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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEVADA**

Rafael PEÑA TREJO,
*Petitioner*,

v.

Jason KNIGHT, Field Office Director, Salt Lake City Field Office, U.S. Immigration and Custom Enforcement, Enforcement and Removal Operations Division;

Reggie RADER, Chief of Police for the City of Henderson, Henderson Detention Center;

Kristi NOEM, Secretary, United States Department of Homeland Security;

Pamela BONDI, Attorney General of the United States,
*Respondents*.

Case No.

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

## I. INTRODUCTION

1. This petition challenges the unlawful detention of Petitioner, Rafael Peña Trejo, a 57-year-old, from Mexico who has resided in the United States for more than 25 years. Petitioner has no criminal history. However, Mr. Peña Trejo was detained on January 12, 2026, through a targeted ICE enforcement operation. Petitioner has since been held in the custody of the Henderson Detention Center (HDC) in Henderson, Nevada.

2. This detention is a substantial deprivation and burden that puts Petitioner and his family at risk without his parental and financial support. Mr. Peña Trejo is a dedicated father of six children, three of which are under the age of 18. His continued detention places a large emotional and financial strain on his children.

3. Petitioner is a member of a Certified Class as defined in the nationwide class certification in *Maldonado Bautista et. al. v. Ernesto Santacruz Jr. et. al., No. 5:25-cv-01873-SS-BFM (C.D. Cal. Nov. 25, 2025)*:

> **"Bond Eligible Class**: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination."
> [*See generally Class Certification Order* at 15].

He is a noncitizen in the United States without lawful status who (1) entered the U.S. without inspection, (2) was not apprehended upon his arrival, and (3) is not subject to mandatory detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231.

4. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-

CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

5. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

6. Nonetheless, the Department of Homeland Security (DHS) continues to assert that Petitioner, and those similarly situated, are subject to mandatory detention under 8 U.S.C. § 1225(b), because of entry to the United States without inspection, despite Congress's separate detention framework in 8 U.S.C. § 1226(a), which governs interior arrests and provides discretionary bond and immigration-judge ("IJ") review, despite this Court's many orders, and despite the declaratory relief issued (and later clarified on December 18, 2025) in the nationwide class certification in *Maldonado Bautista et. al. v. Ernesto Santacruz Jr. et. al., No. 5:25-cv-01873-SS-BFM (C.D. Cal. Nov. 25, 2025)*.

7. On January 13, 2026, Chief Immigration Judge Teresa L. Riley issued nationwide guidance instructing all immigration judges that: "*Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay or enjoin *Yajure Hurtado*." Immigration judges are instructed to follow the BIA's decision in *Matter of Yajure Hurtado* as binding precedent. The guidance from EOIR states that a "declaratory judgment" is not binding and does not have the

authority to compel specific action. For this reason, Petitioner has not filed a motion for bond with the Immigration Court.

8. Petitioner is eligible for bond because he is a Class member, he is not a danger to the community as he has no prior criminal history, he is not a flight risk due to his family ties and stable employment, and has the possibility of relief from removal through his eligibility to apply for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents under 8 U.S.C. § 1229b(b) with the Immigration Court. Cancellation of Removal under § 1229b(b) requires: physical presence in the U.S. for a continuous period of not less than ten (10) years from issuance of the Notice to Appear (NTA); good moral character during that period as defined in section 101(f) of the INA; no convictions of disqualifying offenses under the INA; and that removal would result in exceptional and extremely unusual hardship to the U.S. citizen spouse, parent, or child. Mr. Peña Trejo has been residing in the U.S. for more than 25 years from the issuance of his NTA. He has no convictions for the good moral character determination and his qualifying relatives are his three minor U.S. citizen children.

9. Mr. Peña Trejo asks this Court to hold that his continued detention under *Yajure Hurtado* is unlawful as a matter of statutory interpretation and due process. *Yajure Hurtado* contradicts the Immigration and Nationality Act's (INA) text, the canon against surplusage, longstanding administrative practice, and Due Process.

10. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

Respondents cannot thus justify Mr. Peña Trejo's present detention and hold him in contravention of law.

11. Petitioner respectfully asks this Court to grant his petition and issue a writ of habeas corpus because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista*.

12. Alternatively, the Court should order Respondents to show cause *within three days*, providing their reasons, if any, as to why his detention is lawful. 28 U.S.C. § 2243. Because Respondents cannot justify Petitoner's ongoing detention, he urges this Court to grant his petition and order Respondents to immediately release him or, at minimum, hold a prompt custody redetermination under § 236(a). 28 U.S.C. § 2241.

## II. JURISDICTION

13. Respondents currently detain Mr. Peña Trejo in civil immigration custody at the Henderson Detention Center (HDC) in Henderson, Nevada.

14. This action arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., the Administrative Procedure Act (APA) 5 U.S.C. § 702, 706, and the Due Process Clause of the Fifth Amendment of the Constitution of the United States.

15. This Court has jurisdiction under Art. I, § 9, cl. 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 2241 (general grant of habeas authority to district courts); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act), and the All Writs Act, 28 U.S.C. § 1651.

16. The federal habeas statute establishes this Court's power to decide the legality of Mr. Peña Trejo's detention and directs courts to "hear and determine the facts" of a habeas petition and to "dispose of the matter as law and justice require." 28 U.S.C. § 2243; *see also Hilton v.*

*Braunskill*, 481 U.S. 775 (1987) (explaining that as far back as the nineteenth century, "the Court interpreted the predecessor of [the habeas statute] as vesting a federal court with the largest power to control and direct the form of judgment to be entered in cases brought up before it on habeas corpus") (internal quotation marks and citation omitted).

17. The Supreme Court, moreover, has held that the federal habeas statute codifies the common law writ of habeas corpus as it existed in 1789. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) ("[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."). The Court has reiterated federal court jurisdiction over habeas claims brought by petitioners in immigration custody. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018).

18. This Court may grant further relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the All Writs Act, 28 U.S.C. § 1651.

## III. VENUE

19. Venue is proper under 28 U.S.C. § 1391(e) because Respondents detain Mr. Peña Trejo in Henderson, Nevada, within the jurisdiction of this Court. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973); *see* 28 U.S.C. § 2241(d).

20. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Nevada.

## IV. REQUIREMENTS OF 28 U.S.C. § 2243, WRIT OF HABEAS CORPUS ISSUANCE, RETURN, HEARING, AND DECISION

21. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Mr. Peña Trejo is not entitled to relief. 28 U.S.C. § 2243. If an

order to show cause is issued, Respondents must file a return "within three days." *Id.* "[F]or good cause[,] additional time, not exceeding twenty days, is allowed." *Id.*

22. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted). Due to the nature of this proceeding, and as the legal issues have already been resolved for class members in *Maldonado Bautista*, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

## V. PARTIES

23. Petitioner Rafael Peña Trejo is a citizen of Mexico who entered the United States over 25 years ago and has resided in the United States since then. ICE detained him and placed him in removal proceedings in January of 2026. ICE currently detains him at the Henderson Detention Center in Henderson, Nevada.

24. Respondent Jason Knight, is sued in his official capacity as the last known Field Office Director, for Salt Lake City Field Office, U.S. Immigration and Custom Enforcement, Enforcement and Removal Operations Division (ERO) for U.S. Immigration and Customs Enforcement (ICE). Respondent Knight oversees the ICE Nevada Field Office and is responsible for Petitioner's detention and removal.

25. Respondent Reggie Rader is sued in his official capacity as Chief of Police for the city of Henderson, Henderson Detention Center. He is an employee of the city of Henderson, which

contracts with ICE to hold noncitizens in its custody at the Henderson Detention Center. He has immediate physical custody of Petitioner.

26. Respondent Kristi Noem is sued in her official capacity as the Secretary of DHS. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority.

27. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. She is responsible for the Department of Justice (DOJ) and oversees the Executive Office for Immigration Review (EOIR) and the immigration court system.

## VI. FACTUAL ALLEGATIONS

28. Petitioner is a 57-year-old man from Mexico. *See* Exh. 1, Mexico Passport biographic page. He has been residing in the United States for over 25 years. Petitioner has five U.S. citizen children, Mirna Pena Cervantes, 26 years old, Nadia Pena Cervantes, 18 years old, K[redacted], 15 years old, M[redacted], 7 years old, and A[redacted], 1 year old. *See* Exh. 2, US birth certificates of [redacted] and [redacted]

29. Petitioner was detained on January 12, 2026, during a targeted enforcement operation. He was merely on his way to work early in the morning when he was detained. Petitioner was placed into ICE custody and transported to the Henderson Detention Center in Henderson, Nevada.

30. Petitioner has no prior arrests or criminal convictions.

31. ICE has held Petitioner without bond, asserting he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

32. For nearly three decades, DHS and EOIR treated individuals arrested in the interior and present without admission as detained under § 1226(a), subject to IJ bond hearings unless § 1225(b)(1), § 1226(c), or §1231 applied.

33. Petitioner's detention has inflicted severe hardship on his family. His significant other along with their US citizen children depend on his care and financial support. *See* Exh. 3, Letter from [redacted]

34. Petitioner's ongoing detention impedes his ability to properly defend against removal, including preparing his relief application, gathering evidence and coordinating with counsel and witnesses. He is currently set for a master hearing on February 2, 2026. *See* Exh. 4, EOIR Automated Case Information printout, listing master hearing on February 2, 2026, at 1pm with Las Vegas Immigration Court.

35. Petitioner remains detained solely because DHS misclassified his custody under §1225(b) rather than § 1226(a), contrary to statutory text, constitutional principles, historical practice, and recent federal court decisions.

## VII. LEGAL FRAMEWORK

**Due Process Clause**

36. The Fifth Amendment's Due Process Clause applies to "all persons" within the U.S., including noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of liberty that the Clause protects." *Id.* at 690. In the immigration context, detention is constitutionally justified only to prevent flight or protect the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

**Statutory Framework for Detention**

37. Generally, removable noncitizens are subject to detention under one of the three statutory provisions under the Immigration and Nationality Act (INA), depending on the context in which they are arrested and deemed removable.

38. First, Section 235(b) 8 U.S.C. § 1225 "applies primarily to [noncitizens] seeking entry into the United States" (applicants for admission) and "mandate[s] detention" of these noncitizens "until certain proceedings have concluded." *Jennings*, 583 U.S. 281 at 297. As the Supreme Court has clarified, this provision applies "at the Nation's borders and points of entry." *Id.* at 287.

39. Second, Section 236 (a) 8 U.S.C. § 1226 "applies to [noncitizens] already present in the United States." *Id.* at 303. § 1226(a) "creates a default rule" permitting detention of removable noncitizens. *Id.* Noncitizens detained under § 1226(a) qualify for release on bond. *Id.* § 1226(c) operates as an exception to § 1226(a)'s general rule in that it mandates detention of noncitizens who "fall[] into one of the enumerated categories involving criminal offenses and terrorist activities." *Id.* Noncitizens who fall under this mandatory detention provision do not qualify for bond.

40. Third, Section 241(b) 8 U.S.C. § 1231 governs detention procedures for individuals with administratively final removal orders. *Maldonado Vazquez*, 2025 WL 2676082, at *4.

**Recent Agency Interpretation of Statutory Detention Provisions**

41. In July 2025, the BIA issued a decision holding that "an applicant for admission who is arrested and detained without a warrant while arriving in the United States" is subject to mandatory detention under 8 U.S.C. § 1225(b)(1), regardless of whether the noncitizen was

arrested at the border or shortly after crossing into the United States. *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025).

42. In doing so, the BIA acknowledged the Supreme Court's characterization of § 1225 as applying to noncitizens "'seeking entry into the United States" and arrested "without a warrant at the border.'" *Id.* at 70 (quoting *Jennings*, 583 U.S. at 303). In *Q. Li*, the BIA acknowledged that § 1226 "'applies to [noncitizens] already present in the United States and arrested on a warrant.'" *Id.* (quoting *Jennings*, 583 U.S. at 302-03).

43. On September 5, 2025, the BIA issued another decision further broadening the classes of noncitizens subject to mandatory detention than the narrower interpretation it had reached two months prior. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 228.

44. In *Matter of Yajure Hurtado*, the BIA reversed decades of well-settled law and procedure, holding that any noncitizen who was not formally admitted into the United States—such as noncitizens who entered without inspection or arriving noncitizens who were arrested at the border and released on parole—are applicants for admission subject to mandatory detention under 8 U.S.C. § 1225(b)(2) regardless of how long they have resided in the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 228.

## VIII. EXHAUSTION

45. Exhaustion is not required as a prudential matter. Prudential exhaustion may be required if "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). None of these factors weigh in favor of requiring exhaustion.

46. First, the agency has already issued instructions to the Immigration Judges in consideration of the type of claim for release Mr. Peña Trejo's would submit. Any bond motion would be denied for jurisdictional grounds under the erroneous limitations set forth in the BIA's statutory interpretation in *Matter of Yajure Hurtado*. *See* Exh. 5, EOIR Chief Immigration Judge email image, January 13, 2026.

47. For the same reasons, addressing Mr. Peña Trejo's challenge would not encourage bypassing the administrative proceedings. Here, the agency has predetermined the legal issue underlying his eligibility for bond, after reversing decades of statutory interpretation and practice. *Maldonado Vazquez*, 2025 WL 2676082, at *10.

48. Similarly, because the agency is bound by the BIA precedent, individualized administrative review of Mr. Peña Trejo's claims is effectively foreclosed. As such, exhaustion would be futile. *Herrera*, 2025 WL 2581792, *8; *Maldonado Vazquez,* 2025 WL 2676082, at *10.

## IX. ARGUMENT

### A. Mr. Peña Trejo's continued detention based on the BIA's erroneous interpretation of § 1225(b)(2) is facially unlawful.

49. As the Supreme Court held, "[w]hen the meaning of a statute [is] at issue, the judicial role [is] to interpret the act of Congress, in order to ascertain the rights of the parties." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (internal quotation marks and citation omitted). Accordingly, "[a] district court may grant a writ of habeas corpus to any person who demonstrates he is in custody in violation of the Constitution or laws of the United States." *Maldonado Vazquez*, 2025 WL 2676082, at *4 (citing 28 U.S.C. § 2241(c)(3)). Because the BIA's sweeping interpretation of 8 U.S.C. § 1225(b)(2)(A) is legally erroneous, this Court must order Mr. Peña Trejo released.

50. The Immigration Judges have been instructed to deny bond request for persons like the Petitioner on the basis of lack of jurisdiction from the BIA's decision in *Matter of Yajure Hurtado,* which holds that all noncitizens who have not been formally admitted into the United States ("applicants for admission") are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) regardless of how long they have lived in the United States. 29 I. & N. Dec. at 228. This holding contradicts the clear language of the statute, judicial precedent, legislative history, and longstanding agency practice. The BIA's erroneous interpretation of § 1225(b)(2) cannot support Mr. Peña Trejo's continued detention.

51. As the Supreme Court has explained, immigration screening and enforcement can be separated into two broad categories: border-related enforcement and interior enforcement. *See Jennings*, 583 U.S. at 287-89.

52. Immigration enforcement "generally begins at the Nation's borders and points of entry." *Id.* at 287. § 1225 governs enforcement actions at the border, where the government determines whether to admit noncitizens who are arriving into the United States or are present but have not been admitted (applicants for admission). *See id.* (quoting 8 U.S.C. § 1225(a)(1)). Noncitizens subject to § 1225 must be detained without the opportunity for a bond hearing for the duration of their proceedings. 8 U.S.C. § 1225(b).

53. There are two broad classes of noncitizens subject to § 1225 mandatory detention. First, § 1225(b)(1), the expedited removal provision, pertains to "arriving" noncitizens and noncitizens who have not been admitted and cannot demonstrate that they have been present in the United States for at least two years. Unless they raise a fear of return to their home country, these noncitizens can be administratively removed without being placed in removal proceedings. *See* 8

U.S.C. § 1225(b)(1). § 1225(b)(2) on the other hand pertains to "applicant[s] for admission" who are "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2).

54. Conversely, § 1226 "applies to [noncitizens] already present in the United States." *Jennings*, 583 U.S. at 303. § 1226(a) "creates a default rule" permitting detention of removable noncitizens. *Id.* Noncitizens detained under § 1226(a) qualify for release on bond. *Id.* § 1226(c) operates as an exception to 1226(a)'s general rule in that it mandates detention of noncitizens who "fall[] into one of the enumerated categories involving criminal offenses and terrorist activities." *Id.* Noncitizens who fall under this mandatory detention provision do not qualify for bond.

55. Notably, § 1226(c) mandates detention for noncitizens based on crime-based inadmissibility grounds, which apply to noncitizens who have not been formally admitted into the United States, as well as deportability grounds, which apply to noncitizens who have been previously admitted but are nonetheless removable. *See* 8 U.S.C. § 1226(c)(1). In fact, Congress recently enacted a new ground for mandatory detention under § 1226(c) under the Laken Riley Act, which mandates detention for noncitizens who are *inter alia* present in the United States without being admitted or paroled, 8 U.S.C. § 1182(a)(6)(A), and who have been charged, arrested, convicted or who admit to having committed certain enumerated crimes. 8 U.S.C. § 1226(c)(1)(E).

56. *Matter of Yajure Hurtado*, however, holds that § 1226 applies only to deportable noncitizens—i.e. those who have been admitted— and that § 1225(b)(2)(A) applies to all noncitizens who have not been properly admitted, regardless of how long they have lived in the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220-21. The plain language of the statute makes it clear that the BIA's sweeping interpretation of § 1225(b)(2) is erroneous.

57. First, the references to inadmissibility grounds, which *only* apply to noncitizens who have not been admitted—"applicants for admission" as the BIA describes them—in § 1226(c)

necessarily mean that noncitizens who are present in the United States without admission and have no disqualifying criminal history are subject to discretionary detention under § 1226(a).

58. The BIA's interpretation in *Matter of Yajure Hurtado*, focuses on the term "applicant for admission" in § 1225 as the only term that could possibly be used to describe a person who has not been admitted and, in doing so, ignoring the full language of the statute. The BIA justified its sweeping interpretation of Section 1225(b) by reasoning that interpreting § 1226 as pertaining to noncitizens residing in the United States who have not been formally admitted would "leave unanswered which applicants for admission would be covered by § [1225](b)(2)(A)" and create an improbable third category of noncitizens who are neither applicant's for admission nor admitted. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221.

59. However, this reasoning demonstrates the BIA's inaccurate assessment of the statute. By focusing too narrowly on the applicant for admission language, the BIA fails to contend with the narrowing clause in § 1225(b)(2), which clarifies that it pertains to applicants for admission who are "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Justice Breyer provides a reasonable interpretation that dissipates this purported tension, explaining that § 1225(b)(2):

> [C]onsists of persons who are neither (1) clearly eligible for admission, nor (2) clearly ineligible. A clearly eligible person is, of course, immediately admitted. A clearly ineligible person—someone who lacks the required documents, or provides fraudulent ones—is "removed ... without further hearing or review." But where the matter is not clear, i.e., where the immigration officer determines that an alien "is not clearly and beyond a doubt entitled to be admitted," he is detained for a removal proceeding. *Jennings*, 583 U.S. 281 at 353 (Breyer, J. dissenting) (internal citations omitted).

Unlike the Board's lack of explanation in *Matter of Yajure Hurtado*, this interpretation contends with the full text of § 1225(b)(2).

60. Accordingly, accepting the BIA's sweeping interpretation of § 1225(b)(2) as pertaining to all noncitizens who have not been admitted into the United States would violate "one of the most basic interpretive canons, that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009) (internal quotations omitted). As the District of Minnesota reasoned on this issue,

> Here, the presumption against superfluity is at its strongest because the Court is interpreting two parts of the same statutory scheme, and Congress even amended the statutory scheme this year when it passed the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), adding Sub§ (c)(1)(E) to § 1226. The Government's novel interpretation of § 1225(b)(2) runs headlong into that new addition. If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless.

*Aguilar Maldonado*, 2025 WL 2374411, at *12.

61. The legislative history further supports a narrow interpretation of § 1225 as inapplicable to noncitizens who reside in the United States but are present without admission.

62. Before the enactment of IIRIRA, "immigration law provided for two types of removal proceedings: deportation hearings and exclusion hearings. A deportation hearing was the "usual means of proceeding against an alien already physically in the United States," while an exclusion hearing was the "usual means of proceeding against an alien outside the United States seeking admission." *Hose v. INS,* 180 F.3d 992, 994 (9th Cir. 1999) (internal citations omitted). Like § 1226(a), the pre-IIRIRA statute allowed for "discretionary release on bond." *Rodriguez v. Boystock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (citing 8 U.S.C. § 1252(a)(1) (1994)).

63. In enacting IIRIRA, Congress was explicit in its intent to "restate" the prior statute's provisions regarding arrest, detention, and discretionary release on bond for unlawfully

present noncitizens. *Id.* (quoting H.R. Rep. No. 104-469, pt. 1, at 229). As such, Congress sought to preserve the longstanding practice of providing removable noncitizens residing in the United States with discretionary bond hearings.

64. It is important to note that the longstanding practice of the government until the last few months had been to treat "noncitizens arrested while living in the United States, including those who entered without inspection, as detained under § 1226(a)." *Id.* at 1260. This "longstanding practice of the government . . . can inform [a court's] determination of what the law is." *Loper Bright*, 603 U.S. at 386.

65. Lastly, This Court has already granted petitioners relief in over a dozen similar challenges. See, e.g., *Herrera v. Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Carlos v. Noem*, No. 2:25-CV-01900-RFBEJY, 2025 WL 2896156 (D. Nev. Oct. 10, 2025); *E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); *Perez Sanchez v. Bernacke*, No. 2:25-CV-01921-RFB-MDC (D. Nev. Oct. 17, 2025); *Aparicio v. Noem*, No. 2:25-CV-01919-RFB-DJA, 2025 WL 2998098 (D. Nev. Oct. 23, 2025); *Dominguez-Lara v. Noem*, No. 2:25-CV-01553-RFB-EJY, 2025 WL 2998094 (D. Nev. Oct. 24, 2025); *Bautista-Avalos v. Bernacke*, 2:25-CV-01987-RFB-BNW (D. Nev. Oct 27, 2025); Arce-*Cervera v. Noem*, No. 2:25-CV-01895-RFB-NJK, 2025 WL 3017866 (D. Nev. Oct. 28, 2025); *Alvarado Gonzalez v. Mattos*, No. 2:25-CV-01599-RFB-NJK (D. Nev. Oct. 30, 2025); *Rodriguez Cabrera v. Mattos*, No. 2:25-CV-01551-RFB-EJY, 2025 WL 3072687 (D. Nev. Nov. 3, 2025); *Berto Mendez v. Noem*, No. 2:25-cv-02602-RFB-MDC (D. Nev. Nov. 7, 2025); among others.

**B. Mr. Peña Trejo's continued detention violates his procedural due process rights.**

66. "[T]he Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).

67. As this Court has recognized, DHS's classification under § 1225 is erroneous and that §1226 governs noncitizens "already in the country." *See Escobar Salgado v. Mattos*, 2:25-CV-01872-RFB-EJY, 2025 WL 3205356, at *22 (D Nev. Nov. 17, 2025) (finding that "the text and canons of statutory interpretation, legislative history, and long history of consistent agency practice, demonstrate . . . that the government's new interpretation and policy under [§ 1225(b)(2)(A)], is unlawful"). Mr. Peña Trejo challenges the application of this policy that deprives him of the opportunity for a bond hearing for a determination on his eligibility for release.

68. To determine whether detention violates procedural due process, courts apply *Mathews*'s three-prong test. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Under *Mathews,* the court weighs the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* Each of these factors weighs in favor of Mr. Peña Trejo.

69. ***Private Interest.*** First, Mr. Peña Trejo's private interest in "freedom from prolonged detention is unquestionably substantial." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (internal quotations omitted). Mr. Peña Trejo's substantial freedom interest

is bolstered by the impact his absence is having on his US citizen children that depend on him emotionally and financially.

70. Moreover, Mr. Peña Trejo has now been detained for over a week away from his family, community, and employment. Mr. Peña Trejo has lived in Nevada, for over 25 years. *See* Exh. 6, Letter from [redacted] His family is here in Las Vegas, Nevada. *See* Exh. 3 and 6. His children depend on him emotionally and financially. Mr. Peña Trejo worries about the hardships his children are facing during his detention due to his daughter [redacted]'s history with mental health issues and his son [redacted]'s autism spectrum disorder and mood dysregulation disorder. *See* Exh. 7, [redacted] and Exh. 8, [redacted] As such, the first *Mathews* prong weighs heavily in Mr. Peña Trejo's favor.

71. ***Risk of Erroneous Deprivation.*** Similarly, the erroneous deprivation factor substantially weighs in Mr. Peña Trejo's favor due to DHS's categorical no-bond stance. There are no existing procedures for Petitioner to challenge his detention pending the conclusion of his removal proceedings without the opportunity for release on bond under the government's policy. The existing procedures set out under § 1226 substantially mitigate the risk of erroneous deprivation of Petitioner's liberty, because they require the government to establish that he presents a flight risk or danger to the community to continue his detention for the pendency of removal proceedings. This procedure will not be accorded to him as the Immigration Judges are denying bond on jurisdictional grounds due to the limitations in *Yajure Hurtado*. The government's application of §1225 in his case elevates the risk of erroneous deprivation to an extraordinarily high level as this application gives ICE and DHS agency officials sole, unguided, and unreviewable discretion to detain Petitioner without any individualized showing of why his

detention is warranted. As such, the second *Mathews* factor also weighs heavily in favor of granting Petitioner recognition of his procedural protections under §1226(a).

72. ***Government's Interest.*** Lastly, the government's interest and burden resulting from additional process also weighs in favor of Mr. Peña Trejo. While the government may have an interest in detaining dangerous noncitizens or securing a noncitizen's removal, Mr. Peña Trejo falls under neither of these categories. The government's interests are broadly safeguarded by the statutory mandatory detention scheme and the Immigration Judges authority to make discretionary bond determinations based on a review of the circumstances of the case against sound legal principles. *Maldonado Vazquez*, 2025 WL 2676082, at *21.

**C. Mr. Peña Trejo's continued detention violates his substantive due process rights.**

73. Substantive due process protects individuals from government action that unduly interferes with their fundamental rights. *Regino v. Staley*, 133 F.4th 951, 960 (9th Cir. 2025). When a fundamental right is at risk, due process requires the government to have a compelling state interest and to tailor its actions narrowly to serve that interest. *Id.*

74. It is well-established that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas,* 533 U.S. 678 at 690. As such, freedom is the norm and the government must justify a noncitizen's detention by a compelling interest and narrowly tailored means.

75. Generally, the government justifies its detention of noncitizens based on its interest in preventing danger to the community and minimizing flight risk of removable noncitizens. *See id.* Those government interests are adequately protected by the INA's mandatory detention provisions and individualized bond adjudications by Immigration Judges. Here, Mr. Peña Trejo's continued detention and the government's lack of evaluation for risk of danger to the community

or flight risk, have resulted in a failure to satisfy the compelling interest and narrowly tailored requirements under *Regino*. As such, Mr. Peña Trejo's continued detention likely violates his substantive due process right.

## X. CLAIMS FOR RELIEF

### Count I

### Violation of 8 U.S.C. § 1226(a)
### Unlawful Detention Pursuant to Agency's Erroneous Interpretation

76. Mr. Peña Trejo re-alleges and incorporates by reference the paragraphs above.

77. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United Stated who are charged as inadmissible because they entered the United States without inspection. Absent disqualifying criminal convictions, those noncitizens are detained under Section 1226(a) and thus eligible for bond hearings.

78. Petitioner was arrested in the interior and after a lengthy residence in the U.S. Accordingly, Mr. Peña Trejo's continued detention based on the BIA's unlawful interpretation of Section 1225(b)(2) in *Matter of Yajure Hurtado* is unlawful. Mr. Peña Trejo thus must be afforded a bond hearing.

79. Additionally, as a member of the Bond Eligible Class in *Maldonado Bautista*, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

80. The order granting partial summary judgment in Maldonado Bautista holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

81. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."

82. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

83. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

**Count II**

**Unlawful Detention Pursuant to Violation of Due Process under Fifth Amendment of U.S. Constitution**

84. Mr. Peña Trejo re-alleges and incorporates by reference the paragraphs above.

85. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

86. Mr. Peña Trejo's ongoing detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

87. Respondents have deprived Mr. Peña Trejo of his liberty interest by the Fifth Amendment by detaining him since January 12, 2026.

88. Mr. Peña Trejo's detention is improper because he has been deprived of a bond hearing. A hearing is if anything a right to be heard, and here the immigration judges have instruction to consider it a foregone conclusion that persons like Mr. Peña Trejo are ineligible for bond, without considering the law. Like the accused in criminal cases, habeas is proper. *See Moore*

*v. Dempsey,* 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson*, 346 U.S. 137, 154 (1953).

89. The government's actions in detaining Mr. Peña Trejo without any legal justification violate the Fifth Amendment.

90. Respondent's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

91. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

**Count III**

**Violation of Administrative Procedures Act**

92. Mr. Peña Trejo re-alleges and incorporates by reference the paragraphs above.

93. Respondents' continued efforts to deny him bond violate the INA, Administrative Procedures Act (APA), and the U.S. Constitution.

94. As set forth in Count Two, federal regulations and case law provide the procedure for a respondent in removal proceedings like him to seek a bond redetermination by an Immigration Judge.

95. Mr. Peña Trejo's denial of the opportunity to return to his family and pursue Cancellation of Removal in a non-detained court setting where he is free to gather the necessary evidence, deprives him of the right to freedom to lawfully pursue his rights in this civil matter. The Government's "no-review" provisions are a violation of his procedural and substantive due

process and without any statutory authority. There is no timeframe or procedure for requesting DHS to itself review its custody decision, and removal proceedings in this case will proceed during that time while Petitioner remains in custody.

96. Respondents' actions improperly alter the substantive rules concerning mandatory custody status without the required notice-and-comment period and are in violation of the INA and its regulations. These actions by Respondents violate the APA. Under the APA, this Court may hold unlawful and set aside an agency action which is "contrary to constitutional right, power, privilege or immunity." 5 U.S.C. § 706(2)(B). The governments actions exceed the authority granted ICE by Congress at 8 U.S.C. § 1226(a). For these reasons, this Honorable Court should hold that Petitioner is detained under § 1226, not § 1225, and order his immediate release or, in the alternative, direct the Immigration Court to conduct a custody redetermination hearing under in which Petitioner has a meaningful opportunity to show that he is not a danger or flight risk. Any contrary reliance on *Matter of Yajure Hurtado* would unlawfully misapply the statute and deprive Petitioner of his rights under the INA, the APA, and the Due Process Clause.

## XI. PRAYER FOR RELIEF

Mr. Peña Trejo respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Issue an order direction Respondents to show cause why the writ should not be granted;

c. Enjoin ICE from transferring Mr. Peña Trejo outside of the State of Nevada while this matter is pending;

d. Grant a writ of habeas corpus and order Respondents to immediately release Mr. Peña Trejo or order Respondents to conduct a bond hearing which correctly applies the statutes and no longer mis-classifies him as subject to mandatory detention; and

e. Grant any other and further relief as the Court deems just and proper.

## XII. PRAYER FOR EXPEDITED CONSIDERATION

Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests expedited consideration. Each day of unlawful detention inflicts irreparable harm on Petitioner and his family. His U.S. citizen children are being deprived of their father's care, stability, and support. Prompt judicial intervention is necessary to protect Petitioner's constitutional rights and his family's well-being.

DATED this 27th day of January, 2026.

/s/ Nallely Abad
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*Counsel for Petitioner*

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

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

Dated this 27th day of January, 2026.

/s/ Nallely Abad
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