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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

JOSE LUIS CARBAJAL; Petitioner, v. PAUL J. WIMMER, Sheriff of Tooele County, in his official capacity; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; BRIAN HENKE, Director of the Salt Lake City Field Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, in his official capacity; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity; TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; PAMELA BONDI, Attorney General of the United States, in her official capacity; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; SIRCE OWEN, Acting Director for Executive Office of Immigration Review, in her official capacity;	**PETITION FOR WRIT OF HABEAS CORPUS** Case No. _____ Judge _____

and U.S. DEPARTMENT OF HOMELAND SECURITY; Respondents.	

INTRODUCTION

1. Petitioner, Jose Luis Carbahal, hereby petitions this Court for a writ of habeas corpus (the Petition). Petitioner has been continuously present in the United States without lawful immigration status since June 2007 and in removal proceedings since January 29, 2026 based on a charge of entry without inspection under 8 U.S.C. § 1182(a)(6)(A)(i) and under 8 U.S.C. § 1182(a)(7)(A)(i)(I), for not possessing valid entry documents at the time of application for admission. On January 15, 2026, while Petitioner was in the custody of local authorities at the Wasatch County Jail, officers with U.S. Immigration and Customs Enforcement ("ICE") encountered him pursuant to routine jail screening procedures. Following the completion of his local criminal matter, ICE lodged an immigration detainer, and Petitioner was not released but instead remained housed in county custody solely on the basis of alleged civil immigration violations. The Department of Homeland Security initiated removal proceedings by serving Petitioner with a Notice to Appear on January 29, 2026, and his removal proceedings remain pending. He has since been held for ICE under an "other agency hold" and is currently confined at the Tooele County Detention Center in Utah.

2. Petitioner now faces unlawful detention, because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have incorrectly concluded that aliens who entered the United States without inspection are subject to mandatory detention without the possibility of bond. That conclusion violates the plain language of the

applicable statutory framework and contravenes decades of agency practice applying the correct statute.

3. DHS policy issued on July 8, 2025, instructs all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—*i.e.*, those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. Consistent with this new policy, on September 5, 2025, the Board of Immigration Appeals (BIA or "Board") issued a precedential decision binding on all immigration judges that held that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Respondents' new legal interpretation is plainly contrary to the statutory framework and decades of agency practice applying the correct statute—8 U.S.C. § 1226(a)—to individuals like Petitioner.

6. Petitioner's detention on the basis of the new DHS policy and the Board's decision in *Matter of Yajure Hurtado* violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a § 1226(a), which allows for release on conditional parole or bond. That statute

expressly applies to individuals who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

7. Petitioner notes that courts in other districts have conditionally or finally certified classes of similarly situated detainees challenging detention under 8 U.S.C. § 1225(b)(2)(A). For example, in *Gutierrez v. Baltasar*, the District of Colorado court found that the "Bond Eligible Class"—for purposes of a declaratory judgment holding that the Bond Eligible Class was detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A)—consisted of those who met the following conditions:

a. For the person's most recent entry into the United States, the government has not alleged that the person was admitted into the United States;

b. For the person's most recent entry into the United States, the person was not paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) at the time of entry;

c. The person is not a person whose most recent arrest occurred at the border while they were arriving in the United States; and,

d. The person is being detained based on Respondents' assertion that they are subject to 8 U.S.C. § 1225(b)(2)(A).

No. 25-CV-2720-RMR, 2025 U.S. Dist. LEXIS 229826, at *17–18 (D. Colo. Nov. 21, 2025), *appeal docketed*, No. 25-1460 (10th Cir. Dec. 16, 2025).

8. *Gutierrez* is consistent with decisions from other district courts effectively certifying the same nationwide class. *See Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 231977, *26-27 (C.D. Cal. Nov. 25, 2025) (certifying a nationwide class and

extended declaratory judgment to the certified class); *see also Bautista v. Santacruz*, 2025 U.S. Dist. LEXIS 262265, at *85–88 (C.D. Cal. Dec. 18, 2025) (final judgment; class-wide declaratory relief and APA vacatur of DHS's July 8, 2025 policy); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 U.S. Dist. LEXIS 214095, (D. Mass. Oct. 30, 2025) (certifying substantially same class for statutory claim regarding bond eligibility).

9. Petitioner shares the same characteristics as the classes of individuals whom these courts have found to be unlawfully detained: he has not been alleged to have been admitted or paroled at his most recent entry, his most recent arrest did not occur at the border while arriving in the United States, and he is being detained based on Respondents' assertion that he is subject to 8 U.S.C. § 1225(b)(2)(A).

10. As discussed below, the majority of district courts to consider the issue have held that individuals like Petitioner and others in the Bond Eligible Class are entitled to a bond hearing under § 1226(a) and that § 1225(b)(2)(A) does not apply to them. Nevertheless, immigration judges have taken the position that they remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

11. Following Petitioner's apprehension on January 15, 2026, the Department of Homeland Security ("DHS") initiated removal proceedings against Petitioner pursuant to 8 U.S.C. § 1229a by serving a Notice to Appear on January 29, 2026. DHS charges Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) on the sole ground that he entered the United States without inspection.

12. As of the filing of this Petition, Petitioner is in the physical custody of Respondents at the Tooele County Detention Center in Tooele, Utah. He now faces unlawful

detention because the DHS and EOIR are detaining him pursuant to 8 U.S.C. § 1225(b)(2)(A) (instead of the applicable provision, § 1226(a)). In other words, Respondents have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

13. The Court should expeditiously grant this Petition and find that Petitioner's apprehension and detention without opportunity for bond is unlawful in violation of (i) 8 U.S.C. § 1226(a) and (ii) the Due Process Clause of the Fifth Amendment of the Constitution.

14. Because Respondents are detaining Petitioner unlawfully Petitioner asks the Court to issue a writ of habeas corpus and order his immediate release from detention, or, in the alternative, order Respondents to schedule a bond hearing under § 1226(a) before an immigration judge within seven (7) days, wherein they will bear the burden to demonstrate that he is a danger to the community or a flight risk to justify continued detention.

JURISDICTION

15. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

16. Petitioner is in the physical custody of Respondents. As of the filing of this Petition, Petitioner is detained at Tooele County Detention Center in Tooele, Utah.

17. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

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

VENUE

19. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Utah, the judicial district in which Petitioner currently is detained. Petitioner is in the physical custody of Respondents. Petitioner is detained at Tooele County Detention Center in Tooele, Utah.

20. Venue is also properly 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 Utah.

REQUIREMENTS OF 28 U.S.C. § 2243

21. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The "Great Writ" has been referred to as "perhaps the most important writ known to the constitutional law of England, 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. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

22. The Court must grant the Petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

PARTIES

23. Petitioner JOSE LUIS CARBAJAL is a citizen of Mexico who has been in immigration detention since January 15, 2026. Petitioner has resided in the United States since June 2007. After Petitioner was arrested in Wasatch County, Utah, ICE did not set bond. He will be denied bond because Respondents have deemed him an "applicant for admission."

24. Respondent PAUL J. WIMMER is the Sheriff of the Tooele County Detention Center where Petitioner is detained. Sheriff Wimmer has immediate physical custody of the Petitioner. He is sued in his official capacity.

25. Respondent U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) is the federal agency responsible for enforcing immigration laws.

26. Respondent BRIAN HENKE is the Director of the Salt Lake City Field Office of ICE's Enforcement and Removal Operations division. As such, Field Office Director Henke is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

27. Respondent KRISTI NOEM is the Secretary of the Department of Homeland Security. 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 over Petitioner and is sued in her official capacity.

28. Respondent TODD LYONS, Acting Director of ICE, oversees ICE's implementation of polices for the detention and removal of noncitizens. He is sued in his official capacity.

29. Respondent PAMELA BONDI is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

30. Respondent EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

31. Respondent SIRCE OWEN is the Acting Director of EOIR and is sued in her official capacity

32. Respondent DEPARTMENT OF HOMELAND SECURITY (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

STATEMENT OF FACTS

33. Petitioner is a native and citizen of Mexico. He has resided in the United States since approximately 2007. He is married to a lawful permanent resident, whom he married on October 18, 2014, and together they have four United States citizen children. Petitioner has been consistently employed and serves as a primary financial provider for his family. He has no prior deportations or removals from the United States.

34. On January 15, 2026, while Petitioner was in the custody of local authorities at the Wasatch County Jail in Heber City, Utah, officers with ICE encountered him pursuant to routine jail screening procedures. After the completion of his local criminal matter, ICE lodged an immigration detainer and Petitioner was not released but instead remained in custody on an

immigration hold. ICE subsequently served him with a Notice to Appear charging him under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) and assumed custody. Petitioner is currently confined at the Tooele County Detention Center in Utah, where he remains detained solely on the basis of alleged civil immigration violations.

35. There have been no other purported changes to his situation which would place him now in detention.

36. Petitioner is now being held in the Tooele County Detention Center in this District.

37. Petitioner's criminal history consists of a single conviction. On January 28, 2026, Petitioner was convicted in the Fourth Judicial District Court of child abuse based on criminal negligence, in violation of Utah Code § 76-5-109(2) and (3)(c), a Class C misdemeanor. Based on records checks conducted by U.S. Immigration and Customs Enforcement and documented in the Notice to Appear, database searches for outstanding wants, warrants, and lookouts were negative, and no additional criminal matters were identified. ICE officials have indicated they do not intend to release Petitioner.

LEGAL FRAMEWORK

38. The Supreme Court has stated that it "'is well established the Fifth Amendment entitles aliens to due process of law in deportation proceedings.'" *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes

protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) ("both removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious").

39. Due process therefore requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

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

41. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

43. Third, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b).

44. This case concerns detention provisions at §§ 1226(a) and 1225(b)(2).

45. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended last year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

46. Following enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

47. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

48. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

49. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades

50. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for bond hearings before immigration judges.

51. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

52. Even before ICE or the BIA introduced these nationwide policies, immigration judges in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. On review, the U.S. District Court in the Western District of Washington rejected the immigration judges' rulings and found that such a reading of the INA is likely unlawful and that § 1226(a),

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

53. Subsequently, court after court has consistently adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.

Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

54. Federal District courts in Utah have reached the same conclusion. *See Tanchez v. Noem*, No. 2:25-cv-1150, 2026 LX 35353 (D. Utah Jan. 16, 2026) (granting habeas petition and holding that DHS's revised interpretation of the INA, which subjects millions of noncitizens to mandatory detention under 8 U.S.C. § 1225(b)(2) without regard to length of residence, criminal history, or individualized assessment, is unlawful; ordering a bond hearing and enjoining ICE from denying bond solely on the basis of § 1225(b)(2)); *Reyes v. United States Immigr. & Custom Enf't*, No. 2:25-cv-01159, 2026 LX 48228 (D. Utah Feb. 2, 2026) (expressly warning that DHS's revised mandatory detention policy under 8 U.S.C. § 1225 has been found unlawful and that continued application will likely result in additional lawsuits and court orders).

55. Courts across the nation have rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Tanchez* Court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

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

57. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* Court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

58. The plain reading of Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those—like Petitioner—who are present without admission or parole.

59. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

60. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to individuals like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

CLAIM FOR RELIEF

COUNT ONE
(Violation of the INA)

61. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

62. The mandatory detention provision at 8 U.S.C. § 1225(b)(2)(A) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

COUNT TWO
(Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution

64. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

65. The Fifth Amendment's Due Process Clause prohibits the Government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const., amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. It is well-established that "the Due Process Clause applies to 'all persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

66. Because 8 U.S.C. § 1226 governs Petitioner's detention, the due process owed to Petitioner is that provided for in § 1226—namely, an individualized bond hearing before an immigration judge.

67. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued detention and violates due process.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Stay Petitioner's transportation to another jurisdiction until this Court resolves his petition for a writ of habeas corpus;

c. Declare that Petitioner's detention is unlawful or, alternatively, issue an Order to Show Cause ordering Respondents to show cause within three days why this petition should not be granted;

d. Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately or, alternatively, issue a writ of habeas corpus requiring Respondents to schedule a bond hearing under 8 U.S.C. § 1226(a) within seven (7) days, wherein they will bear the burden to demonstrate by clear and convincing evidence that he is a danger to the community or a flight risk, to justify his continued and currently unjustified detention.;

e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

f. Grant any other and further relief that this Court deems just and proper.

DATED this 4th day of February, 2026.

HOLLAND & HART LLP

/s/ April M. Medley
April M. Medley
Samantha D. Wolfe
Christopher Thomas
Joshua D. Hurwit

Attorneys for Petitioner

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

I represent Petitioner, Jose Luis Carbajal, 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 4th day of February, 2026.

HOLLAND & HART LLP

/s/ April M. Medley
April M. Medley
Samantha D. Wolfe
Christopher Thomas
Joshua D. Hurwit

Attorneys for Petitioner

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