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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Nestor Jose BLANCO SEQUERA,

Petitioner,

v.

Christopher J. LAROSE, in his official
capacity as Warden of the Otay Mesa
Detention Center;

Daniel A. BRIGHTMAN, in his official
capacity as Field Office Director of the
Immigration and Customs Enforcement,
Enforcement and Removal Operations
San Diego Field Office;

Todd M. LYONS, Acting Director, U.S.
Immigration and Customs Enforcement;

Kristi NOEM, in her official capacity as
Secretary of the U.S. Department of
Homeland Security; and

Pamela J. BONDI, in her official
capacity as U.S. Attorney General,

Respondents.

Case No.: '26CV1697 TWR JLB

**PETITION FOR A WRIT OF
HABEAS CORPUS AND
ORDER TO SHOW CAUSE
WITHIN THREE DAYS;
COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

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1 Petitioner Nestor Jose Blanco Sequera (“Petitioner”) petitions this Court for
2 a writ of habeas corpus pursuant to 28 USC §2241 to remedy his unlawful
3 detention and states as follows:

4 **INTRODUCTION**

- 5
- 6 1. Petitioner is a Venezuelan citizen who entered the U.S. without being
7 admitted or paroled on April 2, 2024. Ex. 1. He was detained by Customs
8 & Border Patrol (“CBP”), then released on his own recognizance after
9 being served with an I-862 Notice to Appear charging him as an “alien
10 present in the United States who has not been admitted or paroled.” See
11 Ex. 1, 2. He filed an I-589 Application for Asylum and for Withholding of
12 Removal on September 26, 2024.
- 13
- 14 2. Nearly two years after entering and residing in the U.S., on February 28,
15 2026, Petitioner was detained for inadvertently entering a military base as
16 he was searching for a restroom. Petitioner was detained by Immigration
17 and Customs Enforcement (“ICE”), then imprisoned at Otay Mesa
18 Detention Center where he has remained. Ex. 3.
- 19
- 20 3. At issue is whether Respondents violated Petitioner’s due process right to
21 liberty by re-detaining him without notice or hearing after twenty-two
22 months living in the interior of the U.S. The second issue is whether
23 Petitioner is detained under 8 USC §1225(b) and thus subject to mandatory
24

1 detention, or rather, under Section 1226(a) which would result in bond
2 eligibility. The Department of Homeland Security's own documents related
3 to Petitioner as well as the plain language of 8 USC §1225(b) and §1226
4 irrefutably show that he is detained pursuant 8 USC §1226(a).

5
6 4. Petitioner asks that this Court issue an Order to Show Cause ("OSC") to the
7 Respondents "forthwith," unless Petitioner is not entitled to relief. 28 USC
8 §2243. If an OSC is issued, the Court must require Respondents to file a
9 return "within three days unless for good cause additional time, not
10 exceeding twenty days, is allowed." *Id.*

11
12 5. Petitioner further requests a writ of habeas corpus ordering his immediate
13 release from detention to restore the *status quo ante* and prohibiting his re-
14 arrest without a pre-detention hearing to contest such arrest before a neutral
15 adjudicator at which the government must show by clear and convincing
16 evidence that Petitioner is a flight risk or a public danger, as well a
17 declaratory judgment finding that his detention is pursuant to 8 USC
18 §1226(a).

19
20 6. As an alternative to immediate release, Petitioner seeks an order directing
21 that a bond hearing before a neutral arbiter be held within 10 days, and that
22 the government bear the burden of demonstrating by clear and convincing
23 evidence that he is a flight risk or danger to the public.
24

JURISDICTION AND VENUE

7. Jurisdiction is proper and relief available pursuant to 28 USC §2241 (habeas corpus jurisdiction), 28 USC §1331 (federal question), 28 USC §1346 (U.S. as defendant), and Art. I, §9, Clause 2 of the United States Constitution (the Suspension Clause), and the Administrative Procedure Act, 5 USC §701, *et seq.*
8. This Court may grant relief pursuant to 28 USC §2241 (All Writs Act), and 28 USC §§2201-02 (Declaratory Judgment Act).
9. 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 Southern District of California, the judicial district in which Petitioner is currently detained.
10. Venue is also proper in this Court pursuant to 28 USC §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 Southern District of California.

CUSTODY AND REQUIREMENTS OF 28 USC §2241

11. The Constitution guarantees that the writ of habeas corpus is “available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (citing U.S. Const., Art I, § 9, Clause 2). “The essence

1 of habeas corpus is an attack by a person in custody upon the legality of that
2 custody, and . . . the traditional function of the writ is to secure release from
3 illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). A writ of
4 habeas corpus may be granted to a petitioner who demonstrates that he is in
5 custody in violation of the Constitution or federal law. 28 USC §2241(c)(3).
6 Historically, “the writ of habeas corpus has served as a means of reviewing
7 the legality of Executive detention, and it is in that context that its
8 protections have been strongest.” *I.N.S. v. St. Cyr*, 533 U.S. 289, 301
9 (2001). A district court's habeas jurisdiction includes challenges to
10 immigration- related detention. *Zadydas v. Davis*, 533 U.S. 678, 687
11 (2001); *see also Demore v. Kim*, 538 U.S. 510, 517 (2003).

12
13
14 12. Petitioner is “in custody” for the purpose of 28 USC §2241, because he was
15 arrested by Respondents and remains in their legal and physical custody at
16 Otay Mesa Detention Center in San Diego, California. He is under
17 Respondents’ direct control.

18 **PARTIES**

19
20 13. Petitioner is a 30-year-old citizen of Venezuela detained by Respondents
21 since on or about February 28, 2026. He is currently imprisoned at Otay
22 Mesa Detention Center under the direct control of Respondents.

1 14. Respondent Christopher J. LaRose (“LaRose”), named in his official
2 capacity, is the Warden of Otay Mesa Detention Center. He oversees the
3 day-to-day operations of, and the confinement of non-citizens detained at,
4 the facility. He is the immediate physical custodian of Petitioner. He acts at
5 the direction of Respondents Brightman, Lyons, and Noem. He is a proper
6 Respondent in this habeas petition under current Ninth Circuit law. *Doe v.*
7 *Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024).
8

9 15. Respondent Daniel Brightman (“Brightman”) is the Field Office Director of
10 ICE Enforcement and Removal Operations (“ERO”), a federal law
11 enforcement agency within DHS in San Diego, California. ERO is a
12 division of ICE that manages and oversees the immigration detention
13 system. He is the legal custodian of Petitioner and is named in his official
14 capacity.
15

16 16. Respondent Todd M. Lyons (“Lyons”) is the Acting Director for ICE and is
17 named in his official capacity. He is responsible for ICE’s policies,
18 practices, and procedures, including those relating to the detention of non-
19 citizens charged with being removable from the U.S. As Acting Director of
20 ICE, Lyons is the legal custodian of Petitioner.
21

22 17. Respondent Kristi Noem (“Noem”) is the Secretary of DHS and has
23 authority over the actions of all other DHS Respondents in this case, as well
24

1 as all operations and federal agencies of DHS, including ICE. In her
2 capacity as Secretary of DHS, Respondent Noem is charged with faithfully
3 administering the immigration and naturalization laws of the United States.
4 8 USC §1103. Respondent Noem is the legal custodian of Petitioner and is
5 named in her official capacity.
6

7 18. Respondent Pamela Bondi (“Bondi”) is the Attorney General of the United
8 States and the most senior official in the U.S. Department of Justice
9 (“DOJ”) which encompasses the Board of Immigration Appeals (“BIA”)
10 and the immigration courts as sub-units of the Executive Office of
11 Immigration Review (“EOIR”). In this capacity, she has the authority to
12 interpret immigration laws and adjudicate removal and custody cases. As
13 the head of EOIR, she supervises Immigration Judges, including those who
14 preside at the Otay Mesa Detention Center, and can instruct an Immigration
15 Judge (“IJ”) to hold a bond hearing. Respondent Bondi is the legal
16 custodian of Petitioner and is named in her official capacity.
17

18
19 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20 19. There is no statutory requirement to exhaust administrative remedies when
21 noncitizens challenge the lawfulness of their detention. 28 USC §2241.
22
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24

1 20. Nevertheless, Petitioner, during a Master Calendar Hearing before the San
2 Diego Immigration Court, was advised by the Immigration Judge that the
3 Court lacked jurisdiction to issue a bond determination in his case.

4 21. Moreover, on September 5, 2025, the BIA issued a decision in *Matter of*
5 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that foreign
6 nationals present in the U.S. without admission (as is Petitioner) are
7 categorically detained pursuant to 8 USC 1225(b) and therefore not entitled
8 to bond.
9

10 22. Prudential exhaustion is not mandated when it would be futile and result in
11 irreparable harm. *See McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992)
12 (superseded by statute on unrelated grounds); *Hernandez v. Sessions*, 872
13 F.3d 976, 988 (9th Cir. 2017). Here, “pursuit of administrative remedies
14 would be a futile gesture,” and “irreparable injury will result” from
15 requiring further pursuit. *See Id.* [quoting *Laing v. Ashcroft*, 370 F.3d 994,
16 1000 (9th Cir. 2004)].
17

18 23. Petitioner cannot be expected to endure the very harm he seeks to avoid by
19 requesting bond before the Immigration Judge after being informed that the
20 Immigration Court lacked jurisdiction to grant him bond, to then appeal this
21 order to the BIA and waiting many more months for a decision. As *Yajure*
22 *Hurtado* is a precedent decision regarding exactly the issue at hand, filing a
23
24

1 motion to set bond before the Immigration Judge is not mandated and
2 would be futile. *See Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th
3 Cir. 2021) (“[W]here the agency's position on the question at issue appears
4 already set, and it is very likely what the result of recourse to administrative
5 remedies would be, such recourse would be futile and is not required.”)
6

7 24. Every day that Petitioner remains in detention violates his due process right
8 to liberty and constitutes irreparable harm. *See Addington v. Texas*, 441
9 U.S. 418, 425 (1979) (“This Court repeatedly has recognized that civil
10 commitment for any purpose constitutes a significant deprivation of liberty
11 that requires due process protection.”). To date, Petitioner has already been
12 unlawfully detained for seventeen days.
13

14 25. Absent a federal court order, the immigration court will not conduct a bond
15 hearing for Petitioner. There is no adequate procedure or administrative
16 remedy to address Petitioner's detention excepting a writ of habeas corpus
17 which is now the sole avenue to vindicate Petitioner's constitutional,
18 statutory, and regulatory rights and restore his liberty. Without this Court's
19 intervention, he faces indefinite detention during the pendency of his
20 removal proceedings, without the opportunity for release on bond.
21

22 LEGAL FRAMEWORK

23
24

1 26. This case presents a challenge to the Government’s new policy of
2 mandatory detention of all noncitizens charged with entering the United
3 States without inspection during the entirety of their removal proceedings.

4 27. The issues in this case are 1) whether a noncitizen once released by DHS
5 has a protected liberty interest of which he cannot be deprived without
6 notice and a pre-detention hearing, and 2) whether persons who have
7 entered the U.S. and are present without admission or parole are eligible for
8 bond under 8 USC §1226(a) as they have been for decades, or whether they
9 are arriving aliens seeking admission to the U.S. who are ineligible for bond
10 under §1225(b).
11

12
13 **A. Petitioner’s Protected Liberty Interest**

14 28. “Freedom from imprisonment—from government custody, detention, or
15 other forms of physical restraint—lies at the heart of the liberty that [the
16 Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. This protection
17 extends to “all ‘persons’ within the United States, including [noncitizens],
18 whether their presence here is lawful, unlawful, temporary, or permanent.”
19 *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting
20 *Zadvydas*, 533 US at 693).
21

22 29. These due process rights are both substantive and procedural. Substantive
23 due process thus requires that all forms of civil detention—including
24

1 immigration detention—bear a “reasonable relation” to a non-punitive
2 purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme
3 Court has recognized only two permissible non-punitive purposes for
4 immigration detention – ensuring a noncitizen’s appearance at immigration
5 proceedings and preventing danger to the community. *Zadvydas*, 533 U.S.
6 at 690-92; *see also Demore v. Kim*, 538 U.S. 510 at 519-20, 527-28, 31
7 (2003).

9 30. Even when the government has discretion to detain an individual, its
10 subsequent decision to release the individual creates “an implicit promise”
11 that she will be re-detained only if she violates the conditions of her release.
12 *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Where DHS releases a
13 noncitizen pending removal proceedings, the noncitizen has a protected
14 liberty interest in remaining out of immigration custody. *See e.g., Prieto-*
15 *Cordova v. Larose*, No. 3:25-cv-2824, 2025 WL 3228953 (S.D. Cal. Nov.
16 19, 2025); *Lucas v. Larose*, 3:25-cv-02973, 2025 WL 3485163 (S.D. Cal.
17 Dec. 4, 2025); *Shen v. Larose*, 25-cv-3235, 2025 WL 3552747 (S.D. Cal.
18 Dec. 11, 2025).

20
21 31. For that reason, procedural due process generally “requires some kind of a
22 hearing before the State deprives a person of liberty or property.” *Zinerman*
23 *v. Burch*, 494 U.S. 113, 127 (1990).

1 32. In the current case, Petitioner was released by DHS on his own
2 recognizance in April 2024, and thereafter re-detained in February 2026.
3 His re-detention violated both his substantive and procedural due process
4 rights, as his detention bears no legitimate, non-punitive purpose and it was
5 not preceded by notice or a pre-detention hearing.
6

7 ***B. Petitioner is Not Subject to Mandatory Detention***

8 ***1. The Distinction Between 8 USC §1225 and §1226***

9 33. The Immigration & Nationality Act prescribes two forms of detention for
10 noncitizens in removal proceedings conducted pursuant to 8 USC §1229a
11 who have not yet received final order of removal.
12

13 34. The first, 8 USC §1226(a), authorizes the discretionary detention of
14 noncitizens in removal proceedings before an IJ. These individuals are
15 generally eligible for bond, *see* 8 C.F.R. §§1003.19(a),
16 1226.1(d), excepting those who have been arrested, charged, or convicted
17 of certain crimes who are therefore subject to mandatory detention under
18 §1226(c).
19

20 35. The second, 8 USC 1225(b), provides for mandatory detention of other
21 noncitizen applicants for admission who are seeking admission to the U.S.
22 and who are deemed not clearly entitled to be admitted. 8 USC §1225(b)(2).
23
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1 36. Both detention provisions, §1226(a) and §1225(b)(2), were enacted as part
2 of the Illegal Immigration Reform and Immigrant Responsibility Act
3 (IIRIRA) of 1996. Pub. L. No. 104—208, Div. C, §§302-03, 110 Stat.
4 3009-546, 3009-582 to 3009-583, 3009-585. 8 USC §1226(c) was most
5 recently amended in early 2025 by the Laken Riley Act, Pub. L. No. 119-1,
6 139 Stat. 3 (2025).

8 37. Following the enactment of the IIRIRA, EOIR drafted new regulations
9 applicable to proceedings before immigration judges explaining that, in
10 general, people who entered the country without inspection – also referred
11 to as being “present without admission” – were not considered detained
12 under §1225, but rather §1226. See *Inspection and Expedited Removal of*
13 *Aliens; Detention and Removal of Aliens; Conduct of Removal*
14 *Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6,
15 1997).

17 38. In the decades that followed, most people who entered the U.S. without
18 inspection and were placed in standard 8 USC §1229a removal
19 proceedings received bond hearings before IJs, unless their criminal history
20 rendered them ineligible. That practice was consistent with many more
21 decades of prior practice, in which noncitizens who were not deemed
22 “arriving” were entitled to a custody hearing before an IJ or other hearing
23
24

1 officer. See 8 USC §1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1
2 at 229 (1996) [noting that §1226(a) simply “restates” the detention
3 authority previously found at 8 USC §1252(a)].

4 39. All of this changed on July 8, 2025 with the publication of DHS policy
5 memo *Interim Guidance Regarding Detention Authority for Applicants for*
6 *Admission*¹ which the BIA thereafter adopted in *Matter of Yajure Hurtado*,
7 in an abrupt and startling upending of established jurisprudence. The
8 Interim Guidance and *Yajure Hurtado* mandate that all noncitizens present
9 within the United States who entered without inspection shall now be
10 deemed “applicants for admission” under 8 USC §1225, and therefore
11 subject mandatory detention under §1225(b)(2)(A). *Yajure Hurtado*
12 (“Based on the plain language of section 1225(b)(2)(A) of the Immigration
13 and Nationality Act . . . Immigration Judges lack authority to hear bond
14 requests or to grant bond to aliens who are present in the United States
15 without admission.”)

16 40. As stated in *E.C. v. Noem*:

17
18 Respondents admit . . . this shift is a substantial and far-
19 reaching break from longstanding agency policy “to
20 routinely release individuals who entered without
21 inspection. . . .” . . . Until this reinterpretation of the
22 statutory scheme by the BIA [in *Yajure*], millions of

23
24 ¹ Available at: <https://immpolicytracking.org/policies/ice-issues-memoeliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents>.

1 noncitizens had been informed that they could participate
2 in removal proceedings, which can take months or years,
3 out of custody, so long as they could establish they were
neither a flight risk nor danger to the community.”

4 2:25-cv-01789, 2025 WL 2916264 (D. Nev. Oct. 15, 2025).

5 41. The Supreme Court explained in *Jennings v. Rodriguez*, 583 U.S. 281, 289
6 (2018), that 8 USC §1226 sets out the “default rule” for noncitizens already
7 present in the country. 583 U.S. at 288. While §1225 “authorizes the
8 Government to detain certain aliens *seeking admission into the country*,”
9 §1226 “authorizes the Government to detain certain aliens *already in the*
10 *country* pending the outcome of removal proceedings.” (emphasis added).
11 *Id.* at 288-289.

12 42. In the current case, Petitioner entered the U.S. on April 2, 2024, was
13 apprehended by DHS, then released on recognizance into the interior where
14 he lived for twenty-two months before being re-detained in February 2026.
15 Exs. 1, 2, & 3. Far from “seeking admission” into the U.S., Petitioner is
16 seeking to *remain* in the U.S.
17

18 43. As explained below, Respondents’ assertion that §1225(b) applies here, is
19 contrary to DHS’ own documents pertaining to Petitioner, as well as the
20 statutory language itself.
21

22 **2. Respondents’ own documents demonstrate that**
23 **Petitioner is detained pursuant to §1226**
24

1 44. Documents completed and executed by DHS clearly demonstrate that
2 Petitioner is detained under 8 USC §1226. First, Petitioner's Form I-862
3 Notice to Appear charges him as "an alien present in the United States who
4 has not been admitted or paroled." Ex. 1. To be clear, the determination
5 that Petitioner is "present in the United States" and not "an arriving alien"
6 was made by Respondents' own agents.
7

8 45. As DHS concedes in Petitioner's I-862 Notice to Appear that he is "an alien
9 present in the U.S. without admission or parole," he falls squarely within
10 the second category referenced in *Jennings*, a noncitizen "already in the
11 country." *Jennings* establishes that it is §1226 that "authorizes the
12 Government to detain certain aliens *already in the country* pending the
13 outcome of removal proceedings." However, that detention is not
14 mandatory and is reviewable by an IJ.
15

16 46. Second, DHS issued a Form I-220A Order of Release on Recognizance on
17 April 2, 2024, directing that "in accordance with section 236 of the
18 Immigration and Nationality Act [8 USC §1226] . . . you are being released
19 on your own recognizance." Ex. 2. It is somewhat disingenuous that
20 Respondents would now claim §1225(b) authority, as DHS itself issued
21 Petitioner's I-220A, the very document referencing §1226.
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1 47. As Petitioner was released under §1226(a), “the Government cannot now
2 switch tracks” and claim mandatory §1225(b) authority. *See Shen v.*
3 *Larose*, 25-cv-3235, 2025 WL 3552747 (S.D. Cal. Dec. 11, 2025); *Lucas v.*
4 *Larose*, 3:25-cv-02973, 2025 WL 3485163 (S.D. Cal. Dec. 4, 2025).

5
6 48. A number of recent decisions from district courts in California have
7 addressed whether persons detained, released on their own recognizance,
8 then later re-detained, are held under §1225 or §1226, and have determined
9 that Sections 1225(b) and 1226(a) are mutually exclusive. In one such case
10 from August 2025, the Northern District found that:

11 [w]hether the Government may have had the power to detain
12 Ms. Salcedo Aceros under 1225(b), the reality is that the
13 detention authority consistently applied by the government to
14 Ms. Salcedo Aceros since her arrival in the United States has
15 always been §1226. In 2024, the Government placed Ms.
16 Salcedo Aceros in normal removal proceedings under Sections
17 §1229, not §1225(b)(1), and chose to release her on conditional
18 parole under §1226(a), not hold her in detention under
19 §1225(b)(2). Sections 1226(a) and 1225(b) cannot be applied
20 simultaneously. Their detention regimes are facially
21 inconsistent: one provides for discretionary release with
22 procedural protections, while the other mandates detention
23 without discretion. It is not possible for Ms. Salcedo Aceros to
24 be simultaneously subject to both detention regimes. She was and is
subject to Section 1226(a), not 1225(b).

21 *Salcedo Aceros v. Kaiser, et al*, 3:25-cv-06924, 2025 WL 2606983 (N.D.
22 Cal. Aug. 16, 2025). *See also Cuevas Guzman v. Andrews, et al*, 1:25-cv-
23 01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025) (Sections 1225 and 1226

1 are “mutually exclusive — a noncitizen cannot be subject to both mandatory
2 detention under §1225 and discretionary detention under §1226”).

3 49. The Ninth Circuit has also specifically determined that a noncitizen such as
4 Petitioner who is released on recognizance then re-detained is held under
5 §1226. *Ortega-Cervantes*, 501 F.3d 1111, 1115-16 (9th Cir. 2006) (“release
6 on recognizance” is “another name for ‘conditional parole’ under
7 §1226(a)”).
8

9 50. Likewise, this very Court, has found that foreign nationals in circumstances
10 similar to Petitioner (detained, charged as an alien present in the US
11 without admission or parole, released on recognizance, then re-detained)
12 were not subject to mandatory detention under §1225(b), because they were
13 “released pursuant to 8 USC §1226(a) on her own recognizance, a form of
14 conditional parole.” *N.A. v. Larose, et al*, 25-cv-2384, 2025 WL
15 2841989 (S.D. Cal. Oct. 7, 2025. *See also Prieto-Cordova v. Larose*, No.
16 3:25-cv-2824, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Lucas v.*
17 *Larose*, 3:25-cv-02973, 2025 WL 3485163 (S.D. Cal Dec. 4, 2025);
18 *Faizyan v. Casey*, 3:25-cv-02884, 2025 WL 3208844 (S.D. Cal. Nov. 17,
19 2025); *Shen v. Larose*, 25-cv-3235, 2025 WL 3552747 (S.D. Cal. Dec. 11,
20 2025).
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1 51. The above cases control here, as Petitioner was released by DHS on his
2 own recognizance, and lived in the U.S. for 22 months before being re-
3 detained. As Petitioner's own Form I-220A Release on Recognizance,
4 which was executed by DHS, refer to Section 1226, Petitioner cannot at the
5 same time be detained under Section 1225(b).
6

7 ***3. The Unambiguous Statutory Language Shows that***
8 ***Section 1225(b)(2) does not Apply to Petitioner***

9 52. Respondents' interpretation of Section 1225(b) runs afoul of the Supreme
10 Court's interpretation of the relationship between 8 USC §1226 and
11 §1225(b). In *Jennings v. Rodriguez*, the Supreme Court explained that
12 §1225(b) governs noncitizens "seeking admission into the country,"
13 whereas §1226(a) governs noncitizens "already in the country." 583 U.S.
14 281 (2018). The plain language of Section 1225(b) belies Respondents'
15 arguments to the contrary:
16

17 [I]n the case of an alien who is an applicant for admission, if the
18 examining immigration officer determines that an alien *seeking*
19 *admission* is not clearly and beyond a doubt entitled to be
20 admitted, the alien shall be detained for a proceeding under
21 section 1229a [full removal proceedings] of this title.

22 8 USC §1225(b)(2) (emphasis added).

23 53. Evaluating the language of §1225(b), the Northern District of California
24 recently acknowledged that to be subject to Section §1225(b) mandatory

1 detention, a noncitizen must be (1) an applicant for admission, (2) “*seeking*
2 *admission*”, and (3) “not clearly and beyond a doubt entitled to be
3 admitted.” *Salcedo Aceros v. Kaiser*, 1:25-cv-06924, 2025 WL 2637503
4 (N.D. Cal. Sept. 12, 2025) (emphasis added). In interpreting §235(b)(2),
5 the *Salcedo Aceros* court noted that myriad courts in recent months have
6 rejected the:
7

8 Government’s expansive construction of §1225(b)(2), which
9 would allow it to detain without a hearing virtually any
10 noncitizen not lawfully admitted. These courts examined the
11 text, structure, agency application, and legislative history of
12 1225(b)(2) and concluded that it applies only to noncitizens
13 “seeking admission,” a category that does not include
14 noncitizens like Ms. Salcedo Aceros, living in the interior of the
15 country.

16 54. The *Salcedo Aceros* court found that Respondents’ reading of 1225(b)(2)
17 would render the phrase “seeking admission” superfluous, reasoning:
18

19 If, as the Government argues, all applicants for admission
20 are deemed to be “seeking admission” for as long as they
21 remain applicants, then the phrase “seeking admission”
22 would add nothing to the provision. This “violates the rule
23 against surplusage.” . . . (“[N]o clause, sentence, or word
24 shall be superfluous, void, or insignificant.”) (quoting
Duncan v. Walker, 533 U.S. 167, 174 (2001)).

55. Similarly, in *Caicedo Hinestroza v. Kaiser* the court considered the case of
a noncitizen who like Petitioner had been apprehended at the border,

1 released, then re-detained. 25-cv-07559, 2025 WL 2606983 (N.D. Cal. Sept
2 9, 2025).

3 The Court stated:

4
5 This case is part of a tsunami of similar cases in this District
6 based on the government’s theory that petitioners are
7 “applicants for admission” to the United States who are
8 “subject to mandatory detention under 8 USC §1225(b).” This
9 theory has been uniformly rejected by the courts of the District.

10 56. This Court has reached the same result on numerous occasions. *See e.g.*

11 *Lucas v. Larose*, 3:25-cv-02973, 2025 WL 3485163 (S.D. Cal Dec. 4,
12 2025); *Faizyan v. Casey*, 3:25-cv-02884, 2025 WL 3208844 (S.D. Cal.
13 Nov. 17, 2025); *Shen v. Larose*, 25-cv-3235, 2025 WL 3552747 (S.D. Cal.
14 Dec. 11, 2025); *Martinez Martinez v. Noem*, 25-cv-2975, 2025 WL
15 3552746 (S.D. Cal. Dec. 11, 2025).

16 57. Moreover, were Respondents’ stance that all noncitizens present in the U.S.
17 without admission or parole are subject to mandatory detention under
18 §1225(b) correct, portions of §1226 would be rendered wholly superfluous
19 in violation of “one of the most basic . . . canons” of statutory
20 interpretation, that all provisions be given effect, “so that no part will be
21 inoperative or superfluous, void or insignificant.” *See Quispe-Ardiles v.*
22 *Noem*, 1:25-cv-01382, 2025 WL 2783800 (E.D. Vir. Sept. 30, 2025) (the
23 government’s theory of §1225(b) – that “the provision applies to all persons
24

1 who have not been admitted into the United States – would render multiple
2 provisions of §1226 superfluous”) (quoting *Corley v. United States*, 556
3 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)
4 (internal brackets omitted).

5
6 58. Specifically, just this year, Congress amended §1226 by passing the Laken
7 Riley Act which mandates detention for certain criminal noncitizens. *See* 8
8 USC §1226(c)(1)(E)(i)-(ii). This amendment created an additional category
9 of citizens subject to mandatory detention.

10 This category includes noncitizens who are (1) inadmissible
11 under INA 212(6)(A) [present without admission or
12 parole] . . . *and* who (2) have been charged with one of certain
enumerated crimes.

13 *Salcedo Aceros v. Kaiser*, 1:25-cv-06924, 2025 WL 2637503 (N.D.
14 Cal. Sept. 12, 2025).

15
16 59. As held by the *Salcedo Aceros* court:

17 If the Government’s view of §1225(b) is correct, however, all
18 noncitizens who are inadmissible are *already* subject to
19 mandatory detention This view would render the Laken
20 Riley Act a meaningless amendment, since it would have
21 prescribed mandatory detention for noncitizens already subject
22 to it. But “[w]hen Congress acts to amend a statute, we
23 presume it intends its amendment to have real and substantial
24 effect.” *Stone v. I.N.S.*, 514 U.S. 386, 397, 115 S.Ct. 1537, 131
L.Ed.2d 465 (1995); *see also Marx v. Gen. Revenue Corp.*, 568
U.S. 371, 386, 133 S.Ct. 1166, 185 L.Ed.2d 242 (2013) (“[T]he
canon against surplusage is strongest when an interpretation
would render superfluous another part of the same statutory

1 scheme.”). If Congress amended Section 1226 to create
2 mandatory detention for certain inadmissible noncitizens, it
3 follows that those noncitizens were not already subject to
4 mandatory detention.

5 60. This very Court has reached the same conclusion. In *Vasquez Garcia v.*
6 *Noem*, 25-cv-02180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025), the Court
7 determined that the government’s contention that any inadmissible
8 noncitizen is “an applicant for admission” who is “seeking admission,” and
9 therefore, subject to mandatory detention under §1225(b)(2), would render
10 the Laken Riley Act “unnecessary.” *See also, Martinez Martinez v. Noem*,
11 25-cv-2975, 2025 WL 3552746 (S.D. Cal. Dec. 11, 2025) (same); *Lagarda*
12 *v. Noem*, 3:25-cv-02970, 2025 WL 3558931 (S.D. Cal. Dec. 11, 2025)
13 (same).

14 61. As Petitioner was detained a full twenty-two months after he entered the
15 U.S., he can hardly be said to be seeking admission. To the contrary, he is
16 already present and residing in the U.S, pursuing his asylum case, and
17 seeking to remain.

18 62. As summed up by the Supreme Court in *Zadvydas v. Davis*, immigration
19 detention should not be used as a punishment, but only where there has
20 been an individualized assessment of flight risk or danger to community.
21 533 U.S. at 690. Accordingly, a noncitizen detained under §1226 must be
22
23
24

1 released if he does not present a danger to persons or property and is not a
2 flight risk.

3 63. Respondents have never asserted that Petitioner is a danger or flight risk.

4 Rather, by releasing Petitioner in April 2024 on his own recognizance,
5 DHS determined that he was neither a flight risk nor a danger to his
6 community. *See Shen v. Larose*, 25-cv-3235, 2025 WL 3552747 (S.D. Cal.
7 Dec. 11, 2025); *Ortiz Donis v. Chestnut*, 1:25-cv-1228, 2025 WL 2879514,
8 at *1 (E.D. Cal. Oct. 9, 2025); *Pinchi v. Noem*, 792 F. Supp.3d 1025, 1034
9 (N.D. Cal. 2025). There has been no assertion that Petitioner violated the
10 conditions of his release. Thus, his continued detention serves no legitimate
11 purpose, and he must be released.
12
13

14 **FACTUAL BACKGROUND**

15 64. Petitioner is a Venezuelan citizen detained by Respondents since February
16 2026. He is currently imprisoned at Otay Mesa Detention Center. He has
17 requested asylum due to the persecution he experienced in Venezuela on
18 account of his political opposition to the ruling party.
19

20 65. Petitioner entered the U.S. on April 2, 2024 near El Paso, Texas. Ex. 1. He
21 was detained by CBP agents, then released into the U.S. on his
22 recognizance. Ex. 2. Petitioner's Form I-862 Notice to Appear charges him
23 as "an alien present in the United States who has not been admitted or
24

1 paroled,” and his Form I-220A Release on Recognizance indicates that he
2 was released pursuant to INA §236 (8 USC §1226). Exs. 1, 2.

3 66. After being released, Petitioner resided in California for over a year. He
4 was re-detained by DHS when he inadvertently entered a military base,
5 while searching for a restroom on or about February 28, 2026.
6

7 67. On March 12, 2026, during a Master Calendar Hearing at the Otay Mesa
8 Immigration Court, the Immigration Judge informed Petitioner that pursuant
9 to *Matter of Yajure Hurtado*, the Immigration Court lacked jurisdiction to
10 grant Petitioner release on bond.

11 68. As a result, Petitioner remains in detention. Without relief from this Court,
12 he faces the prospect of months, or even years, in immigration custody,
13 separated from his family and community
14

15 **CAUSES OF ACTION**
16 **COUNT ONE**

17 **Petitioner’s Detention Violates His Fifth Amendment Right to Procedural &**
18 **Substantive Due Process**

19 69. Petitioner incorporates by reference the allegations of fact set forth in the
20 preceding paragraphs.

21 70. The Government may not deprive a person of life, liberty, or property
22 without due process of law. U.S. Constitution Amendment V. “Freedom
23 from imprisonment – from government custody, detention, or other forms
24

1 of physical restraint – lies at the heart of the liberty that Clause protects.”

2 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Due process protects “all
3 ‘persons’ within the United States, including [non-citizens], whether their
4 presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.
5

6 71. Petitioner has a fundamental interest in liberty and being free from official
7 restraint. Respondents’ detention of Petitioner without providing a pre-
8 detention notice and hearing, or a post-detention bond hearing, to determine
9 whether he is a flight risk or a danger to others violates his right to Due
10 Process.
11

12 **COUNT TWO**

13 **Petitioner’s Detention is in Violation of 8 USC §1226(a)**

14 72. Petitioner incorporates by reference the allegations of fact set forth in the
15 preceding paragraphs.

16 73. The mandatory detention provision at 8 USC §1225(b)(2) does not apply to
17 Petitioner who was present and residing in the United State, was placed in 8
18 USC §1229a removal proceedings, and was charged pursuant 8 USC
19 1182(a)(6)(A)(i) [present without admission or parole]. Section 1225(b)(2)
20 does not apply to noncitizens present in the U.S. rather than seeking
21 admission. Such noncitizens are subject only to discretionary detention
22 pursuant to §1226(a), unless subject to §1226(c).
23
24

1 74. The application of § 1225(b)(2) to Petitioner unlawfully mandates his
2 continued detention without a bond hearing and violates § 1226(a).

3 **COUNT THREE**

4 **Petitioner's Detention Violates the Administrative Procedure Act,**
5 **5 USC § 706(2)**

6 75. Petitioner incorporates by reference the allegations of fact set forth in the
7 preceding paragraphs.

8 76. Under the Administrative Procedure Act, a court shall "hold unlawful and
9 set aside agency action" that is "arbitrary, capricious, an abuse of
10 discretion, or otherwise not in accordance with law," "contrary to
11 constitutional right," "in excess of statutory jurisdiction, authority, or
12 limitations, or short of statutory right" or "without observance of procedure
13 required by law." 5 USC § 706(2)(A)-(D).

14
15 77. Respondents' detention of Petitioner pursuant to 8 USC § 1225(b)(2) is
16 arbitrary and capricious as they do not have statutory authority under
17 § 1225(b)(2) to detain him. As Petitioner's detention is not in accordance
18 with law, his detention under § 1225(b)(2) violates the APA.

19
20 78. Petitioner's detention is arbitrary, capricious, an abuse of discretion,
21 violative of the Constitution, and without statutory authority in violation of
22 5 USC § 706(2).
23
24

PRAYER FOR RELIEF

79. WHEREFORE, Petitioner respectfully asks that this Court take jurisdiction over this matter and grant the following relief:

- a. Issue an Order to Show Cause requiring Respondents to respond within three days;
- b. Issue a Writ of Habeas Corpus ordering Petitioner's immediate release.

In the alternative, order Respondents to provide Petitioner a bond hearing within 10 days pursuant to 8 USC §1226(a) at which Respondents must show by clear and convincing evidence that Petitioner is a flight risk or poses a danger to the community;

- c. Issue a declaratory judgment that Petitioner is detained pursuant to 8 USC §1226(a), and prohibit denial of bond on the basis that he is detained under 8 USC §1225(b);

- d. Enjoin Respondents from transferring Petitioner out of this Court's jurisdiction during the pendency of this action;

- e. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community;

- 1 f. Order Respondents to return to Petitioner all original documents,
2 identification, and personal papers in their possession immediately
3 upon Petitioner's release, including his employment authorization
4 card.
5
6 g. Award Petitioner's attorney's fees and costs under the Equal Access to
7 Justice Act ("EAJA"), as amended, 28 USC §2412, and on any other
8 basis justified under law; and
9
10 h. Grant any other and further relief that this Court deems just and proper.

11 Date: March 17, 2026

Respectfully submitted,

13 /s/ Nneka Jackson

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20 *Attorney for Petitioner*
21
22
23
24

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge and abilities.

Executed on this 17th day of March 2026, in New York, New York.

/s/ Nneka Jackson

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