025);  
13 *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn.  
14 Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx),  
15 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM,  
16 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373  
17 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*,  
18 No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-*  
19 *Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24,  
20 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La.  
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1 Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d  
2 ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No.  
3 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez*  
4 *Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept.  
5 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL  
6 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546,  
7 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-  
8 11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez*  
9 *v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting  
10 that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes  
11 detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at  
12 \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-  
13 RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).

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18 33. Indeed, within the Southern District of California, there have been  
19 numerous decisions rejecting ICE and EOIR’s new interpretation. *See Vasquez*  
20 *Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Valdovinos v. Noem*,  
21 No. 3:25-cv-2439 (S.D. Cal. Sept. 17, 2025); *Esquivel-Ipina v. Larose*, 2025 WL  
22 2998361 (S.D. Cal. Oct. 24, 2025); *Castellanos Lopez v. Warden, Otay Mesa Det.*  
23 *Ctr.*, 2025 WL 3005346 (S.D. Cal. Oct. 27, 2025); *Martinez Lopez v. Noem*, 2025  
24 WL 3030457 (S.D. Cal. Oct. 30, 2025); *Perez-Gonzalez v. LaRose*, 3:25-cv-02727

1 (S.D. Cal. Oct. 30, 2025); *Beltran v. Noem*, 2025 WL 3078837 (S.D. Cal. Nov. 4,  
2 2025); *Garcia Magadan v. Noem*, 2025 WL 3090089 (S.D. Cal. Nov. 5, 2025);  
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4 *Maravilla Amaya v. Noem*, 2025 WL 3182998 (S.D. Cal. Nov. 13, 2025); *Pelico*  
5 *Calel v. Larose*, 2025 WL 3171898 (S.D. Cal. Nov. 13, 2025); *Faizyan v. Casey*,  
6 2025 WL 3208844 (S.D. Cal. Nov. 17, 2025); *Mancilla Ruiz v. Larose*, 2025 WL  
7 3214975 (S.D. Cal. Nov. 18, 2025); *Cruz Vega v. Larose*, 2025 WL 3247778 (S.D.  
8 Cal. Nov. 20, 2025); *Godinez Sales v. Warden, Otay Mesa Detention Center*, 2025  
9 WL 3625867 (S.D. Cal. Dec. 12, 2025); *Arias Hernandez v. Bondi*, 2025 WL  
10 3633040 (S.D. Ca. Dec. 15, 2025).

13 34. Courts have uniformly rejected DHS's and EOIR's new interpretation  
14 because it defies the INA. As the Courts have explained, the plain text of the  
15 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people  
16 like Petitioner.  
17

18 35. Section 1226(a) applies by default to all persons "pending a decision  
19 on whether the [noncitizen] is to be removed from the United States." These removal  
20 hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of  
21 a[] [noncitizen]."  
22

23 36. The text of § 1226 also explicitly applies to people charged as being  
24 inadmissible, including those who entered without inspection. *See* 8 U.S.C. §  
25 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by  
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1 default, such people are afforded a bond hearing under subsection (a). When  
2 Congress creates ‘specific exceptions’ to a statute’s applicability, it proves that  
3 absent those exceptions, the statute generally applies.  
4

5 37. Section 1226 therefore leaves no doubt that it applies to people who  
6 face charges of being inadmissible to the United States, including those who are  
7 present without admission or parole.  
8

9 38. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry  
10 or who recently entered the United States. The statute’s entire framework is  
11 premised on inspections at the border of people who are “seeking admission” to the  
12 United States. 8 U.S.C.

13 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory  
14 detention scheme applies “at the Nation’s borders and ports of entry, where the  
15 Government must determine whether a[] [noncitizen] seeking to enter the country is  
16 admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).  
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19 39. Accordingly, the mandatory detention provision of § 1225(b)(2)(A)  
20 does not apply to people like Petitioner, who have already entered and were residing  
21 in the United States at the time they were apprehended.  
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24 **FACTS**

25 40. Petitioner incorporates herein by reference paragraphs 1-6, *supra*.  
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1 41. Following Petitioner’s arrest and transfer to the Otay Mesa Detention  
2 Center, ICE presumptively issued a custody determination to continue Petitioner’s  
3 detention without an opportunity to post bond or be released on other conditions.  
4

5 42. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable  
6 to consider Petitioner’s bond request.  
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8 43. As a result, Petitioner remains in detention. Without relief from this  
9 court, he faces the prospect of months, or even years, in immigration custody,  
10 separated from his family and community.  
11

12 **IMMEDIATE RELEASE IS WARRANTED**

13 44. The Supreme Court has recognized that “Habeas has traditionally been  
14 a means to secure *release* from unlawful detention.” *Dep’t of Homeland Sec. v.*  
15 *Thuraissigiam*, 591 U.S. 103, 107, 140 S.Ct. 1959, 207 L.Ed.2d 427 (2020)  
16 (emphasis in original). Several decisions from the Eastern District have ordered  
17 immediate release in similar cases. *See eg. Bhatia v. O’Neill, et al.*, No. 25-6809,  
18 Dkt. 8 (E.D. Pa. Dec. 10, 2025); *Rodrigues Pereira v. O’Neill, et al.*, No. 25-6543,  
19 Dkt. 11 (E.D. Pa. Dec. 8, 2025); *Morocho v. Jamison, et al.*, No. 25-05930, 2025  
20 WL 3296300, at \*3 (E.D. Pa. Nov. 26, 2025); *Diallo v. O’Neill, et al.*, 25-06358,  
21 Dkt. 10 (E.D. Pa. Nov. 26, 2025); *Patel v. McShane, et al.*, 25-05975 (E.D. Pa. Nov.  
22 20, 2025). The Court should not depart from this norm.  
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1 45. As noted above, several hundred district court decisions addressing the  
2 legal issues presented in the underlying Petition for Writ of Habeas Corpus and  
3 rejected the government's position. *Barco Mercado v. Francis et al.*, No. 25-06582,  
4 ECF No. 28 at \*9-10, \*35-40 (S.D.N.Y. Nov. 26, 2025). Those Courts have roundly  
5 rejected Government's interpretation of the Immigration and Nationality Act (INA);  
6 the interpretation that is part of the Department of Homeland Security's (DHS)  
7 policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement  
8 (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e.,  
9 those who entered the United States without admission or inspection—to be subject  
10 to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released  
11 on bond; and the interpretation is part of the Board of Immigration Appeals' (BIA  
12 or Board) September 5, 2025 precedent decision, binding on all immigration judges,  
13 holding that an immigration judge has no authority to consider bond requests for any  
14 person who entered the United States without admission. *See Matter of Yajure*  
15 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which determined that such individuals  
16 are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to  
17 be released on bond.  
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24 46. Many of these decisions have found that Respondents' erroneous  
25 application of the law violates the respective detainees constitutional right to Due  
26 Process. *See eg. Cantu-Cortes v. O'Neill*, No. 25-6338, 2025 317639 (E.D. Pa. Nov.  
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1 13, 2025); *Bethancourt Soto v. Soto*, 2025 WL 2976572 (D.N.J. Oct. 22, 2025);  
2 *Sanchez Ballestros v. Noem*, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025);  
3 *Hernandez-Alonso v. Tindall*, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025);  
4 *Rodriguez Serrano v. Noem*, 2025 WL 3122825 (W.D. Mich. Nov. 7, 2025); *Ochoa*  
5 *Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, (N.D. Ill. Oct. 16, 2025);  
6 *Rosales Ponce v. Olson*, 2025 WL 3049785 (N.D. Ill. Oct. 31, 2025); *Loza Valencia*  
7 *v. Noem*, 2025 WL 3042520 (N.D. Ill. Oct. 31, 2025); *Rosado v. Figueroa*, 2025 WL  
8 2337099 (D. Ariz. Aug. 11, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256  
9 (E.D. Cal. Sept. 9, 2025); *Guerrero Lepe v. Andrews*, 2025 WL 2716910 (E.D. Cal.  
10 Sept. 23, 2025); *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); *Garcia*  
11 *Domingo v. Castro*, 2025 WL 2941217 (D.N.M. Oct. 15, 2025); *Artiga v. Genalo*,  
12 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025).

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17 47. Despite this *overwhelming rejection* of Respondents' new policies and  
18 *Matter of Yajure Hurtado*, and hundreds of decisions finding that Respondents are  
19 violating the constitutional rights, **Respondents refuse to relent and continue act**  
20 **in defiance of the law and the Constitution.** It has been reported that ICE  
21 **agents inform detainees that they "have to sue us [ICE] to get out."**  
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1 48. Petitioner is now one of the approximately 73,000 people detained by  
2 Respondents.<sup>3</sup> Respondents' unlawful behavior is pervasive and defies decision  
3 after decision from the Courts. As Petitioner's arrest and detention were blatantly  
4 unlawful from the start, the only commensurate and appropriate equitable remedy to  
5 even partially restore Petitioner is to immediate release him and enjoin the  
6 Government from further similar transgressions. *See eg. Martinez v. McAleenan*,  
7 385 F. Supp. 3d 349, 373 (S.D.N.Y. 2019).  
8  
9

10  
11 **CLAIMS FOR RELIEF**

12 **COUNT I**  
13 **Violation of the INA**

14 49. Petitioner incorporates by reference the allegations of fact set forth in  
15 the preceding paragraphs.  
16

17 50. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not  
18 apply to all noncitizens residing in the United States who are subject to the grounds  
19 of inadmissibility. As relevant here, it does not apply to those who previously  
20 entered the country, were apprehended by ICE or CBP, and were then released on  
21 their own recognizance. Such noncitizens are detained under § 1226(a), unless they  
22 are subject to § 1225(b)(1), § 1226(c), or § 1231.  
23  
24  
25

26  
27 <sup>3</sup> *See* ICE's publicly available detention data, available at:  
<https://www.ice.gov/detain/detention-management>

1 51. The application of § 1225(b)(2) to Petitioner unlawfully mandates his  
2 continued detention and violates the INA.  
3

4 **COUNT II**  
5 **Violation of the Bond Regulations**

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

8 53. In 1997, after Congress amended the INA through IIRIRA, EOIR and  
9 the then-Immigration and Naturalization Service issued an interim rule to interpret  
10 and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and  
11 Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants  
12 for admission, [noncitizens] who are present without having been admitted or  
13 paroled (formerly referred to as [noncitizens] who entered without inspection) will  
14 be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis  
15 added). The agencies thus made clear that individuals who had entered without  
16 inspection were eligible for consideration for bond and bond hearings before IJs  
17 under 8 U.S.C. § 1226 and its implementing regulations.  
18

19 54. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy  
20 and practice of applying § 1225(b)(2) to individual like Petitioner.  
21

22 55. The application of § 1225(b)(2) to Petitioner unlawfully mandates his  
23 continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.  
24

25 **COUNT III**

26 PETITION FOR WRIT OF HABEAS CORPUS - 17  
27  
28

**Violation of Due Process**

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

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

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

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

**PRAAYER FOR RELIEF**

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

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the Southern District of California while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

- 1 d. Issue a Writ of Habeas Corpus requiring that Respondents to release
- 2 Petitioner immediately;
- 3
- 4 e. Declare that Petitioner’s detention is unlawful and in violation of his
- 5 due process rights;
- 6
- 7 f. Award Petitioner attorney’s fees and costs under the Equal Access to
- 8 Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other
- 9 basis justified under law; and
- 10
- 11 g. Grant any other and further relief that this Court deems just and proper.
- 12

13 Respectfully Submitted,

14 Date: January 26, 2026

15 s/ Curtis Lee Morrison

16 Curtis Lee Morrison

17 Red Eagle Law, L.C.

18 5256 S. Mission Road

19 Suite 135

20 Bonsall, CA 92003

21 714-661-3446

22 Email: [curtis@redeaglelaw.com](mailto:curtis@redeaglelaw.com)

23 *Attorney for Petitioner*

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List of Respondents

1. **Patrick Divver**, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement;  
1.
2. **Christopher J. LaRose**, Warden, Otay Mesa Detention Center,