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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Abel Nava-Santos,
Petitioner,

v.

Kristi Noem, Secretary of the United States
Department of Homeland Security, in her official
capacity; Sirce Owen, Acting Director of Executive
Office for Immigration Review, in her official capacity;
Eric Rokosky, Warden of the Eloy Detention Center,
in his official capacity,
Respondents.

Case No.

Agency No. 

**PETITION FOR WRIT
OF HABEAS CORPUS
PURSUANT TO 28 U.S.C.
§2241**

INTRODUCTION

The Respondents are unlawfully detaining Petitioner Abel Nava-Santos, at the Eloy Detention Center, due to the Department of Homeland Security (DHS) recently changed its long-standing position with regard to the status of mandatory detention. *See*, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission filed herewith as Exhibit 1. The Board of Immigration Appeals (BIA) issued a precedential decision on September 5, 2025, holding that all noncitizens present in the

1 United States without admission – no matter how long they have resided here – are still
2 “applicants for admission” under 8 U.S.C. § 1225(a) and not entitled to bond hearings
3 because they are subject to mandatory detention under § 1225(b)(2)(A). *See, Matter of*
4 *Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) filed herewith as Exhibit 2.

6 But this interpretation of the Immigration and Naturalization Act (INA) violates
7 both procedural and substantive Fifth Amendment protections, ignores the plain
8 statutory language of both § 1225 and § 1226, and is contrary to numerous recent Federal
9 Court decisions in this District that have rejected these exact arguments. *See e.g.*
10 *10/3/2025 Order entered in Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-
11 PHX-DWL (ESW), (D. Ariz. 10/3/2025), filed herewith as Exhibit 3.

14 Here, Respondents’ reliance on *Yajure-Hurtado* to justify Petitioner’s continued
15 detention without a bond hearing is legally and factually misplaced. Petitioner has lived
16 in the United States continuously since August 2000 and is not a recent entrant or
17 arriving alien. *See Declaration of Counsel in Support of Petition for Writ of Habeas*
18 *Corpus*, filed herewith as Exhibit 6. He has no non-immigration criminal convictions.
19 *Id.*

22 Further, when Respondents initiated removal proceedings, the Notice to Appear
23 classified Petitioner as an “alien present in the United States,” rather than as an “arriving
24 alien,” notwithstanding that option being available on the form. *See Petitioner’s Notice*
25 *to Appear*, filed herewith as Exhibit 6. This designation is consistent with the
26

1 government's own treatment of Petitioner as a non-arriving noncitizen subject to
2 detention under § 1226, not mandatory detention under § 1225.

3
4 In addition to BIA decisions not being binding precedent upon this Court, the
5 Supreme Court decision last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S.
6 369, 400 (2024), made clear that federal courts must independently interpret statutes and
7 no longer defer under so-called "Chevron deference." This Court is therefore in the best
8 position to determine whether the Respondents are misinterpreting the relevant federal
9 statutes and improperly denying alien detainees bond hearings on the grounds that they
10 are all subject to mandatory detention under § 1225(b)(2)(A). The petition for writ of
11 habeas corpus should be granted.
12
13

14 JURISDICTION & CUSTODY

15 1. Petitioner Abel Nava-Santos, is in the physical custody of Respondents
16 and Immigration and Customs Enforcement (ICE), an agency within the Department of
17 Homeland Security.
18

19 2. Petitioner is currently detained at Eloy Detention Center and is under
20 the direct control of Respondents and their agents.
21

22 3. This action arises under the Constitution of the United States and 8
23 U.S.C. § 1101 et seq.
24

25 4. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of
26 the United States Constitution, 28 U.S.C. § 1331, and the common law. This Court may
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28

1 grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. §
2 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

3
4 5. Congress has preserved judicial review of challenges to immigration
5 detention. *See Jennings v. Rodriguez*, 583 U.S. 122, 130-131 (2018) (holding that 8
6 U.S.C. §§ 1226(e) and 1252(b)(9) do not bar review of challenges to prolonged
7 immigration detention).

8
9 6. The Court must grant the petition for writ of habeas corpus or order
10 Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28
11 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return
12 “within three days unless for good cause additional time, not exceeding twenty days, is
13 allowed.” *Id.*

14
15 7. The Court has inherent power to release the petitioner pending review
16 of his petition. *See Martin v. Solem*, 801 F.2d 324, 329 (8th Cir. 1986).

17 18 VENUE

19 8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410
20 U.S. 484, 493- 500 (1973), venue lies in this Court, the federal judicial district in which
21 Petitioner is currently is in custody.

22
23 9. Venue is also properly in this Court pursuant to 18 U.S.C. § 1391(e)
24 because Respondents are employees, officers, and agencies of the United States.

25 26 PARTIES

1 10. Petitioner Abel Nava-Santos was born on [REDACTED] in
2 Mazapil, Zacatecas, Mexico. Petitioner is currently detained by ICE at Eloy Detention
3 Center. *See*, ICE Online Detainee Locator, filed herewith as Exhibit 7.
4

5 11. Respondent Kristi Noem is the Secretary of the U.S. Department of
6 Homeland Security ("DHS"). In this capacity, Respondent Noem is a legal custodian of
7 Petitioner. Respondent Noem is sued in her official capacity.
8

9 12. Respondent DHS is a federal executive agency responsible for, among
10 other things, enforcing federal immigration laws and overseeing lawful immigration to
11 the United States. Respondent DHS is a legal custodian of Petitioner.
12

13 13. Respondent Eric Rokosky is the Warden of the Eloy Detention Center.
14 Respondent Rokosky is a legal custodian of Petitioner. Respondent Rokosky is sued in
15 his official capacity.
16

17 14. Respondent Sirce Owen is the Acting Director of the Executive Office
18 for Immigration Review (EOIR), a federal agency within the U.S. Department of Justice.
19 Respondent EOIR is responsible for the administration of immigration courts, and
20 acceptance of forms and petitions related to adjudication of immigration claims, as well
21 as motions for bond. Respondent Sirce Owen is sued in her official capacity.
22

23 **STATEMENT OF FACTS**

24 15. Petitioner Abel Nava-Santos was born on [REDACTED] in
25 Mazapil, Zacatecas, Mexico.
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1 16. Petitioner last left Mexico and entered the United States in August 2000.
2 He entered near Nogales, Arizona, without inspection (EWI). *See* Declaration of Counsel
3 in Support of Petition for Writ of Habeas Corpus, filed herewith as Exhibit 5.
4

5 17. Respondents arrested Petitioner and issued a notice to appear on
6 November 6, 2025. *See* Petitioner's Notice to Appear, filed herewith as Exhibit 6. DHS
7 charged Petitioner with being subject to removal under Section 212(a)(6)(A)(i) of the
8 Immigration and Nationality Act. *Id.* This placed him in full removal proceedings under
9 section 240 of the Act.
10

11 18. The Notice to Appear identified him as an "alien present in the United
12 States" even though "arriving alien" was an alternate option. *Id.*
13

14 19. Petitioner is detained at the Eloy Detention Center where he remains
15 in custody. *See* ICE Online Detainee Locator Printout, filed herewith as Exhibit 7.
16

17 20. Petitioner applied for asylum, withholding of removal, and protection
18 under the Convention Against Torture, based on his fear of persecution and harm by
19 cartel members in Mexico.
20

21 21. On January 20, 2026, an Immigration Judge denied Petitioner's
22 applications for relief and ordered him removed to Mexico. Petitioner timely appealed
23 that decision to the Board of Immigration Appeals on February 19, 2026. *See* Filing
24 Receipt for Appeal or Motion, filed herewith as Exhibit 8. That appeal remains pending.
25

26 22. On information and belief, Petitioner has a single prior arrest for
27 driving under the influence in or about 2006. Aside from this isolated incident, Petitioner
28

1 has no other known criminal history and has otherwise conducted himself in a lawful
2 manner throughout his time in the United States. Individuals familiar with Petitioner,
3 including friends and employers, attest to his good moral character and describe him as
4 a responsible and law-abiding member of the community. *See*, Declaration of Counsel
5 in Support of Petition for Writ of Habeas Corpus, filed herewith as Exhibit 5.
6

7 23. Petitioner has not been afforded an individualized bond hearing at
8 which he could demonstrate that he is neither a flight risk nor a danger to the community.
9

10 LEGAL FRAMEWORK

11 24. The length of time that a petitioner has been living in the United States
12 is a constitutionally relevant consideration, because “once an alien enters the country,
13 the legal circumstance changes, for the Due Process Clause applies to all ‘persons’
14 within the United States, including aliens, whether their presence here is lawful,
15 unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It
16 is therefore reasonable to read these statutes “against [that] backdrop.” *See Hewitt v.*
17 *United States*, 145 S. Ct. 2165, 2173 (2025).
18

19 25. Due process thus requires “adequate procedural protections” to ensure
20 that the government’s asserted justification for a noncitizen’s physical confinement
21 “outweighs the individual’s constitutionally protected interest in avoiding physical
22 restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).
23

24 26. In the immigration context, the Supreme Court has recognized only
25 two valid purposes for civil detention: to mitigate the risks of danger to the community
26
27
28

1 and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. The government may not detain a
2 noncitizen based on any other justification.

3
4 27. Congress has granted the Attorney General discretion to decide
5 whether to detain or release certain noncitizens pending a removal decision. *See* 8 U.S.C.
6 § 1226(a). The Attorney General has delegated that authority to IJs. 8 C.F.R. §§ 1003.19,
7 1236.1.
8

9 28. On July 8, 2025, DHS adopted a new policy on mandatory detention
10 for noncitizens who have been residing in the United States. *See*, ICE Memo: Interim
11 Guidance Regarding Detention Authority for Applications for Admission filed herewith
12 as Exhibit 1.
13

14 29. On September 5, 2025, the BIA entered the precedential decision
15 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed herewith as Exhibit 2,
16 which holds that all noncitizens who enter without inspection are “applicants for
17 admission” under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under
18 § 1225(b)(2), without regard for the length of time they have lived in the United States.
19

20 30. The Ninth Circuit has held that § 1226(a) is the “default” detention
21 statute for aliens in removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the
22 default detention statute for noncitizens in removal proceedings and applies to
23 noncitizens “[e]xcept as provided in [Subsection C].” 8 U.S.C. § 1226(a).” *Avilez v.*
24 *Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord*, *Rodriguez Diaz v. Garland*,
25 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD
26
27
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1 Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-*
2 *Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

3
4 31. In 1997, after Congress amended the INA through the Illegal
5 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and
6 the then-Immigration and Naturalization Service issued an interim rule to interpret and
7 apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and
8 Detention of Aliens,” the agencies explained that:
9

10 Despite being applicants for admission, aliens who are
11 present without having been admitted or paroled (formerly
12 referred to as aliens who entered without inspection) ***will be***
eligible for bond and bond redetermination.

13 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that
14 individuals who had entered without inspection ***were*** eligible for consideration for
15 bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing
16 regulations.
17

18 32. Thus, for almost 30 years, all participants in the immigration system
19 have understood that people arrested inside the United States generally fall within §
20 1226 for detention purposes and are therefore required to receive a bond hearing upon
21 request—even if they initially entered the country without permission. *See Martinez v.*
22 *Hyde*, No. 25-11613, 2025 WL 2084238, at *4 n.9 (D. Mass. July 24, 2025) (citing the
23 United States Solicitor General’s representation to the Supreme Court at oral argument
24 that “DHS’s long-standing interpretation has been that 1226(a) applies to those who
25 have crossed the border between ports of entry and are shortly thereafter apprehended”).
26
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1 33. This Court and numerous district courts have rejected that
2 interpretation, holding that § 1226(a) governs detention of long-present noncitizens
3 apprehended within the United States and requires access to bond hearings. *See*
4 *Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (ESW) (D. Ariz. Oct. 3, 2025)
5 (collecting cases). While a minority of courts have adopted Respondents' position, those
6 decisions are not binding and conflict with the statutory text, legislative history, and
7 overwhelming district court authority.
8

9
10 34. In *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM
11 (C.D. Cal. Feb. 18, 2026), the district court vacated *Matter of Yajure-Hurtado* under the
12 Administrative Procedure Act as resting on an identical, incorrect interpretation of law.
13 *See, Maldonado Bautista*, filed herewith as Exhibit 4. The court held that EOIR and
14 DHS may not "privilege an executive agency's legal interpretation over a federal district
15 court's legal interpretation," reaffirming that "[i]t is the province and duty of the judicial
16 department to say what the law is." The court further rejected the government's reliance
17 on rhetoric about detaining the "worst of the worst," where the record showed detainees
18 with no criminal history and strong community ties.
19
20

21 35. Accordingly, the court restored Immigration Judges' jurisdiction to
22 conduct bond hearings under 8 U.S.C. § 1226(a) for individuals previously denied
23 custody redeterminations based solely on entry without inspection and ordered
24 classwide notice to ensure detainees are informed of their right to seek release on bond
25 or conditional parole.
26
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28

1 36. Although the Fifth Circuit recently adopted a contrary interpretation in
2 *Buenrostro-Mendez v. Bondi*, No. 25-20496, slip op. at 9 (5th Cir. Feb. 6, 2026),
3 concluding that noncitizens who entered without inspection are subject to mandatory
4 detention under 8 U.S.C. § 1225(b)(2) based on an equivalence between the terms
5 “applicant for admission” and “seeking admission,” that decision is not binding on this
6 Court and represents a minority view. Courts within this Circuit, including the court in
7 *Maldonado Bautista*, have rejected that interpretation as inconsistent with the INA’s
8 structure distinguishing border inspection under § 1225 from interior detention under §
9 1226.

10
11
12 37. Respondents continue to misclassify long-present noncitizens under §
13 1225(b)(2) and deny access to bond hearings in violation of statutory authority, binding
14 precedent, and due process. Petitioner’s continued detention without a custody
15 redetermination hearing is therefore unlawful and warrants habeas relief.
16
17

18 **CLAIMS FOR RELIEF**
19 **FIRST CLAIM FOR RELIEF**
20 **Violation of Fifth Amendment – Substantive Due Process**

21 38. Petitioner realleges and incorporates herein the allegations contained
22 in the preceding paragraphs of the petition as if fully set forth herein.
23

24 39. The Due Process Clause of the Fifth Amendment forbids the
25 government from depriving any “person” of liberty “without due process of law,”
26 including noncitizens. U.S. Const. amend. V.
27
28

1 40. Substantive due process asks whether a person's life, liberty, or
2 property is deprived without sufficient purpose. There is no question that Petitioner has
3 been deprived of his liberty in this case.
4

5 41. The government's continued detention of Petitioner is not supported
6 by any special interest or compelling justification that outweighs his liberty interest.
7

8 42. Petitioner's ongoing detention when so many federal courts have held
9 that he is entitled to be considered for release upon posting an appropriate bond under §
10 1226 constitutes prolonged detention and violates his substantive due process rights.
11

12 **SECOND CLAIM FOR RELIEF**
13 **Violation of Fifth Amendment Right - Procedural Due Process**

14 43. Petitioner realleges and incorporates herein the allegations contained
15 in the preceding paragraphs of the petition as if fully set forth herein.
16

17 44. The Due Process Clause of the Fifth Amendment guarantees Petitioner
18 the right to procedural due process in seeking a bond redetermination and the
19 government may not unreasonably restrict this right.

20 45. The government's knowing misclassification of Petitioner as an
21 "applicant for admission" under § 1225 in order to justify its argument for mandatory
22 detention is not supported by any special interest or compelling justification that
23 outweighs Petitioner's liberty interest.
24

25 46. The continued detention of Petitioner is not supported by any special
26 interest or compelling justification that outweighs his liberty interest.
27
28

PRAYER FOR RELIEF

WHEREFORE Petitioner Abel Nava-Santos respectfully requests that the Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order Respondents not to transfer Petitioner out of this District during the pendency of these proceedings, to preserve jurisdiction;
3. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to immediately release Petitioner from custody or, in the alternative, order Respondents to provide Petitioner a bond hearing under 8 U.S.C. § 1226, and without regard to the holding of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), within three (3) business days;
4. Award Petitioner reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
5. Grant any further relief the Court deems just and proper.

Dated this 24th day of March, 2026.

By: /s/ Erica Sanchez
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

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

Dated this 24th day of March, 2026.

By: /s/ *Erica Sanchez*
Erica Sanchez, Esq.

LIST OF EXHIBITS

Exhibit 1	<u>ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission</u> (last visited September 8, 2025)
Exhibit 2	<i>Matter of Yajure Hurtado</i> , 29 I&N Dec. 216 (B.I.A. 2025).
Exhibit 3	<i>Echevarria v. Bondi</i> , No. CV-25-03252-PHX-DWL (ESW), (D. Ariz. Oct. 3, 2025)
Exhibit 4	<i>Maldonado Bautista v. Santacruz</i> , No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026)
Exhibit 5	Declaration of Counsel in Support of Petition for Writ of Habeas Corpus
Exhibit 6	Notice to Appear
Exhibit 7	ICE Online Detainee Locator Printout
Exhibit 8	Filing Receipt for Appeal or Motion