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6
7 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

8 **ROGELIO ESCAMILLA-LOPEZ,**

9 **Petitioner,**

10 **vs.**

11 **LEANDER HOLSTON, Field Office**
Director of Enforcement and Removal
Operations, Las Vegas Field Office,
Immigration and Customs Enforcement;
12 **KRISTI NOEM, Secretary,**
Department of Homeland Security;
13 **U.S. DEPARTMENT OF**
HOMELAND SECURITY;
14 **PAMELA BONDI, Attorney General of**
the United States of America;
15 **EXECUTIVE OFFICE FOR**
IMMIGRATION REVIEW; and
16 **JOHN MATTOS, Warden, Nevada**
Southern Detention Center,

17
18 **Respondents.**
19

Case No.: 2-26-cv-00242

**PETITION FOR WRIT OF
HABEAS CORPUS**

20 **Petitioner Rogelio Escamilla-Lopez is an immigration detainee proceeding with**
21 **counsel. Petitioner is a noncitizen who entered the United States without inspection**
22 **and who has lived in the country continuously for twenty-one years. On January**
23 **20, 2026, Petitioner was detained by Immigration and Customs Enforcement (“ICE”)**

1 and has since then been under the custody of Defendants at the Nevada Southern
2 Detention Center (“NSDC”) in Pahrump, Nevada.

3 On February 2, 2026, an Immigration Judge (“IJ”) from the Las Vegas
4 Immigration Court denied releasing Petitioner on bond based on a finding of lack of
5 jurisdiction as all noncitizens are treated as not admitted to the United States,
6 requiring mandatory detention of all noncitizens pursuant to 8 U.S.C. § 1225(b)(2)(A)
7 under the guidance of the Bureau of Immigration Appeals (“BIA”) decision provided
8 in *Matter of Yajure Hurtado v. Noem*, 29 I&N Dec. 216 (BIA 2025). See **Exhibit A**.

9 Importantly, the IJ stated “[i]n the alternative, the [immigration] Court would
10 set bond in amount \$2,000 with ATD at the direction of DHS/ERO.” See *Id.*

11 A nationwide class has been certified, become final, and grants declaratory
12 relief to all class members, holding that they are being detained without a bond
13 hearing unlawfully. *Maldonado Bautista v. Santacruz et. al.*, No. 5:25-CV-01873-SSS-
14 BFM, — F. Supp. 3d —, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025); *Maldonado*
15 *Bautista v. Santacruz et. al.*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D.
16 Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz et. al.*, No. 5:25-CV-01873-SSS-
17 BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025).

18 The Bond Eligible Class is defined as follows:

19 All noncitizens in the United States without lawful status
20 who (1) have entered or will enter the United States
21 without inspection; (2) were not or will not be apprehended
22 upon arrival; and (3) are not or will not be subject to
23 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.

1 to Petitioner’s claims occurred in this District. Moreover, Petitioner resides
2 in this District, and real property is not involved in this action.

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

- 4 6. The Court must grant the petition for writ of habeas corpus or issue an
5 order to show cause (“OSC”) to the respondents “forthwith,” unless the
6 petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show
7 cause is issued, the Court must require Respondents to file a return “within
8 three days unless for good cause additional time, not exceeding twenty days,
9 is allowed.” *Id.* (emphasis added).
- 10 7. Courts have long recognized the significance of the habeas statute in
11 protecting individuals from unlawful detention. The Great Writ has been
12 referred to as “perhaps the most important writ known to the constitutional
13 law..., affording as it does a swift and imperative remedy in all cases of
14 illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963)
15 (emphasis added).

16 **PARTIES**

- 17 8. Petitioner is a noncitizen. He is a native and citizen of Mexico who has been
18 living in the United States since March 2004. Petitioner has been in
19 detention since his arrest on January 20, 2026. After Petitioner’s arrest in
20 Las Vegas, Nevada, ICE did not set a bond, and Petitioner requested review
21 of his custody by an IJ. On February 2, 2026, Petitioner was denied bond by
22 an IJ at the Las Vegas Immigration Court because the IJ claimed lack of
23 jurisdiction. Petitioner is currently detained at the Nevada Southern

1 jurisdiction. Petitioner is currently detained at the NSDC. He is in the
2 custody, and under the direct control, of Respondents and their agents.

3 9. Respondent Leander Holston is sued in his official capacity as the Las
4 Vegas Field Office Director for U.S. Immigration and Customs
5 Enforcement. Respondent Holston is a legal custodian of Petitioner and has
6 authority to release him.

7 10. Respondent Kristi Noem is sued in her official capacity as the Secretary of
8 the U.S. Department of Homeland Security. In this capacity, Respondent
9 Noem is responsible for the implementation and enforcement of the
10 Immigration and Nationality Act (“INA”) and oversees ICE, the agency
11 responsible for Petitioner’s custody. Respondent Noem is a legal custodian
12 of Petitioner.

13 11. Respondent Department of Homeland Security (“DHS”) is the federal
14 agency responsible for implementing and enforcing the INA, including the
15 detention and removal of noncitizens.

16 12. Respondent Pamela Bondi is sued in her official capacity as the Attorney
17 General of the United States and the senior official of the U.S. Department
18 of Justice (“DOJ”). In that capacity, she has the authority to adjudicate
19 removal cases and to oversee the Executive Office for Immigration Review,
20 which administers the immigration court system. Respondent is a legal
21 custodian of Petitioner.

22 13. Respondent Executive Office for Immigration Review (“EOIR”) is the
23 federal agency responsible for implementing and enforcing the INA in

1 removal proceedings, including for the custody redeterminations in bond
2 hearings.

3 14. Respondent John Mattos is sued in his official capacity as the Warden of the
4 Nevada Southern Detention Center. He has immediate physical custody of
5 Petitioner pursuant to the facility's contract with ICE to detain noncitizens.
6 Respondent John Mattos is a legal custodian of Petitioner.

7 **STATEMENT OF FACTS**

8 15. Petitioner is a 51-year-old native and citizen of Mexico. He is married and
9 has two children, his youngest being a U.S Citizen, and has strong
10 community ties and stable employment as an owner-operator of a
11 landscaping company. Before being detained he was living in Las Vegas,
12 Nevada.

13 16. Petitioner entered the United States without inspection in or around March
14 2004. ICE detained Petitioner on January 20, 2024, in Las Vegas, Nevada,
15 and has remained since then in ICE custody at the NSDC. He has been
16 residing in the United States for 21 years and was therefore not
17 apprehended upon arrival. Thus, Petitioner is subject to 8 U.S.C. § 1226(a)
18 not to § 1225(b)(2) as the Defendants arbitrarily claim.

19 17. On February 2, 2026, Petitioner through his counsel, Walter Jimenez-
20 Ortega, appeared at his custody redetermination hearing at which the IJ
21 denied releasing him on bond based on lack of jurisdiction. The IJ order
22 was based on the instruction in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216
23 (BIA 2025).

1 18. The IJ entered an alternative order stating, “No jurisdiction. In the
2 alternative, the court would set bond in amount of \$2,000 with ATD at the
3 direction of DHS/ERO”, which means that the IJ found Petitioner is not a
4 danger to the community or a flight risk. Petitioner is not subject to any of
5 the INA’s special mandatory detention provisions and continues to be
6 detained only because of the Respondent’s unlawful, arbitrary, and
7 capricious actions, when Petitioner should be released instead due to the IJ
8 authority under 8 U.S.C. § 1226(a).

9 **LEGAL FRAMEWORK**

10 **In addition to Petitioner being a member of the bond eligible class,**
11 **Mr. Escamilla-Lopez’s continued detention without a bond violates the INA as**
12 **he is subject to 8 U.S.C. § 1226(a) and not 8 U.S.C. § 1225(b)(1).**

13 Petitioner’s case concerns the detention authority of people who entered the
14 United States without inspection, were not apprehended upon arrival, and are not
15 subject to one of the INA’s special detention provisions, i.e. 8 U.S.C. § 1225(b)(1) and
16 § 1231(a)(6).

17 Two provisions of the INA govern the detention of noncitizens: 8 U.S.C. §
18 1226(a) and § 1225(b). There is a critical distinction between the two provisions.
19 Noncitizens subject to § 1226(a) are arrested and once detained, the statute allows
20 ICE to release a person on bond or conditional parole, *See* 8 U.S.C. § 1226(a)(1);
21 8 C.F.R. § 236.1(c)(8). If released is denied, the person can seek custody
22 redetermination—better known as a bond hearing—before an IJ. *See* 8 C.F.R.
23 § 1236.1(c)(8). At that hearing, the noncitizen may present evidence to show they are

1 not a flight risk or danger to the community. *See generally Matter of Guerra*, 24 I & N
2 Dec. 37, 40 (BIA 2006). By contrast, people detained under § 1225(b) are subject to
3 mandatory detention and do not receive a bond hearing. *See* 8 U.S.C.
4 § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A). They may only be released under humanitarian
5 parole at the arresting agency's (i.e., ICE) discretion. *See Jennings*, 583 U.S. at 288;
6 8 U.S.C. § 1182(d)(5).

7 The difference between these two statutes reflects immigration law's
8 longstanding distinction in the detention structure for noncitizens arrested *after*
9 *entering* the country and those arrested when *attempting to enter* the country. Prior to
10 passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996
11 ("IIRIRA"), the statutory authority for custody determinations was found at 8 U.S.C.
12 § 1252(a). That statute provided for a noncitizen's detention during deportation
13 proceedings, as well as authority to release them on bond. *See* 8 U.S.C. § 1252(a)
14 (1994). Those "deportation" proceedings governed the detention of anyone in the
15 United States, regardless of the manner of entry. *Id.* IIRIRA maintained the same
16 basic detention authority and access to release on bond in the provisions now codified
17 in 8 U.S.C. § 1226(a).

18 Separately, through IIRIRA, Congress enacted new detention and removal
19 authority for people who were apprehended upon arriving in the United States.
20 *See* 8 U.S.C. § 1225(b)(1)-(2). These individuals can be placed in special expedited
21 removal proceedings (where DHS officers issue administrative removal orders
22 without any hearings), or regular removal proceedings (before IJs). Either way, such
23

1 people are subject to mandatory detention. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV),
2 (b)(2)(A).

3 In implementing IIRIRA’s detention authority, the former Immigration and
4 Naturalization Service clarified that—just as before IIRIRA—people who entered the
5 United States without inspection and were not apprehended while “arriving” in the
6 country would continue to be detained under the same detention authority they have
7 always been pursuant to § 1226(a) (previously § 1252(a)). Inadmissible noncitizens
8 thus, except for arriving noncitizens, have available to them bond redetermination
9 hearings before an immigration judge.

10 Consistent with these principles, during the nearly thirty years since IIRIRA
11 was enacted, DHS and the EOIR have applied § 1226(a) to the detention of people
12 who were apprehended within the United States after having entered without
13 inspection and have provided them access to release on bond. Notwithstanding this
14 long history, Defendants have now switched course, concluding that 1225(b)(2)(A)
15 imposes mandatory detention on all persons who entered the United States without
16 inspection, regardless of how long they have resided here. After *Matter of Yajure*
17 *Hurtado* (BIA 2025), IJs in Las Vegas Immigration Court have reluctantly adopted
18 this unprecedented interpretation of the INA’s detention scheme.

19 **CLAIMS FOR RELIEF**
20 **COUNT ONE**
21 **Violation of the INA 8 U.S.C. § 1226(a)**

22 19. The allegations in the above paragraphs are realleged and incorporated
23 herein.

1 20. Respondents are not releasing Petitioner on bond pursuant to 8 U.S.C. §
2 1225(b), which imposes mandatory detention to all persons who entered the
3 United States without inspection, regardless of how long they have resided
4 here.

5 21. However, Petitioner's detention is governed by 8 U.S.C. § 1226(a) as he
6 entered without inspection, has been living in the United States for more
7 than two years, was not apprehended while trying to enter the United States,
8 and has no criminal record that subject him to mandatory detention under
9 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

10 22. Accordingly, no statute authorizes detention here. Petitioner's is subject to
11 8 U.S.C. § 1226(a) and not to § 1225(b).

12 23. The IJ erred in refusing to consider release on bond by finding that he does
13 not have jurisdiction under *Matter of Yajure Hurtado* (BIA 2025), which
14 makes an erroneous interpretation of 8 U.S.C. § 1226(a) and § 1225(b).

15 24. For these reasons, Petitioner's detention violates 8 U.S.C. § 1226(a) and
16 therefore the Court should order Petitioner immediate release.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Petitioner respectfully requests the following relief:

- 19 1. Assume jurisdiction over the matter;
- 20 2. Declare that the Petitioner's detention violates Due Process;
- 21 3. Declare that the Petitioner be release from detention pursuant to 8 U.S.C.
22 § 1226(a);
- 23

- 1 4. Issue a Writ of Habeas Corpus empowering the Las Vegas Immigration Court
- 2 with jurisdiction to release Petitioner on bond pursuant to 8 U.S.C. § 1226(a);
- 3 5. Order Respondents to release Petitioner pursuant to the IJ Order;
- 4 6. For an award of reasonable attorney's fees under the Equal Access to
- 5 Justice Act;
- 6 7. For an award of costs of suit; and
- 7 8. Such further relief that the Court deems proper.

8 DATED this 2nd day of January 2026.

9 MEESHA MOULTON LAW

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11
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14 *Attorney for Petitioner*
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