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Attorney for **Jose Estiven Guerra Martinez**

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

GUERRA-MARTINEZ, Estiven Jose,

Petitioner,

v.

Pamela Bondi, in her official capacity as
Attorney General of the United States;
Markwayne Mullin in his official capacity
as Secretary of the Department of
Homeland Security; Daren K. Margolin,
Acting Director, Executive Office for
Immigration Review; Christopher
McGregor, in his official capacity as
Phoenix Field Office Director, Immigration
and Customs Enforcement, Enforcement
and Removal Operations; Eric Rokowsky,
Acting Warden, Eloy Detention Center

Respondents.

Case No.:

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Mr. Jose Estiven Guerra Martinez, moves this Court to issue a Writ of Habeas Corpus to compel the Respondents to appear and show cause why the Petitioner should not be released from the custody of the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), and to order declaratory and injunctive relief to remedy his unlawful detention, and to enjoin the Respondents from continuing to deny his release from immigration custody.

SUMMARY OF THE ARGUMENT

2. Mr. Guerra Martinez is detained in the custody of the Department of Homeland Security ("DHS"), 1705 East Hanna Road, Eloy, AZ 85131 United States under 8 U.S.C. § 1226 and 8 C.F.R. § 1236. Respondents have claimed that the legal basis for his detention is 8 U.S.C. § 1225. He has been detained for roughly three weeks while removal proceedings remain pending.
3. As of today's date, March 10, 2026 Mr. Guerra Martinez remains in immigration detention and has been there for roughly three weeks.
4. Petitioner respectfully requests this Court to find that he is not detained pursuant to INA § 1225, but rather 8 U.S.C. § 1226, and as such is entitled to either release or a custody redetermination hearing in accordance with applicable law. *See Exhibit B Proposed Bond Packet.*

PARTIES

5. Respondent Guerra Martinez is a native and citizen of Guatemala. See Exhibit A, Notice to Appear. After approximately five years of peacefully living and working in the United States, Mr. Guerra Martinez was detained by Immigration and Customs

1 Enforcement ("ICE") on February 15, 2025, and placed in removal proceedings. See
2 *Exhibit B, Proposed Bond Packet*.

- 3 6. Respondent Pamela Bondi is sued in her official capacity as the Attorney General
4 of the United States. She has authority over the Executive Office for Immigration
5 Review ("EOIR"), and she has authority to issue appropriate directions to the
6 Director of the EOIR for the reasonable management of the immigration courts and
7 their dockets.
- 8 7. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of the
9 Department of Homeland Security (DHS). He is the executive officer who has been
10 given authority to manage and control the Immigration and Customs Enforcement.
11 As such, he is the ultimate legal custodian of the Petitioner.
- 12 8. Respondent Daren K. Margolin is sued in his official capacity as Acting Director of
13 the Executive Office for Immigration Review. He is responsible for the supervision
14 of the Chief Immigration Judge and all agency personnel—including the Immigration
15 Judges in the various local Immigration Courts throughout the country—in the
16 execution of their duties in accordance with 8 C.F.R. Part 3. He represents the
17 position and policies of EOIR to the Attorney General, Members of Congress, and
18 other governmental bodies.
- 19 9. Respondent Christopher McGregor is sued in his official capacity as the Phoenix
20 Field Office Director of Immigration and Customs Enforcement (ICE). In his official
21 capacity, he is a legal custodian over Petitioner because he is responsible for
22 providing a detailed worksheet, including a recommendation on continued detention
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1 or release, so that the Headquarters Custody Determination Unit can make the final
2 decision on continued detention.

3 10. Respondent Eric Rokowsky is the acting warden of the Eloy Detention Center
4 where Mr. Guerra Martinez is currently detained.

5 **JURISDICTION**

6 11. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3); Article I § 9, Clause 2 of
7 the United States Constitution ("Suspension Clause"), and 28 U.S.C. § 1331, as the
8 Petitioner is presently in custody under color of the authority of the United States,
9 and such custody is in violation of the Constitution, laws, regulations, and, or treaties
10 of the United States, specifically the Immigration and Nationality Act ("INA"), 8
11 U.S.C. § 1101 *et seq.*

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13 12. This Court may also exercise jurisdiction under 28 U.S.C. § 1361 ("Mandamus
14 Clause"). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory
15 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651 to
16 protect Petitioners' rights under the Due Process Clause of the Fifth Amendment to
17 the United States Constitution and under applicable Federal law, and to issue a writ
18 of habeas corpus for his immediate release. *See generally INS v. St. Cyr*, 533 U.S.
19 289 (2001); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

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21 **VENUE**

22 13. Venue is proper in the Arizona District Court because Mr. Guerra Martinez is
23 detained at the Eloy Detention Center, in Eloy, Arizona, and the records and
24 witnesses pertinent to his claim are likely to be found there. Eloy Detention Center
25 (EDC), Arizona is within the geographical jurisdiction of this Court. Several of the
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1 Respondents reside and work in their official capacity in this District. 28 U.S.C.
2 1391(e). Furthermore, it is a convenient forum for both the Respondents and the
3 Petitioner. *Branden v. 30th Judicial Circuit Court*, 410 U.S. 484, 493-94 (1973).

4 **STATEMENT OF FACTS**

5 **14.** Petitioner Mr. Guerra Martinez is a native citizen of Guatemala. He entered the
6 United States without inspection in September, 2020 has resided in the United
7 States ever since. *See Exhibit C, Proposed Bond Packet.*

8 **15.** Mr. Guerra Martinez came into contact with and was arrested by ICE on February
9 15, 2026. He was detained and transferred to Eloy Detention Center (EDC).

10 **16.** When Mr. Guerra Martinez was placed in immigration proceedings, DHS and ICE
11 relied solely on his entry without inspection to assert he was subject to deportation.
12 *See Exhibit A, Notice to Appear.*

13 **17.** Mr. Guerra Martinez remains in immigration custody, as he has been for
14 approximately three weeks.
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16 **LEGAL ARGUMENT**

17 **18.** Mr. Guerra Martinez is detained under 8 U.S.C. § 1226 and 8 C.F.R. § 1236. The
18 statute expressly authorizes the Attorney General to release detained aliens on
19 "bond...or conditional parole" subject to the limitations in found at 8 U.S.C. § 1226(c).
20 8 U.S.C. § 1226(a)(2), (c). If they are not detained pursuant to 8 U.S.C. § 1226(c), a
21 detained alien may apply for release on bond and an Immigration Judge, exercising
22 the authority delegated from the Attorney General, must determine whether the alien
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1 would “pose a danger to persons or to property” and “that the alien is likely to appear
2 for any scheduled proceeding or interview.” 8 C.F.R. § 1003.19(h)(3).

3 **19.** Respondents will likely contend that Mr. Guerra Martinez is detained pursuant to 8
4 U.S.C. § 1225. *See Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). Mr. Guerra
5 Martinez came into contact with Immigration and Customs Enforcement (“ICE”) on
6 December 2, 2025, after being pulled over that day, which led to his detention. At
7 present, no party contends that Mr. Guerra Martinez is detained pursuant to 8 U.S.C.
8 § 1225(b)(1) or 8 U.S.C. § 1226(c).

9 **20.** To the extent that the government relies on *Yajure Hurtado* in refusing to consider Mr.
10 Guerra Martinez request for a bond hearing, the government violates the statute and
11 applicable regulations and deprived Mr. Guerra Martinez of due process.
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13 **21.** The Due Process clause of the constitution applies to all persons in the United States,
14 “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*
15 *v. Davis*, 533 U.S. 678, 693 (2001). Procedural due process contains government
16 decisions that deprive individuals of property or liberty interests within the meaning of
17 the Due Process Clause of the Fifth Amendment. *See Matthews v. Eldrige*, 424 U.S.
18 319, 332 (1976); *see also Perry v. Sindermann*, 408 U.S. 593, 601-03 (1972)
19 (reliance on informal policies and practices may establish a legitimate claim of
20 entitlement to a constitutionally protected interest). Infringing on a protected interest
21 triggers a right to a hearing before that right is deprived. *See Board of Regents of*
22 *State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972).
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24 **22.** Mr. Guerra Martinez has a legitimate liberty interest in his potential release from
25 detention under INA § 1226. His detention is arbitrary, capricious, and contrary to law
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1 as it misclassifies him as an “applicant for admission” and deprives him of that interest
2 without a meaningful opportunity to challenge the basis of his detention.

3 **23.** Respondents’ misclassification of Mr. Guerra Martinez is contrary to law because it
4 violates long-established canons of statutory construction by rendering the text of the
5 INA, congressional action, and recent Board precedent unnecessary and superfluous.

6 **24.** First, Respondents’ reading of 8 USC § 1225 cannot be squared with the fact that
7 that under “one of the most basic interpretive canons . . . [a] statute should be
8 construed so that effect is given to all its provisions, so that no part will be
9 inoperative or superfluous, void or insignificant[.]” *Corley v. United States*, 556 U.S.
10 303, 314 (2009) (cleaned up); *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir.
11 2023) (“a court must interpret the statute as a whole, giving effect to each word and
12 making every effort not to interpret a provision in a manner that renders other
13 provisions of the same statute inconsistent, meaningless or superfluous.”) (cleaned
14 up). “This principle . . . applies to interpreting any two provisions in the U.S. Code,
15 even when Congress enacted the provisions at different times.” *Bilski v. Kappos*,
16 561 U.S. 593, 607–08 (2010).

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18 **25.** In order to detain Mr. Guerra Martinez under 8 U.S.C. § 1225(b), an immigration
19 officer must determine that the noncitizen “is an applicant for admission . . . seeking
20 admission . . . and not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C.
21 § 1225(b)(2)(A). Determining the plain meaning of the statute requires consideration
22 of the tense of the verb “is” and the present participle “seeking.” Here, section
23 1225(b)(2) applies to aliens who are presently applicants for admission and who are
24 presently seeking admission at the time of their detention. To be seeking admission
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1 means to be seeking entry, which “by its own force implies a coming from outside.”

2 *United States ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929).

3 **26.** Mr. Guerra Martinez has been in the United States for five years. He is not currently
4 “seeking admission” within the plain meaning of that term as he has resided in the
5 United States for decades. The longstanding interpretation of the INA has been that
6 an alien in his position is detained under section 1226 and entitled to a bond hearing,
7 as Respondents themselves have acknowledged. *See Yajure Hurtado*, 29 I&N Dec.
8 at 225, n. 6 (“We acknowledge that for years Immigration Judges have conducted
9 bond hearings for aliens who entered the United States without inspection”).
10 Consistent with Supreme Court precedent, this was the basis of BIA decisions
11 finding that aliens detained *shortly after an unlawful entry* were applicants for
12 admission because they “cannot be said to have ‘effected an entry.’” *Matter of Q.*
13 *Li*, 29 I&N Dec. 66, 68 (BIA 2025) (quoting *DHS vs. Thuraissigiam*, 591 U.S. 103,
14 140 (2020) (internal quotations omitted)).

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16 **27.** Respondents’ interpretation of section 1225 fails to account for other sections of the
17 INA as well. If all inadmissible aliens present without admission or inspection were
18 subject to mandatory detention under section 1225, there would be no reason for §
19 1226(c)(1)(A) and (D) to subject inadmissible aliens to mandatory detention for
20 committing certain criminal offenses. *See* 8 U.S.C. § 1226(c)(1)(A), (D).

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22 **28.** This is especially true in light of Congress’s recent decision to pass the Laken Riley
23 Act. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2005). “When Congress
24 acts to amend a statute, we presume it intends its amendment to have real and
25 substantial effect.” *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) (citations omitted)

(giving effect to a congressional amendment of the INA). The new additions to section 1226(c) subject an additional class of inadmissible aliens to its mandatory detention scheme if they find themselves so much as arrested for certain crimes. See 8 U.S.C. § 1226(c)(1)(E). The Laken Riley Act is even more specific than the older provisions of section 1226(c), as it specifically refers to aliens like Respondent “inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title.” 8 U.S.C. § 1226(c)(E)(i). The Supreme Court has recognized that when Congress creates “specific exceptions” to a statute’s applicability, it proves that the statute would generally apply absent those exceptions. See *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). Congress clearly acted with the understanding that inadmissible aliens are generally detained under section 1226 and eligible to request bond, because if they were not, there would have been no reason to amend the INA to require mandatory detention for inadmissible aliens accused of certain criminal activities.

29. Congress’s amendments to the INA demonstrate a consistent understanding of section 1226 dating back to the legislative history of the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”). Prior to IIRIRA’s passage, section 1226’s predecessor governed the detention of all aliens arrested and detained in the United States and allowed for release on bond. See INA § 1252(a)(1) (1994). Congress stated that IIRIRA section 1226(a) merely “restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229; see also H.R. Rep. No. 104-828, at 210

1 (same). If Mr. Salazar Cardenas would have been eligible to request a bond before
2 the passage of IIRIRA, and Congress did not alter the Attorney General's power to
3 grant a bond by passing IIRIRA, it follows that he is eligible to request a bond now.

4 **30.** The documents in the Proposed Bond Packet record do not show that Mr. Guerra
5 Martinez is either a danger or a flight risk. He has resided in the United States without
6 incident for roughly five and has no criminal record. He has been a wonderful and
7 supportive father. *See Exhibit C, Proposed Bond Packet.* Mr. Guerra Martinez is
8 involved in his community. Under a proper interpretation of the law, he would be
9 allowed to litigate his case outside of detention or at least be entitled to ask for the
10 opportunity to do so.
11

12 **CLAIMS FOR RELIEF**

13 **31.** Mr. Guerra Martinez re-alleges and incorporates by reference each and every
14 allegation contained in paragraphs 1-30, as if set forth herein.

15 **32.** Respondents' interpretation of 8 U.S.C. § 1225(b) violates Mr. Guerra Martinez
16 substantive due process right to liberty because it allows the government to infringe
17 on his fundamental liberty interests through a process that is not narrowly tailored
18 to meet the compelling government interest of protecting public safety.
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20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 **33.** Exhaustion is not mandated in this case since neither INA § 236, 8 U.S.C. § 1226,
22 nor the federal review provisions of INA § 242, 8 U.S.C. § 1252, require the Petitioner
23 to exhaust administrative remedies for purposes of challenging the constitutionality of
24 regulations allegedly implemented under bond proceedings under INA §§ 235(b)(2) or
25 236(c), 8 U.S.C. §§ 1225(b)(2), 1226(c).
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1 **34.** The exhaustion requirements under INA § 242(d)(1), 8 U.S.C. § 1252(d)(1), are
2 inapplicable to bond challenges. *National Center for Immigrants Rights, Inc. v. INS*,
3 791 F.2d 1351 (9th Cir. 1986), vacated on other grounds, 481 U.S. 1009 (1987),
4 reaffirmed, 913 F.2d 1350 (9th Cir. 1990), vacated on other grounds, 502 U.S. 183
5 (1991).

6 **35.** Exhaustion of administrative remedies before the filing of this writ is not necessary,
7 since the Petitioner has raised constitutional issues concerning his detention. The
8 administrative forum "...provide[s] no real opportunity to present...constitutional
9 issues requiring exhaustion." *Legalization Assistance Project v. INS*, 976 F.2d 1198,
10 1203 (9th Cir. 1992).

11 **36.** Exhaustion is not necessary where raising the issues presented in this writ to the
12 immigration court would be futile and moot. *American-Arab Anti-Discrimination*
13 *Committee v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) rev'd on other grounds, 119
14 S.Ct. 936 (1999). EOIR has issued a published decision requiring all individuals
15 similarly situated to Mr. Guerra Martinez to be detained without a bond hearing, and
16 have refused to consider recent district court decisions such as *Maldonado Bautista*
17 *v. Santacruz*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025) as binding. See
18 *Yajure Hurtado*, 29 I&N Dec. at 216; see also Exhibit D, *AILA Practice Alert: EOIR*
19 *issues Nationwide Guidance on Maldonado Bautista*.

20 **37.** The exhaustion requirement is not a jurisdictional prerequisite but a matter
21 committed to the "sound discretion of the trial court." See *NLRB v. Industrial Union*
22 *of Marine and Shipbuilding Workers*, 391 U.S. 418, 426 n.8 (1968). Respondents
23 have issued a published decision interpreting 8 U.S.C. § 1225 which they intend to
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1 apply nationwide and in all cases with similar facts to Petitioner's. See *Yajure Hurtado*,
2 29 I&N Dec. at 216.

3 38. Such a decision is plainly contrary to Mr. Guerra Martinez statutory, regulatory, and
4 constitutional rights to due process, which this Honorable Court should review
5 without delay; and thus, this is a matter ripe for the "sound discretion of the trial
6 court." See *NLRB v. Industrial Union of Marine and Shipbuilding Workers*, 391 U.S.
7 418, 426 n. 8 (1968).

8 39. Finally, a record of administrative appeal is not germane to the purely legal issue
9 of whether Respondents' interpretation of 8 U.S.C. § 1225 is arbitrary, capricious,
10 contrary to law, or violates Mr. Guerra Martinez's statutory, regulatory, and due
11 process rights.
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13 **REQUEST FOR RELIEF**

14 40. The Petitioner herein respectfully requests that this Court enter the following
15 findings and order the following relief:

- 16 1) Issue an order restraining the Respondents from attempting to move Mr. Guerra
17 Martinez from the State of Arizona while this petition is pending;
18 2) Issue an order requiring the Respondents to provide seventy-two hours' notice of
19 their intent to move him;
20 3) Grant a writ of Habeas Corpus, directed to the Respondents, requiring them to
21 either release Mr. Guerra Martinez immediately or hold a bond hearing pursuant
22 to 8 U.S.C. § 1226;
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- 1 4) Declare that Mr. Guerra Martinez continued detention is arbitrary and capricious
- 2 and violates the INA, its implementing regulations, and Due Process Clause of
- 3 the Fifth Amendment to the United States Constitution;
- 4 5) Award Mr. Guerra Martinez and his counsel reasonable costs and attorney's fees
- 5 incurred as a result of bringing this action, pursuant to the Equal Access to Justice
- 6 Act, 28 U.S.C. § 2412; and
- 7 6) Grant any further relief that this Court may deem fit, just, and proper.
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9 Dated: March 10, 2026,

Respectfully submitted,

10 /s/Ray Ybarra Maldonado
11 Ray Ybarra Maldonado
12 Attorney for Petitioner
13 Jose Estiven Guerra Martinez
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VERIFICATION

I, Ray A. Ybarra Maldonado, hereby declare under penalty of perjury of the laws of the State of Arizona and the United States that the facts alleged in the foregoing Verified Petition for a Writ of Habeas Corpus are to the best of my knowledge true and correct.

Executed on this 10th of March, 2026, in Phoenix, Arizona.

/s/Ray Ybarra Maldonado
Ray Ybarra Maldonado
Attorney for Petitioner
Jose Estiven Guerra Martinez

Certificate of Service

I hereby certify that on this 10th of March of 2026, I electronically submitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing; however, since no attorney from U.S. Attorney's Office has entered his or her appearance yet in this case, I caused a copy of the foregoing to be delivered via electronic mail to:

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