

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

Rajiv KUMAR,

Petitioner,

v.

Kristi NOEM, Secretary, U.S. Department of  
Homeland Security; Pamela BONDI, U.S.  
Attorney General; WARDEN of Otero County  
Processing Center; Todd LYONS, Acting  
Director, Immigration and Customs  
Enforcement and Removal Operations; Mary  
De ANDA-YBARRA, Regional Director, Field  
Office Director of Enforcement and Removal  
Operations, Immigration and Customs  
Enforcement;

Respondents.

Case No.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

## INTRODUCTION

1  
2 1. Since at least the passage of the Immigration and Nationality Act (INA) of 1952,  
3 noncitizens who entered the country illegally could generally be released on bond while their  
4 removal proceedings were pending. Yet earlier this year, U.S. Immigration and Customs  
5 Enforcement (ICE) “revisited” its position and determined that all noncitizens who are present  
6 without admission are subject to mandatory detention while in removal proceedings. The Board of  
7 Immigration Appeals (BIA) recently reached the same conclusion in a precedential decision,  
8 *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding for the first time that all  
9 noncitizens who entered the country without admission are categorically ineligible for bond  
10 regardless of how long they have lived in the United States.

11 2. Federal judges have issued hundreds of decisions finding the government’s novel  
12 interpretation incompatible with the INA. *See Endnote i & ii*. The provision on which the  
13 government relies states that noncitizens who are “seeking admission” are subject to mandatory  
14 detention while in removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Congress defined “admission”  
15 as “the lawful entry of the alien into the United States after inspection and authorization by an  
16 immigration officer.” 8 U.S.C. § 1101(a)(13)(A). Thus, by its plain terms, the provision only  
17 applies to noncitizens who present themselves at a port of entry. And in addition to disregarding  
18 the plain text of § 1225(b)(2)(A), the government’s contrary interpretation renders superfluous  
19 other provisions of the INA that require the mandatory detention of noncitizens who have engaged  
20 in criminal activity—including a provision, § 1226(c)(1)(E), enacted this year in the Laken Riley  
21 Act.

22 3. The government’s argument also flouts the Justice Department’s own regulations.  
23 Since 1997, the Justice Department has precluded immigration judges from granting bond to so-

1 called “arriving aliens”—*i.e.*, those who seek admission at a port of entry—but not to those who  
2 entered the country without inspection. This distinction was the result of a deliberate choice made  
3 by the Attorney General following the passage of the Illegal Immigration Reform and Immigrant  
4 Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, Div. C, 110 Stat. 3009-546. And under  
5 bedrock principles of administrative law, agencies cannot “overrule” by adjudication regulations  
6 that were promulgated after notice and comment. *Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980).

7 4. As a result of the government’s new interpretation, every noncitizen who entered  
8 the country without being admitted is subject to mandatory detention for the duration of their  
9 removal proceedings. One of those noncitizens is Rajiv Kumar, who has resided in the United  
10 States since 2022. After entering the United States without inspection, he was released on his own  
11 recognizance by ICE. He has since worked in a restaurant, but one day while traveling by bus he  
12 was stopped and detained by ICE. Petitioner does not have any criminal history. Absent this  
13 Court’s intervention, he will remain detained for the duration of his removal proceedings.

#### 14 JURISDICTION

15 5. Petitioner is in the physical custody of Respondents. Petitioner is detained at the  
16 Otero County Processing Center in Chaparral, New Mexico.

17 6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas  
18 corpus), 28 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the United States  
19 Constitution (the Suspension Clause).

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

22 8. The “zipper clause” at 8 U.S.C. § 1252(b)(9), which channels “[j]udicial review of  
23 all questions of law . . . including interpretation and application of constitutional and statutory  
24

1 provisions, arising from any action taken . . . to remove an alien from the United States” to the  
2 appropriate federal court of appeals, does not apply because that section applies only to review of  
3 removal orders, and Petitioner does not seek review of orders of removal but of custody.  
4 *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28,  
5 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 4-5.

6 9. The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to hear “any  
7 cause or claim by or on behalf of any alien arising from the decision or action by the Attorney  
8 General to commence proceedings, adjudicate cases, or execute removal orders against any alien  
9 under this chapter.” The Supreme Court previously characterized § 1252(g) as a narrow provision,  
10 applying “only to three discrete actions that the Attorney General may take: her ‘decision or action’  
11 to ‘commence proceedings, *adjudicate* cases, or *execute* removal orders.” *Reno v. Am.-Arab Anti-*  
12 *Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). In doing so, the Supreme  
13 Court found it “implausible that the mention of *three discrete events* along the road to deportation  
14 was a shorthand way to referring to *all claims arising from* deportation proceedings.” *Id.* (emphasis  
15 added). Petitioner’s challenge to his detention does not fall within these discrete actions.  
16 *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28,  
17 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 5.

18 10. Subsection 2 of 8 U.S.C. § 1252(a), titled “Judicial Review of Orders of Removal,”  
19 contains four subsections, which outline categories of claims that are not subject to judicial review.  
20 § 1252(a)(2)(A)–(D). None of these subsections precluding judicial review apply to this matter, as  
21 the specified statutory provisions do not cite § 1225(b)(2)(A) or § 1226(a), which are the two  
22 provisions Petitioner challenges. Thus, no part of § 1252 deprives this Court of jurisdiction.  
23 *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28,  
24

1 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 6. As such, the Court has  
2 jurisdiction over Petitioner’s challenge to his detention.

3 **VENUE**

4 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-  
5 500 (1973), venue lies in the United States District Court for the District of New Mexico, the  
6 judicial district in which Petitioner currently is detained.

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

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

11 13. The Court must grant the petition for writ of habeas corpus or order Respondents  
12 to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an  
13 order to show cause is issued, the Respondents must file a return “within three days unless for  
14 good cause additional time, not exceeding twenty days, is allowed.” *Id.*

15 14. Habeas corpus is “perhaps the most important writ known to the constitutional  
16 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or  
17 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the  
18 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and  
19 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208  
20 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

21 **PARTIES**

22 15. Petitioner Rajiv Kumar first entered the United States in 2022 and has maintained  
23 residence here since that time. ICE has charged Petitioner with removability under 8 U.S.C. §  
24

1 1182(a)(6)(A)(i) as an alien in the United States without being admitted or paroled. He is presently  
2 detained at the Otero County Processing Center in Chaparral, New Mexico.

3 16. Mary De ANDA-YBARRA is the director of the Regional Field Office of ICE's  
4 Enforcement and Removal Operations division, which oversees operations at the detention center.  
5 As such, the Director is Petitioner's immediate custodian and is responsible for Petitioner's  
6 detention and removal. The person is named in their official capacity.

7 17. Respondent Kristi NOEM is the Secretary of the Department of Homeland Security.  
8 She is responsible for the implementation and enforcement of the INA, and oversees ICE, which  
9 is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner  
10 and is sued in her official capacity.

11 18. Respondent Pamela BONDI is the United States Attorney General. She is  
12 responsible for the Executive Office for Immigration Review (EOIR), which is the component of  
13 the U.S. Department of Justice that is responsible for implementing and enforcing the INA in  
14 removal proceedings, including for custody redetermination in bond hearings.

15 19. Respondent WARDEN is an unknow individual and the Warden of Otero County  
16 Processing Center, where Petitioner is detained. That person has immediate physical custody of  
17 Petitioner. That person is sued in their official capacity.

18 20. Respondent Todd LYONS is the Acting Director of ICE and is named in his  
19 official capacity. Among other things, ICE is responsible for the administration and enforcement  
20 of the immigration laws, including the removal of noncitizens. In his official capacity as head of  
21 ICE, he is the legal custodian of Petitioner.

22 **LEGAL FRAMEWORK**

23 **Immigration and Nationality Act and Federal Regulations**

1           21.     The INA prescribes three basic forms of detention for the vast majority of  
2 noncitizens who are alleged or found to be removable from the United States.

3           22.     First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal  
4 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally  
5 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),  
6 while noncitizens who have engaged in specified criminal and terrorist activity are subject to  
7 mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

14           26.     The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
15 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–  
16 208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section  
17 1225(b)(2)(A) states that if an “examining immigration officer determines that an alien seeking  
18 admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for  
19 [removal proceedings].” The IIRIRA also defined “admission” in 8 U.S.C. § 1101(a)(13)(A) as  
20 the “lawful entry of the alien into the United States after inspection and authorization by an  
21 immigration officer.” § 301, 110 Stat. 3009-575.

22           27.     Consistent with these statutory provisions, federal regulations preclude  
23 immigration judges from granting bond to “arriving aliens,” 8 C.F.R. § 1003.19(h)(1)(B)(ii), a  
24

1 phrase defined in relevant part as “applicant[s] for admission coming or attempting to come into  
2 the United States at a port-of-entry.” 8 C.F.R. § 1001.1(q). The decision to preclude immigration  
3 judges from granting bond to arriving aliens—as distinct from all noncitizens who entered without  
4 admission—was the product of notice and comment rulemaking in early 1997 following the  
5 enactment of the IIRIRA.

6 28. As the regulations were initially proposed, all “[i]nadmissible aliens in removal  
7 proceedings” would have been ineligible for bond. *Inspection and Expedited Removal of Aliens;*  
8 *Detention and Removal of Aliens; Conduct of Removal*, 62 Fed. Reg. 444, 483 (Jan. 3, 1997). After  
9 receiving comments, however, the Attorney General deleted the proposed provision and replaced  
10 it with one that would apply only to “[a]rriving aliens.”<sup>1</sup> *Inspection and Expedited Removal of*  
11 *Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*,  
12 62 Fed. Reg. 10312, 10361 (March 6, 1997). As the Attorney General explained, “[t]he effect of  
13 this change [was] that inadmissible aliens, except for arriving aliens, have available to them bond  
14 redetermination hearings before an immigration judge, while arriving aliens do not.” *Id.* at 10323.  
15 In other words, “aliens who are present without having been admitted or paroled (formerly referred  
16 to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”  
17 *Id.*

18 29. Thus, in the decades that followed, most people who entered without inspection  
19 and were placed in standard removal proceedings received bond hearings, unless their criminal  
20 history rendered them ineligible. That practice was consistent with many more decades of prior  
21 practice in which noncitizens who were not deemed “arriving” were entitled to a custody hearing  
22

23 \_\_\_\_\_  
24 <sup>1</sup> This provision was originally promulgated as 8 C.F.R. § 236.1(c)(5)(i) and was later transferred  
to 8 C.F.R. § 1003.19(h)(2)(i)(B).

1 before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1,  
2 at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at  
3 § 1252(a)).

4 30. Section 1226 was most recently amended earlier this year by the Laken Riley Act,  
5 Pub. L. No. 119-1, 139 Stat. 3 (2025). Congress provided that noncitizens who entered the country  
6 without being admitted are subject to mandatory detention if they were thereafter charged with,  
7 arrested for, convicted of, or admitted committing various offenses. § 1226(c)(1)(E). As may be  
8 apparent, this provision would be superfluous if all noncitizens who were present without  
9 admission were already subject to mandatory detention under § 1225(b)(2)(A).

#### 10 **Exhaustion and Futility**

11 31. Exhaustion of administrative remedies is required “[w]here Congress specifically  
12 mandates.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). But where, as here “Congress has  
13 not clearly required exhaustion, sound judicial discretion governs.” *Id.* (citations omitted). Under  
14 these principles, prudential exhaustion is not required where a request for relief before the agency  
15 would be futile because the agency has “predetermined the issue before it.” *Id.* at 148. Further, “a  
16 court may waive the prudential exhaustion requirement if ‘administrative remedies are inadequate  
17 or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury  
18 will result, or the administrative proceedings would be void.’” *Hernandez v. Sessions*, 872 F.3d  
19 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

20 32. The BIA’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, renders  
21 prudential exhaustion futile in bond cases involving individuals who entered the United States  
22 without inspection. *Zaragoza Mosqueda, et al. v. Noem*, 2025 WL 2591530, at \*7 (C.D. Cal. Sept.  
23 8, 2025). Although Petitioner has just received a denial of his bond request by an immigration  
24

1 judge, *Matter of Yajure Hurtado* “predetermine[s]” the outcome of that appeal. *McCarthy*, 503  
2 U.S. at 148. Prudential exhaustion is therefore unnecessary, and the Court should take jurisdiction  
3 over Petitioner’s case.

4 33. A motion to reconsider has been filed in *Matter of Yajure Hurtado*. The motion  
5 challenges the Board’s statutory analysis and asks it to withdraw its decision because (a) the  
6 underlying removal proceedings had concluded by the time the Board issued its decision, making  
7 the case moot, and (b) the decision conflicts with longstanding regulations issued by the Attorney  
8 General.<sup>2</sup>

9 **Federal Court Decisions Regarding Detention of**  
10 **Individuals Who Are Present Without Admission**

11 34. To date, federal district judges have issued hundreds of decisions either outright  
12 rejecting the government’s novel interpretation of § 1225(b)(2)(A),<sup>i</sup> or finding that noncitizens  
13 challenging the government’s interpretation were substantially likely to prevail on the merits.<sup>ii</sup>  
14 These judges have not been unsparing in their criticism of the government’s newfound position.  
15 One called it a “nonstarter.” *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 at \*10 (D. Mass.  
16 Sept. 5, 2025). Another called it “willfully blind.” *Leal-Hernandez v. Noem*, No. 25-2428, 2025  
17 WL 2430025 at \*25 (D. Md. Aug. 24, 2025). Another called it “a policy argument, projected onto  
18 Congress.” *Romero v. Hyde*, No. 25-11631, \_\_ F. Supp. 3d \_\_, 2025 WL 2403827 at \*28 (D. Mass.  
19 Aug. 19, 2025). Indeed, in the District of New Mexico alone, various judges have rejected the  
20 government’s interpretation. *See, e.g., Hernandez-Parrilla v. Anda-Ybarra*, 2025 WL 362769  
21 (D.N.M. Dec. 15, 2025) (Strickland, J.); *Cortez- Gonzalez v. Noem*, 2025 WL 3485771 (D.N.M.

22  
23 <sup>2</sup> The Board’s Decision in *Matter of Yajure Hurtado* is also not entitled to deference because it  
24 contravenes the statutory language and legislative history, and it deviates from longstanding  
agency practice and regulations.

1 Dec. 4, 2025) (Garcia, J.). *But see Singh v. Noem*, No. 25-110 2026 WL 146005 (D.N.M. Jan. 20,  
2 2026) (Browning, J.).

3 35. The district court in *Maldonado Bautista v. Santacruz*, et al, 5:25-cv-01873 (C.D.  
4 Cal. Nov. 20, 2025) (Sykes, J.), has granted nationwide class certification and summary judgment  
5 on this issue. Specifically, the court has declared illegal the Immigration and Customs Enforcement  
6 policy, and the Board of Immigration Appeals decision in *Matter of Yajure-Hurtado*, 29 I. & N.  
7 Dec. 216 (BIA 2025), requiring detention without bond of all persons who entered without  
8 inspection or admission. Other courts have followed suit. *See Guerrero Orellano v. Moniz, et al.*,  
9 1:25-cv-12664 (D. Mass. Dec. 19, 2025) (Saris, J.); *Ramirez Ovando, et al., v. Noem, et al.*, 1:25-  
10 cv-03183 (D. Colo. Nov. 25, 2025) (Jackson, J.). Thus, class members nationwide now have a  
11 binding judgment declaring they are detained under 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), and  
12 are entitled to consideration for release on bond.<sup>3</sup>

13 36. The court there expressly extended the declaratory relief to the Bond Eligible Class,  
14 which is nationwide and encompasses:

15 All noncitizens in the United States without lawful status who (1) have entered or  
16 will enter the United States without inspection; (2) were not or will not be  
17 apprehended upon arrival; and (3) are not or will not be subject to detention under  
18 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland  
19 Security makes an initial custody determination.

20 37. Petitioner in this case is thus a class member and covered by the declaratory relief  
21 granted in *Maldonado Bautista*.

22  
23 <sup>3</sup> Petitioner notes that on Dec. 18, 2025, the Court subsequently ordered final judgment in favor  
24 of Petitioners and the Bond Eligible Class. *Maldonado Bautista v. Santacruz*, et al, 5:25-cv-  
01873 (C.D. Cal. Dec. 18, 2025) (Sykes, J.).

1 38. It is not difficult to understand why federal district courts have rejected the  
2 government’s novel interpretation, as the plain text of the statutory provisions demonstrates that  
3 § 1226(a), not § 1225(b), applies to people like Petitioner.

4 39. By its terms, § 1225(b)(2)(A) only applies to noncitizens who are “seeking  
5 admission,” and Congress defined “admission” as the “lawful entry of the alien into the United  
6 States after inspection and authorization by an immigration officer.” § 1101(a)(13)(A).  
7 Accordingly, “[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the  
8 country would read the word ‘entry’ out of the definitions of ‘admitted’ and ‘admission.’” *Chafla*  
9 *v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025).

10 40. Accordingly, § 1225(b) applies to people arriving at U.S. ports of entry. The  
11 statute’s entire framework is premised on inspections at the border of people who are “seeking  
12 admission” to the United States, and individuals who entered without inspection and have never  
13 affirmatively applied for admission or parole do not fit within that category. 8 U.S.C. §  
14 1225(b)(2)(A); *see also Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025)  
15 (specifically rejecting the Board’s analysis of the statute in *Matter of Yajure Hurtado* and  
16 concluding that it is “difficult to square a noncitizen’s continued presence with “seeking admission”  
17 when that noncitizen never attempted to obtain lawful status”); *Vasquez-Garcia et al. v. Noem*,  
18 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (rejecting DHS’ contention that an individual who  
19 entered the United States without inspection “is automatically understood to be ‘seeking admission’  
20 within the meaning of § 1225(b)(2)(A), without need[ing] to affirmatively apply for admission or  
21 parole”); *Arrazola Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (concluding  
22 that habeas petitioner showed likelihood of success on the merits of argument that “[t]o ignore the  
23  
24

1 ‘seeking admission’ language [in 8 U.S.C. § 1225(b)(2)(A) . . . would render the language  
2 purposeless and violate a key rule of statutory construction”).

3 41. Throughout its text, 8 U.S.C. § 1225 defines its scope by reference to  
4 “inspections”—a term not defined in the INA but which typically connotes an examination upon  
5 or soon after physical entry. *See* 8 U.S.C. § 1225 (titled “Inspection by immigration officers;  
6 expedited removal of inadmissible arriving [noncitizens]; referral for hearing”); §§ 1225(b)(1)–(2)  
7 (referring to “inspections” in their titles); § 1225(d)(1) (authorizing immigration officials to search  
8 certain conveyances to conduct “inspections” where noncitizens “are being brought into the United  
9 States”). Many statutory provisions, various regulations and agency precedent discuss “inspection”  
10 in the context of admission processes at ports of entry, further supporting the conclusion that §  
11 1225(b) has a limited temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§ 1187(h)(2)(B)(i),  
12 1225A; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010)).

13 42. Indeed, the Supreme Court has explained that this mandatory detention scheme  
14 applies to noncitizens who are “arriving in the United States,” *Clark v. Martinez*, 543 U.S. 371  
15 (2005), “at the Nation’s borders and ports of entry, where the Government must determine whether  
16 a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281,  
17 287 (2018).

18 43. As importantly, § 1226(c) subjects numerous categories of inadmissible noncitizens  
19 to mandatory detention. If “the [BIA was] correct that § 1225(b)’s mandatory detention provisions  
20 apply to all persons who have not been admitted into the United States, that would render  
21 superfluous those provisions of § 1226 that apply to certain categories of inadmissible aliens, such  
22 as § 1226(c)(1)(A), (D), and (E).” *Hasan v. Crawford*, \_\_ F. Supp. 3d \_\_, 2025 WL 268225 at \*22  
23 (E.D. Va. Sept. 19, 2025) (Brinkema, J.). Indeed, the BIA’s interpretation would “render the Laken  
24

1 Riley Act a meaningless amendment, since it would have prescribed mandatory detention for  
2 noncitizens already subject to it.” *Aceros v. Kaiser*, 2025 WL 2637503 at \*28 (N.D. Cal. Sept. 12,  
3 2025).

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

7 **FACTS**

8 45. Petitioner Rajiv Kumar is originally from India and has been in the United States  
9 since 2022.

10 46. On November 28, 2022, after entering the United States via the southern border  
11 without being inspected by an immigration officer, he was detained by ICE

12 47. ICE charged Petitioner with removability under 8 U.S.C. § 1182(a)(6)(A)(i) as an  
13 alien in the United States without being admitted or paroled.

14 48. ICE then released Petitioner on his own recognizance as part of ICE’s Alternatives  
15 to Detention program.

16 49. Petitioner has been a productive member of society and worked at a restaurant while  
17 in the United States.

18 50. Despite having no criminal history or other issues while in the United States, on  
19 December 7, 2025, while travelling on a bus, Petitioner was stopped and detained by ICE.

20 51. Petitioner is currently detained at the Otero Processing Center in Chaparral, New  
21 Mexico.

22 **CLAIMS FOR RELIEF**

23 **COUNT I**

**Violation of the INA**

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

53. 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 entered the country without being admitted. By its terms, § 1225(b)(2)(A) only applies to noncitizens who are “seeking admission.” The term “admission” is defined to require a “lawful entry” following “inspection and authorization by an immigration officer.” § 1101(a)(13)(A). Accordingly, § 1225(b)(2)(A) does not apply to noncitizens like Petitioner who evade inspection and are apprehended outside a port of entry. Such noncitizens are instead detained under § 1226 while in removal proceedings, and are thus eligible for release on bond under § 1226(a) unless they are subject to mandatory detention under § 1226(c).

54. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued detention without a bond hearing and violates the INA.

**COUNT II**

**Violation of Federal Regulations**

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

56. Under 8 C.F.R. § 1236.1(d)(1), immigration judges may grant bond to any noncitizen in removal proceedings who is not subject to a final order or to any of the exceptions in 8 C.F.R. § 1003.19. None of the exceptions in § 1003.19 preclude immigration judges from granting bond to noncitizens simply for being present without admission.

57. As relevant here, the regulations only preclude immigration judges from granting bond to noncitizens who qualify as “arriving aliens,” § 1003.19(h)(1)(B)(ii), *i.e.*, those who

1 presented themselves for inspection at a port of entry. When these regulations were initially  
2 promulgated, the Justice Department explained that “inadmissible aliens, except for arriving aliens,  
3 have available to them bond redetermination hearings before an immigration judge.” 62 Fed. Reg.  
4 10312, 10323 (March 6, 1997). The Justice Department thus made clear that individuals who had  
5 entered without inspection were eligible for consideration for bond and bond hearings before IJs  
6 under 8 U.S.C. 1226 and its implementing regulations.

7 58. Notwithstanding these regulations, the BIA held in *Matter of Yajure Hurtado* that  
8 all noncitizens who are present without admission are ineligible to receive a bond from  
9 immigration judges. Application of this decision to Petitioner unlawfully mandates his continued  
10 detention without a bond hearing in violation of §§ 1236.1 and 1003.19.

11 **COUNT III**  
12 **Violation of Due Process**

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

15 60. The government may not deprive a person of life, liberty, or property without due  
16 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,  
17 detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause  
18 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

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

20 62. The government’s detention of Petitioner and its issuance of a precedential decision  
21 precluding his release violates his right to due process.

22 **PRAYER FOR RELIEF**

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

24 a. Assume jurisdiction over this matter;

- 1 b. Set this matter for expedited consideration;
- 2 c. Declare that no statute or regulation prohibits an immigration judge from holding a  
3 custody redetermination hearing for Petitioner, and that Petitioner is properly  
4 detained, if at all, under 8 U.S.C. 1226(a);
- 5 d. Issue a Writ of Habeas Corpus and conduct a bond hearing within 15 days, or order  
6 Petitioner’s release within 15 days unless Respondents provide him with a bond  
7 hearing before an immigration judge;
- 8 e. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act  
9 (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under  
10 law; and
- 11 f. Grant any other and further relief that this Court deems just and proper.

12 DATED this 6th day of February, 2026.

13  
14  
15 /s/ Jason Wisecup  
16 Jason Wisecup  
17 Wisecup Legal, PLLC  
18 1500 N. Grant St. #6316  
19 Denver, CO 80203  
20 (505) 376-6670  
21 [jason@wisecuplegal.com](mailto:jason@wisecuplegal.com)  
22 [www.wisecuplegal.com](http://www.wisecuplegal.com)

23 *Attorney for Petitioner*  
24

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

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

Executed on this 6th day of February, 2026, in Albuquerque, New Mexico.

/s/ Jason Wisecup  
Jason Wisecup  
*Attorney for Petitioner*

---

<sup>i</sup> See, e.g., *Moreno Madrid v. Acuna*, 3:25-CV-01572 (W.D. La. Dec. 12, 2025); *Sanabria v. Rosa*, 25-4429 (D. Ariz. Dec. 11, 2025) (Tuchi, J.); *H.L.P.F. V. Wamsley*, 25-1899 (D. Or. Dec. 10, 2025) (Aiken, J.); *Millan-Osuna v. Cantu*, 25-4019 (D. Ariz. Nov. 26, 2025); (Liburdi, J.); *Soto v. Noem*, 25-4178 (D. Ariz. Nov. 26, 2025) (Liburdi, J.); *Vargas-Murillo v. Bondi*, 25-03396 (D. Ariz. Nov. 25, 2025) (Liburdi, J.); *Perez Camacho v. Holinshead*, 25-593 (D. Id. Nov. 19, 2025) (Winmill, J.); *Macilla Ruiz v. Larose*, No. 25-379 (S.D. Cal. Nov. 18, 2025) (Bashant, J.); *Maravilla Amaya v. Noem*, 25-2892 (S.D. Cal. Nov. 13, 2025) (Moskowitz, J.); *Hernandez-Luna v. Noem*, 25-1818 (D. Nev. Nov. 6, 2025) (Navarro, J.); *Castellanos Lopez v. Warden*, No. 25-2527 (S.D. Cal. Oct. 27, 2025) (Huie, J.); *Esquivel-Ipina v. Larose*, No. 25-2672 (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Benitez-Cornejo v. Cantu*, No. 25-3672 (D. Ariz. Oct. 17, 2025) (Tuchi, J.); *Torres v. Wamsley*, 2025 WL 2855379 (W.D. Wash. Oct. 8, 2025) (Menendez, J.); *BDVS v. Forestal*, No. 25-1968 (S.D. Ind. Oct. 8, 2025) (Evans Barker, J.); *Eliseo v. Olson*, No. 25-3381 (Oct. 8, 2025) (Blackwell, J.); *Buenrostro-Mendez v. Bondi*, No. 25-3726, (S.D. Tex. Oct. 7, 2025) (Rosenthal, J.); *Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025) (Joun, J.); *Belsai D.S. v. Bondi*, No. 25-3682 (D. Minn. Oct. 1, 2025) (Menendez, J.); *Santiago Santiago v. Noem*, No. 25-361 (W.D. Tex. Oct. 1, 2025) (Cardone, J.); *Quispe-Ardiles v. Noem*, No. 25-1382, 2025 WL 2783799 (E.D. Va. Sept. 30, 2025) (Nachmanoff, J.); *Rodriguez Vazquez v. Bostock*, No. 25-5240, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (Cartwright, J.); *Da Silva v. ICE*, No. 25-284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025) (McCafferty, J.); *Quispe v. Crawford*, No. 25-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025) (Trenga, J.); *Inlago Tocagon v. Moniz*, No. 25-12453, 2025 WL 2778023 (D. Mass. Sept. 29, 2025) (Joun, J.); *Barrios v. Shepley*, No. 25-406, 2025 WL 2772579 (D. Maine Sept. 29, 2025) (Woodcock, Jr.); *J.U. v. Maldonado*, No. 25-4836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Savane v. Francis*, No. 25-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.); *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (Hayden, J.); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tex. Sept 26, 2025) (Hittner, J.); *Gamez Lira v. Noem*, No. 25-855 (D.N.M. 25-855) (Johnson, J.); *Singh*

1 v. *Lewis*, No. 25-96, 2025 LX 400065 (W.D. Ky. Sept. 22, 2025) (Jennings, J.); *Chafla v. Scott*,  
2 No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (Neumann, J.); *Hasan v. Crawford*, No.  
3 25-1408, 2025 LX 499354 (E.D. Va. Sept. 19, 2025) (Brinkema, J.); *Barrera v. Tindall*, No. 25-  
4 451, 2025 LX 435572 (W.D. Ky. Sept. 19, 2025) (Jenning, J.); *Salazar v. Dedos*, No. 25-835,  
5 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (Urias, J.); *Garcia Cortes v. Noem*, No. 25-2677, 2025  
6 WL 2652880 (D. Colo. Sept. 16, 2025) (Sweeney, J.); *Lopez Santos v. Noem*, 2025 WL 2642278  
7 (W.D. La. Sept. 11, 2025) (Doughty, J.); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL  
8 2609425 (E.D. Mich. Sept. 9, 2025) (White, J.); *Sampiao v. Hyde*, No. 25-11981, 2025 WL  
9 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX  
10 360066 (D.N.H. Sept. 8, 2025) (McCafferty, J.); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819  
11 (D. Mass. Sept. 5, 2025) (Talwani, J.); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803  
12 (S.D.N.Y. Aug. 8, 2025) (Ho, J.); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379  
13 (E.D. Mich. Aug. 29, 2025) (McMillion, J.); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610  
14 (D. Mass. Aug. 27, 2025) (Kobick, J.); *Jose J.O.E. v. Bondi*, No. 25-3051, 2025 WL 2466670 (D.  
15 Minn. Aug. 27, 2025) (Tostrud, J.); *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 (D.  
16 Md. Aug. 24, 2025) (Rubin, J.); *Romero v. Hyde*, No. 25-11631, \_\_ F.Supp.3d \_\_, 2025 WL  
17 2403827 (D. Mass. Aug. 19, 2025) (Murphy, J.); *Samb v. Joyce*, No. 25-6373, 2025 WL 2398831  
18 (S.D.N.Y. Aug. 19, 2025) (Ho, J.); *dos Santos v. Noem*, No. 25-12052, 2025 WL 2370988 (D.  
19 Mass. Aug. 14, 2025) (Kobick, J.); *Diaz Martinez v. Hyde*, No. 25-11613, \_\_ F.Supp.3d \_\_, 2025  
20 WL 2084238 (D. Mass. July 24, 2025) (Murphy, J.); *Gomes v. Hyde*, No. 25-11571, 2025 WL  
21 1869299 (D. Mass. July 7, 2025) (Kobick, J.). *But see Barrios Sandoval v. Acuna*, 2025 WL  
22 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.) (denying habeas petition); *Silva Oliveira v.*  
23 *Patterson*, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (Joseph, J.) (same).

24 <sup>ii</sup> See, e.g., *Dolmo Martinez v. Rice*, 2025 WL 3554620 (W.D. La. Dec. 11, 2025) (Edwards, J.);  
*Rueda Padilla v. Bowen*, 25-cv-10780 (C.D. Cal. Nov. 21, 2025) (Snyder, J.); *Sandigo*  
*Manzanarez v. Bondi*, 25-1536 (E.D. Cal. Nov. 20, 2025) (Coggins, J.); *Orozco Acosta v. Bondi*,  
25-9601 (N.D. Cal. Nov. 19, 2025) (Gillam, J.); *Diaz v. Albarran*, 25-cv-9601 (N.D. Cal. Nov. 18,  
2025) (Corley, J.); *Estuardo Marin v. Andrews*, 25-cv-1422 (E.D. Cal. Nov. 13, 2025) (Boone, J.);  
*Lopez v. Lyons*, 25-3174 (E.D. Cal. Nov 7, 2025) (Calabretta J.) *Castillo v. Wamsley*, 25-2054  
(W.D. Wash. Nov 5, 2025) (Cartwright, J.); *Pineda Parada v. Rice*, 2025 WL 3146250 (W.D. La.  
Nov. 4, 2025) (Drell, J.); *Arce-Cervera v. Noem*, 25-1895 (D. Nev. Oct. 28, 2025); *Martinez Lopez*  
*v. Noem*, No. 3:25-2734 (S.D. Cal. Oct. 23, 2025) (Park, J.); *Ventura Martinez v. Trump* (W.D. La.  
Oct. 22, 2025) (Edwards, J.); *Sabi Polo v. Chestnut*, No. 25-1342 (E.D. Cal. Oct. 17, 2025)  
(Thurston, J.); *Menjivar Sanchez v. Wofford*, No. 25-1187 (E.D. Cal. Oct. 17, 2025) (Oberto, J.);  
*E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025) (Boulware, J.); *Rico-Tapia v. Smith* No.  
25-379 (D. Haw. Oct. 10, 2025) (Park, J.); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D.  
Cal. Oct. 9, 2025) (Beeler, J.) *Flores v. Noem*, No. 25-2490, 2025 LX 444718 (C.D. Cal. Sept. 29,  
2025) (Birotte, J.); *Roa v. Albarran*, No. 25-7802, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025)  
(Seeborg, J.); *Lopez v. Hardin*, No. 25-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025) (Dudek,  
J.); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163 (E.D. Cal. Sept. 23, 2025) (Sherriff, J.); *Aceros*  
*v. Kaiser*, No. 25-06924, 2025 LX 330524 (N.D. Cal. Sept. 12, 2025) (Chen, J.); *Guzman v.*  
*Andrews*, No. 25-01015, 2025 LX 354551 (E.D. Cal. Sept. 9, 2025) (Sherriff, J.); *Mosqueda v.*  
*Noem*, No. 25-2304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (Snyder, J.); *Nieves v. Kaiser*,  
No. 25-6921, 2025 LX 320701 (N.D. Cal. Sept. 3, 2025) (Beeler, J.); *Garcia v. Noem*, No. 25-  
2180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.); *Garcia v. Kaiser*, No. 25-06916,  
2025 LX 322337 (N.D. Cal. Aug. 29, 2025) (Gonzalez Rogers, J.); *Kostak v. Trump*, No. 25-1093,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Edwards, J.); *Benitez v. Noem*, No. 25-02190, 2025 LX 322897 (C.D. Cal. Aug. 26, 2025) (Klausner, J.); *Ramirez Clavijo v. Kaiser*, No. 25-06248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025) (Freeman, J.); *Arrazola-Gonzalez v. Noem*, No. 25-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (Wright, J.); *Maldonado v. Olson*, No. 25-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (Nelson, J.); *Maldonado Bautista v. Santacruz*, No. 25-01873, 2025 LX 341363 (C.D. Cal. July 28, 2025); *Vazquez v. Bostock*, No. 25-05240, 779 F. Supp. 3d 1239 (W.D. Wash. April 24, 2025) (Cartwright, J.). *But see Sixtos Chavez v. Noem*, No. 25-2325 (S.D. Cal. Sep. 24, 2025) (Bencivengo, J.) (denying temporary restraining order); *Villanueva v. Chestnut*, No. 25-2 (E.D. Cal. Oct. 24, 2025) (Sheriff, J.) (same).