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

8 Oscar GANDARA SIMENTAL,  
9 *Petitioner,*

10 v.

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

13 John MATTOS, Warden, Nevada Southern  
14 Detention Center;

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

16 Pamela BONDI, Attorney General of the United  
17 States,

*Respondents.*

Case No.

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

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23

I. INTRODUCTION

1  
2 1. This petition challenges the unlawful detention of Petitioner, Oscar Gandara  
3 Simental, a 50-year-old, from Mexico who has resided in the United States for nearly 20 years.  
4 Petitioner has no criminal convictions. Mr. Gandara Simental was detained on January 13, 2026,  
5 in Las Vegas, Nevada, where he has resided since his entry in 2006. ICE officers approached him  
6 and detained him. This arrest was not as a result of him having committed any crime or caused any  
7 harm or damage. Petitioner was initially detained in the Henderson Detention Center but was  
8 subsequently transferred and held in the custody of the Nevada Southern Detention Center (NSDC)  
9 in Pahrump, Nevada since January 15, 2026.

10 2. This detention is a substantial deprivation and burden that puts Petitioner and his  
11 family at risk without his parental and financial support.

12 3. The Department of Homeland Security (DHS) asserts that Petitioner is subject to  
13 mandatory detention under 8 U.S.C. § 1225(b), because he entered the United States without  
14 inspection, despite Congress’s separate detention framework in 8 U.S.C. § 1226(a), which governs  
15 interior arrests and provides discretionary bond and immigration-judge (“IJ”) review.

16 4. Though many other similarly-situated undocumented immigrants were able, for a  
17 time, to obtain a bond determination hearing based on the nationwide class action and final order  
18 in *Maldonado Bautista et. al. v. Ernesto Santacruz Jr. et. al.*, 5:25-cv-01873-SSS-BFM (U.S. Dist.  
19 Ct. Cen. D. CAL., Dec. 18, 2025), which binds the Respondents, specifically Immigration Judges,  
20 to accept jurisdiction and determine bond for noncitizens who find themselves similarly situated  
21 to Mr. Gandara Simental, a nationwide memo has subsequently been circulated by the Chief  
22 Immigration Judge which orders all Immigration Judges to ignore this binding class action and  
23 deny jurisdiction subject to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

1           5.       This court already found in *Maldonado Vazquez v. Feely*, Case No. 2:25-cv-01542-  
2 RFB-EJY, that §1225 subjects, “noncitizens who are present and who have resided in the U.S. for  
3 an extended period—to permissive detention.” *Id.*, at 26. The Chief Immigration Judge’s order,  
4 forcing Immigration Judges to adopt DHS’s position in *Yajure Hurtado* would therefore deny Mr.  
5 Gandara Simental access to a bond hearing under 8 U.S.C. § 1226.

6           6.       Petitioner is eligible to apply for Cancellation of Removal and Adjustment of Status  
7 for Certain Nonpermanent Residents under 8 U.S.C. § 1229b(b) with the Immigration Court.  
8 Cancellation of Removal under § 1229b(b) requires: physical presence in the U.S. for a continuous  
9 period of not less than ten (10) years from issuance of the Notice to Appear (NTA); good moral  
10 character during that period as defined in section 101(f) of the INA; no convictions of disqualifying  
11 offenses under the INA; and that removal would result in exceptional and extremely unusual  
12 hardship to the U.S. citizen spouse, parent, or child. Mr. Gandara has been residing in the U.S. for  
13 more than 10 years from the issuance of his NTA. He has no criminal convictions. His qualifying  
14 relative is his minor U.S. citizen child.

15           7.       Mr. Gandara Simental is also relied upon by his longtime girlfriend. Though they  
16 haven’t married, it is something they have spoken about and begun planning. She is a U.S. Citizen  
17 and could also become a qualifying or even petitioning relative in the future. Petitioner’s unjust  
18 detention has caused her significant emotional and financial distress.

19           8.       Mr. Gandara Simental also is responsible for working and providing for his  
20 Mexican family members who live in Mexico. He has a long history of many years of sending  
21 money back to them so they can make ends meet. One of his daughters has recently been diagnosed  
22 with Cancer and it is his income that allows her to provide for herself, her family, and to fight to  
23 live with a deadly disease.

1 9. Mr. Gandara Simental asks this Court to hold that his continued detention under  
2 *Yajure Hurtado* is unlawful as a matter of statutory interpretation and due process. *Yajure Hurtado*  
3 contradicts the Immigration and Nationality Act’s (INA) text, the canon against surplusage,  
4 longstanding administrative practice, and Due Process. Respondents cannot thus justify Mr.  
5 Gandara Simental’s present detention and hold him in contravention of law.

6 10. Petitioner respectfully asks this Court to grant his petition and issue a writ of habeas  
7 corpus or, in the alternative, to order Respondents to show cause *within three days*, providing their  
8 reasons, if any, as to why his detention is lawful. 28 U.S.C. § 2243. Because Respondents cannot  
9 justify Petitioner’s ongoing detention, he urges this Court to grant his petition and order  
10 Respondents to immediately release him or, at minimum, hold a prompt custody redetermination  
11 under § 236(a). 28 U.S.C. § 2241.

## 12 II. JURISDICTION

13 11. Respondents currently detain Mr. Gandara Simental in civil immigration custody  
14 at the Nevada Southern Detention Center (NSDC) in Pahrump, Nevada.

15 12. This action arises under the Immigration and Nationality Act (INA), 8 U.S.C. §  
16 1101 et seq., the Administrative Procedure Act (APA) 5 U.S.C. § 702, 706, and the Due Process  
17 Clause of the Fifth Amendment of the Constitution of the United States.

18 13. This Court has jurisdiction under Art. I, § 9, cl. 2 of the United States Constitution  
19 (the Suspension Clause); 28 U.S.C. § 2241 (general grant of habeas authority to district courts);  
20 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory  
21 Judgment Act), and the All Writs Act, 28 U.S.C. § 1651.

22 14. The federal habeas statute establishes this Court’s power to decide the legality of  
23 Mr. Gandara Simental’s detention and directs courts to “hear and determine the facts” of a habeas

1 petition and to “dispose of the matter as law and justice require.” 28 U.S.C. § 2243; *see also* *Hilton*  
2 *v. Braunskill*, 481 U.S. 775 (1987) (explaining that as far back as the nineteenth century, “the Court  
3 interpreted the predecessor of [the habeas statute] as vesting a federal court with the largest power  
4 to control and direct the form of judgment to be entered in cases brought up before it on habeas  
5 corpus”) (internal quotation marks and citation omitted).

6 15. The Supreme Court, moreover, has held that the federal habeas statute codifies the  
7 common law writ of habeas corpus as it existed in 1789. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301  
8 (2001) (“[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the  
9 legality of Executive detention, and it is in that context that its protections have been strongest.”).  
10 The Court has reiterated federal court jurisdiction over habeas claims brought by petitioners in  
11 immigration custody. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018).

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

### 14 III. VENUE

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

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

### 21 IV. REQUIREMENTS OF 28 U.S.C. § 2243, WRIT OF HABEAS CORPUS

#### 22 ISSUANCE, RETURN, HEARING, AND DECISION

23



1 23. Respondent John Mattos is sued in his official capacity as warden of the Nevada  
2 Southern Detention Center. He is an employee of CoreCivic, which contracts with ICE to hold  
3 noncitizens in its custody at Nevada Southern. He has immediate physical custody of Petitioner.

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

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

## 11 VI. FACTUAL ALLEGATIONS

12 26. Petitioner is a 50-year-old man from Mexico. *See* Exh. 1, DHS Form I-862, Notice  
13 to Appear at 2.

14 27. Petitioner was detained on January 13, 2026, as a result of a ICE stop. He has  
15 committed no crimes during his time in the United States. Petitioner was transferred to ICE  
16 custody, held briefly in the Henderson Detention Center, transported to the Nevada Southern  
17 Detention Center in Pahrump, Nevada where he has remained since January 15, 2026.

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

20 29. On November 25, 2025, the United States District Court for the Central District of  
21 California certified a nationwide class and extended declaratory judgment to the certified class in  
22 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL  
23 3289861, at \*11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named

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

5 30. Since on the class certification in *Maldonado Bautista*, some undocumented  
6 immigrants have been able to obtain bond. In a patchwork and inconsistent manner, some, but not  
7 all IJs agreed to accept jurisdiction. This has been further complicated as a recent email from the  
8 Chief Immigration Judge, Teresa L. Riley, has instructed IJs to not accept jurisdiction and follow  
9 *Yajure Hurtado*. See Exh \*\* Leaked January 13, 2026, Email from Chief Immigration Judge  
10 Teresa L. Riley.

11 31. For nearly three decades, DHS and EOIR treated individuals arrested in the interior  
12 and present without admission as detained under § 1226(a), subject to IJ bond hearings unless §  
13 1225(b)(1), § 1226(c), or §1231 applied.

14 32. Petitioner's detention has inflicted severe hardship on his family. His girlfriend  
15 especially struggles in her day-to-day time without him. His family depends on his income  
16 financially. He also cares for much of his family in Mexico who he has been sending money to  
17 care for since at least 2011.

18 33. Petitioner's ongoing detention impedes his ability to properly defend against  
19 removal, including gathering evidence and coordinating with counsel and witnesses. Petitioner is  
20 eligible to apply for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent  
21 Residents with the immigration court in his removal proceedings. He is currently set for a master  
22 calendar hearing on February 9, 2026.

1 34. Petitioner remains detained solely because DHS misclassified his custody under  
2 §1225(b) rather than § 1226(a), contrary to statutory text, constitutional principles, and historical  
3 practice.

## 4 VII. LEGAL FRAMEWORK

### 5 Due Process Clause

6 35. The Fifth Amendment’s Due Process Clause applies to “all persons” within the  
7 U.S., including noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). “Freedom from  
8 imprisonment – from government custody, detention, or other forms of physical restraint – lies at  
9 the heart of liberty that the Clause protects.” *Id.* at 690. In the immigration context, detention is  
10 constitutionally justified only to prevent flight or protect the community. *Demore v. Kim*, 538 U.S.  
11 510, 528 (2003).

### 12 Statutory Framework for Detention

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

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

21 38. Second, Section 236 (a) 8 U.S.C. § 1226 “applies to [noncitizens] already present  
22 in the United States.” *Id.* at 303. § 1226(a) “creates a default rule” permitting detention of  
23 removable noncitizens. *Id.* Noncitizens detained under § 1226(a) qualify for release on bond. *Id.*

1 § 1226(c) operates as an exception to § 1226(a)'s general rule in that it mandates detention of  
2 noncitizens who "fall[] into one of the enumerated categories involving criminal offenses and  
3 terrorist activities." *Id.* Noncitizens who fall under this mandatory detention provision do not  
4 qualify for bond.

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

7 **Recent Agency Interpretation of Statutory Detention Provisions**

8 40. In July 2025, the BIA issued a decision holding that "an applicant for admission  
9 who is arrested and detained without a warrant while arriving in the United States" is subject to  
10 mandatory detention under 8 U.S.C. § 1225(b)(1), regardless of whether the noncitizen was  
11 arrested at the border or shortly after crossing into the United States. *Matter of Q. Li*, 29 I. & N.  
12 Dec. 66, 69 (BIA 2025).

13 41. In doing so, the BIA acknowledged the Supreme Court's characterization of § 1225  
14 as applying to noncitizens "'seeking entry into the United States" and arrested "without a warrant  
15 at the border.'" *Id.* at 70 (quoting *Jennings*, 583 U.S. at 303). In *Q. Li*, the BIA acknowledged that  
16 § 1226 "'applies to [noncitizens] already present in the United States and arrested on a warrant.'" *Id.*  
17 (quoting *Jennings*, 583 U.S. at 302-03).

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

21 43. In *Matter of Yajure Hurtado*, the BIA reversed decades of well-settled law and  
22 procedure, holding that any noncitizen who was not formally admitted into the United States—  
23 such as noncitizens who entered without inspection or arriving noncitizens who were arrested at

1 the border and released on parole—are applicants for admission subject to mandatory detention  
2 under 8 U.S.C. § 1225(b)(2) regardless of how long they have resided in the United States. *Matter*  
3 *of Yajure Hurtado*, 29 I. & N. Dec. at 228.

#### 4 VIII. EXHAUSTION

5 44. Exhaustion is not required as a prudential matter. Prudential exhaustion may be  
6 required if“(1) agency expertise makes agency consideration necessary to generate a proper record  
7 and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate  
8 bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to  
9 correct its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*, 488 F.3d  
10 812, 815 (9th Cir. 2007). None of these factors weigh in favor of requiring exhaustion.

11 45. For the same reasons, addressing Mr. Gandara Simental’s challenge would not  
12 encourage bypassing the administrative proceedings. Here, the agency has predetermined the legal  
13 issue underlying his eligibility for bond, after reversing decades of statutory interpretation and  
14 practice. *Maldonado Vazquez*, 2025 WL 2676082, at \*10. Moreover, the agency has reaffirmed its  
15 dedication to *Yajure Hurtado*, in spite of a class action that has ruled against it. *See Exh \*\* Leaked*  
16 *January 13, 2026, Email*

17 46. Similarly, because the agency is bound by the BIA precedent, individualized  
18 administrative review of Mr. Gandara Simental’s claims is effectively foreclosed. As such,  
19 exhaustion would be futile. *Herrera*, 2025 WL 2581792, \*8; *Maldonado Vazquez*, 2025 WL  
20 2676082, at \*10.

#### 21 IX. ARGUMENT

22 **A. Mr. Gandara Simental’s continued detention based on the BIA’s erroneous**  
23 **interpretation of § 1225(b)(2) is facially unlawful.**

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

9 48. The BIA’s decision in *Matter of Yajure Hurtado*, which holds that all noncitizens  
10 who have not been formally admitted into the United States (“applicants for admission”) are  
11 subject to mandatory detention under 8 U.S.C. § 1225(b)(2) regardless of how long they have lived  
12 in the United States. 29 I. & N. Dec. at 228. This holding contradicts the clear language of the  
13 statute, judicial precedent, legislative history, and longstanding agency practice demonstrate. The  
14 BIA’s erroneous interpretation of § 1225(b)(2) cannot support Mr. Gandara Simental’s continued  
15 detention.

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

19 50. Immigration enforcement “generally begins at the Nation’s borders and points of  
20 entry.” *Id.* at 287. § 1225 governs enforcement actions at the border, where the government  
21 determines whether to admit noncitizens who are arriving into the United States or are present but  
22 have not been admitted (applicants for admission). *See id.* (quoting 8 U.S.C. § 1225(a)(1)).  
23

1 Noncitizens subject to § 1225 must be detained without the opportunity for a bond hearing for the  
2 duration of their proceedings. 8 U.S.C. § 1225(b).

3 51. There are two broad classes of noncitizens subject to § 1225 mandatory detention.  
4 First, § 1225(b)(1), the expedited removal provision, pertains to “arriving” noncitizens and  
5 noncitizens who have not been admitted and cannot demonstrate that they have been present in the  
6 United States for at least two years. Unless they raise a fear of return to their home country, these  
7 noncitizens can be administratively removed without being placed in removal proceedings. *See* 8  
8 U.S.C. § 1225(b)(1). § 1225(b)(2) on the other hand pertains to “applicant[s] for admission” who  
9 are “not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2).

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

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

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

6           55. First, the references to inadmissibility grounds, which *only* apply to noncitizens  
7 who have not been admitted—“applicants for admission” as the BIA describes them—in § 1226(c)  
8 necessarily mean that noncitizens who are present in the United States without admission and have  
9 no disqualifying criminal history are subject to discretionary detention under § 1226(a).

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

18           57. However, this reasoning demonstrates the BIA’s inaccurate assessment of the  
19 statute. By focusing too narrowly on the applicant for admission language, the BIA fails to contend  
20 with the narrowing clause in § 1225(b)(2), which clarifies that it pertains to applicants for  
21 admission who are “not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §  
22 1225(b)(2)(A). Justice Breyer provides a reasonable interpretation that dissipates this purported  
23 tension, explaining that § 1225(b)(2):

1 [C]onsists of persons who are neither (1) clearly eligible for admission, nor (2) clearly  
2 ineligible. A clearly eligible person is, of course, immediately admitted. A clearly  
3 ineligible person—someone who lacks the required documents, or provides fraudulent  
4 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).

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

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

13 Here, the presumption against superfluity is at its strongest because the Court  
14 is interpreting two parts of the same statutory scheme, and Congress even  
15 amended the statutory scheme this year when it passed the Laken Riley Act,  
16 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.

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

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

20 60. Before the enactment of IIRIRA, “immigration law provided for two types of  
21 removal proceedings: deportation hearings and exclusion hearings. A deportation hearing was the  
22 “usual means of proceeding against an alien already physically in the United States,” while an  
23 exclusion hearing was the “usual means of proceeding against an alien outside the United States

1 seeking admission.” *Hose v. INS*, 180 F.3d 992, 994 (9th Cir. 1999) (internal citations omitted).  
2 Like § 1226(a), the pre-IIRIRA statute allowed for “discretionary release on bond.” *Rodriguez v.*  
3 *Boystock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (citing 8 U.S.C. § 1252(a)(1) (1994)).

4 61. In enacting IIRIRA, Congress was explicit in its intent to “restate” the prior  
5 statute’s provisions regarding arrest, detention, and discretionary release on bond for unlawfully  
6 present noncitizens. *Id.* (quoting H.R. Rep. No. 104-469, pt. 1, at 229). As such, Congress sought  
7 to preserve the longstanding practice of providing removable noncitizens residing in the United  
8 States with discretionary bond hearings.

9 62. Lastly, it is important to note that the longstanding practice of the government until  
10 the last September 2025 had been to treat “noncitizens arrested while living in the United States,  
11 including those who entered without inspection, as detained under § 1226(a).” *Id.* at 1260. This  
12 “longstanding practice of the government . . . can inform [a court's] determination of what the law  
13 is.” *Loper Bright*, 603 U.S. at 386.

14 **B. Mr. Gandara Simental’s continued detention violates his procedural due process**  
15 **rights.**

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

19 64. As this Court has recognized, DHS’s classification under § 1225 is erroneous and  
20 that §1226 governs noncitizens “already in the country.” *See Escobar Salgado v. Mattos*, 2:25-  
21 CV-01872-RFB-EJY, 2025 WL 3205356, at \*22 (D Nev. Nov. 17, 2025) (finding that “the text  
22 and canons of statutory interpretation, legislative history, and long history of consistent agency  
23 practice, demonstrate . . . that the government’s new interpretation and policy under [§

1 1225(b)(2)(A)], is unlawful”). Mr. Gandara Simental challenges the application of this policy that  
2 deprives him of the opportunity for a bond hearing for a determination on his eligibility for release.

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

11 66. ***Private Interest.*** First, Mr. Gandara Simental’s private interest in “freedom from  
12 prolonged detention is unquestionably substantial.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189,  
13 1207 (9th Cir. 2022) (internal quotations omitted). Mr. Gandara Simental’s substantial freedom  
14 interest is bolstered by the conditions of his detention. *Id.*

15 67. Moreover, Mr. Gandara Simental has lived in the United States for over 20 years.  
16 See Exhibits 5 and 9. His girlfriend of over 7 years and misses him and need his presence. See  
17 Exhibit 7. His community loves him and wants him out of custody. See Exhibit 9. Mr. Gandara  
18 Simental’s physical and mental health is being adversely impacted by his detention. As such, the  
19 first *Mathews* prong weighs heavily in Mr. Gandara Simental’s favor.

20 68. ***Risk of Erroneous Deprivation.*** Similarly, the erroneous deprivation factor  
21 substantially weighs in Mr. Gandara Simental’s favor due to DHS’s categorical no-bond stance.  
22 There are no existing procedures for Petitioner to challenge his detention pending the conclusion  
23 of his removal proceedings without the opportunity for release on bond under the government’s

1 policy. The existing procedures set out under § 1226 substantially mitigate the risk of erroneous  
2 deprivation of Petitioner’s liberty, because they require the government to establish that he  
3 presents a flight risk or danger to the community to continue his detention for the pendency of  
4 removal proceedings. This procedure was not accorded to him as his request for bond would be  
5 denied on jurisdictional grounds due to the limitations in *Yajure Hurtado*. The government’s  
6 application of §1225 in his case elevates the risk of erroneous deprivation to an extraordinarily  
7 high level as this application gives ICE and DHS agency officials sole, unguided, and  
8 unreviewable discretion to detain Petitioner without any individualized showing of why his  
9 detention is warranted. As such, the second *Mathews* factor also weighs heavily in favor of  
10 granting Petitioner recognition of his procedural protections under §1226(a).

11 69. ***Government’s Interest.*** Lastly, the government’s interest and burden resulting  
12 from additional process also weighs in favor of Mr. Gandara Simental. While the government may  
13 have an interest in detaining dangerous noncitizens or securing a noncitizen’s removal, Mr.  
14 Gandara Simental falls under neither of these categories. The government’s interests are broadly  
15 safeguarded by the statutory mandatory detention scheme and the IJs authority to make  
16 discretionary bond determinations based on a review of the circumstances of the case against sound  
17 legal principles. *Maldonado Vazquez*, 2025 WL 2676082, at \*21.

18 **C. Mr. Gandara Simental’s continued detention violates his substantive due process  
19 rights.**

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

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

5 72. Generally, the government justifies its detention of noncitizens based on its interest  
6 in preventing danger to the community and minimizing flight risk of removable noncitizens. *See*  
7 *id.* Those government interests are adequately protected by the INA’s mandatory detention  
8 provisions and individualized bond adjudications by IJs. Here, Mr. Gandara Simental’s continued  
9 detention and the government’s lack of evaluation for risk of danger to the community or flight  
10 risk, have resulted in a failure to satisfy the compelling interest and narrowly tailored requirements  
11 under *Regino*. As such, Mr. Gandara Simental’s continued detention likely violates his substantive  
12 due process right.

## 13 X. CLAIMS FOR RELIEF

### 14 Count I

#### 15 Violation of 8 U.S.C. § 1226(a) 16 Unlawful Detention Pursuant to Agency’s Erroneous Interpretation

17 73. Mr. Gandara Simental re-alleges and incorporates by reference the paragraphs  
18 above.

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

23 75. Petitioner was arrested in the interior and after a lengthy residence in the U.S.  
Accordingly, Mr. Gandara Simental’s continued detention based on the BIA’s unlawful

1 interpretation of Section 1225(b)(2) in *Matter of Yajure Hurtado* is unlawful. Mr. Gandara  
2 Simental thus must be afforded a bond hearing.

3 **Count II**

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

6 76. Mr. Gandara Simental re-alleges and incorporates by reference the paragraphs  
7 above.

8 77. The Due Process Clause of the Fifth Amendment forbids the government from  
9 depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

10 78. Mr. Gandara Simental’s ongoing detention violates his right to substantive and  
11 procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

12 79. Respondents have deprived Mr. Gandara Simental of his liberty interest by the Fifth  
13 Amendment by detaining him since January 13, 2026.

14 80. Mr. Gandara Simental’s detention is improper because he has been deprived of a  
15 bond hearing. A hearing is if anything a right to be heard, and here the immigration judge  
16 considered it a foregone conclusion that he was ineligible for bond, without considering the law  
17 or entertaining his counsel’s arguments. Like the accused in criminal cases, habeas is proper. *See*  
18 *Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson*,  
19 346 U.S. 137, 154 (1953).

20 81. The government’s actions in detaining Mr. Gandara Simental without any legal  
21 justification violate the Fifth Amendment.

22 82. Respondent’s detention of Petitioner is unjustified. Respondents have not  
23 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

1 during removal proceedings and (2) preventing danger to the community). There is no credible  
2 argument that Petitioner cannot be safely released back to his community and family.

3 83. For these reasons, Petitioner’s detention violates the Due Process Clause of the  
4 Fifth Amendment.

5 **Count III**

6 **Violation of Administrative Procedures Act**

7 84. Mr. Gandara Simental re-alleges and incorporates by reference the paragraphs  
8 above.

9 85. Respondents’ continued efforts to deny him bond violate the INA, Administrative  
10 Procedures Act (APA), and the U.S. Constitution.

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

13 87. Mr. Gandara Simental’s denial of the opportunity to return to his family and pursue  
14 Cancellation of Removal in a non-detained court setting where he is free to gather the necessary  
15 evidence, deprives him of the right to freedom to lawfully pursue his rights in this civil matter.  
16 The Government’s “no-review” provisions are a violation of his procedural and substantive due  
17 process and without any statutory authority. There is no timeframe or procedure for requesting  
18 DHS to itself review its custody decision, and removal proceedings in this case will proceed during  
19 that time while Petitioner remains in custody.

20 88. Respondents’ actions improperly alter the substantive rules concerning mandatory  
21 custody status without the required notice-and-comment period and are in violation of the INA  
22 and its regulations. These actions by Respondents violate the APA. Under the APA, this Court  
23 may hold unlawful and set aside an agency action which is “contrary to constitutional right, power,

1 privilege or immunity.” 5 U.S.C. § 706(2)(B). The governments actions exceed the authority  
2 granted ICE by Congress at 8 U.S.C. § 1226(a). For these reasons, this Honorable Court should  
3 hold that Petitioner is detained under § 1226, not § 1225, and order his immediate release or, in  
4 the alternative, direct the Immigration Court to conduct a custody redetermination hearing under  
5 in which Petitioner has a meaningful opportunity to show that he is not a danger or flight risk. Any  
6 contrary reliance on *Matter of Yajure Hurtado* would unlawfully misapply the statute and deprive  
7 Petitioner of his rights under the INA, the APA, and the Due Process Clause.

8  
9 **XI. PRAYER FOR RELIEF**

10 Mr. Gandara Simental respectfully requests that this Court:

- 11 a. Assume jurisdiction over this matter;
- 12 b. Issue an order direction Respondents to show cause why the writ should not be  
13 granted;
- 14 c. Enjoin ICE from transferring Mr. Gandara Simental outside of the State of Nevada  
15 while this matter is pending;
- 16 d. Grant a writ of habeas corpus and order Respondents to immediately release Mr.  
17 Gandara Simental or order Respondents to conduct a bond hearing which correctly applies the  
18 statutes and no longer mis-classifies him as subject to mandatory detention; and
- 19 e. Grant any other and further relief as the Court deems just and proper.

20 **XII. PRAYER FOR EXPEDITED CONSIDERATION**

21 Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests expedited consideration.  
22 Each day of unlawful detention inflicts irreparable harm on Petitioner’s health. His U.S. citizen  
23

1 child is also being deprived of her father's care, stability, and support. Prompt judicial intervention  
2 is necessary to protect Petitioner's constitutional rights and his family's well-being.

3 DATED this 28th day of January, 2026.

4 /s/Spencer Judd Jr., Esq.  
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*Counsel for Petitioner*

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

12 I represent Petitioner, Daniel Gandara Simental, and submit this verification on his behalf.

13 I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus  
14 are true and correct to the best of my knowledge.

Dated this 28th day of January, 2026.

15 /s/Spencer Judd Jr., Esq.  
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