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6 **Attorney for Petitioners,**  
**Yesenia Carolina Reyes Hernandez**

7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 **Yesenia Carolina Reyes Hernandez**  
11 **Petitioners(s),**  
12 **v.**  
13 **Markwayne Mullin, Secretary, Department of**  
14 **Homeland Security; Todd Lyons, in his**  
15 **official capacity as Acting Director of U.S.**  
16 **Immigration and Customs Enforcement; Pam**  
17 **Bondi, Attorney General of the United States;**  
18 **Warden of Otay Mesa Detention Center.**  
19 **Respondent(s).**  
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Civil Case No.: **'26CV1910 DMS VET**  
**PETITION FOR WRIT OF HABEAS  
CORPUS AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**INTRODUCTION**

- 1 1. Petitioner with A  is a noncitizen who is currently detained at the Immigration  
2 Detention Center facility in San Diego, CA.
- 3 2. Petition is charged with entering the United States without inspection pursuant to 8 U.S.C. §  
4 1182(a)(6)(A)(i). The Petitioner is not eligible for bond under the recent decision dated  
5 September 5, 2025 in the Immigration *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA  
6 2025), holding that individuals charged with having entered the United States without  
7 inspection are ineligible for bond redetermination hearings before an immigration judge,  
8 relying on the statute at 8 U.S.C. § 1225(b)(2)(A) which reads:

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10 8 U.S.C. § 1225(b)(2) Inspection of other aliens

11 (A) In general

12 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for  
13 admission, if the examining immigration officer determines that an alien seeking  
14 admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be  
15 detained for a proceeding under section 1229a of this title

- 16 3. However, 8 U.S.C. § 1225(b)(2)(A) does not govern individuals—such as Petitioner—who are  
17 charged with having entered the United States without inspection. Rather, such individuals fall  
18 under the detention framework of 8 U.S.C. § 1226(a) and are therefore eligible for  
19 consideration of release on bond.
- 20 4. Several courts have addressed this issue even prior to the Board of Immigration Appeals’  
21 decision in *Matter of Yajure Hurtado*. These courts have consistently held that individuals  
22 charged with entering the United States without inspection fall within the ambit of § 1226(a)  
23 and are therefore entitled to bond hearings before an Immigration Judge. Accordingly, the  
24 BIA’s ruling in *Matter of Yajure Hurtado* is a violation of the statute and principles of due  
25 process.
- 26 5. As such, Petitioner seeks an order of declaratory and injunctive relief that the Petitioner be  
27 provided a bond redetermination hearing before an Immigration Judge

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**JURISDICTION AND VENUE**

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6. A Federal District Court is authorized to grant a writ of habeas corpus under 28 U.S.C. § 2241 where the Petitioner is “in custody under or by color of the authority of the United States... in violation of the Constitution or laws or treaties of the United States.”
  7. Venue is proper and it lies within the Southern District of California under 28 U.S.C. § 1391, because this is a civil action in which Respondents are agencies of the United States and Petitioner is detained in this District, and a substantial part of the events or omissions giving rise to this action occurred in the District.

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**PARTIES**

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8. Petitioner Javier Haro Becerra, is in pending removal proceedings and is currently detained at the Imperial Regional Detention Immigration Detention Center.
  9. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. Mr. Mullin is responsible for the implementation and enforcement of the Immigration and National Act (“INA”) and oversees Immigration Customs Enforcement (“ICE”), which is responsible for Petitioner’s detention. Mr. Mullin has ultimate custodial authority over the Petitioner. Mr. Mullin is sued in his official capacity.
  10. Respondent Todd Lyons is the Acting Director of ICE and has authority over the operations of ICE. In that capacity and through his agents, Mr. Lyons has broad authority over the operation and enforcement of the immigration laws. Mr. Lyons is being sued in his official capacity.
  11. Repondent Pam Bondi is the Attorney General of the United States and is responsible for the Department of Justice (“DOJ”) and is being sued in her official capacity.
  12. Respondent is the Warden of the Otay Mesa Detention Center in San Diego, California, where the Petitioner is detained. The warden has immediate physical custody of the Petitioner and is being sued in his official capacity.

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**LEGAL BACKGROUND**

13. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.
14. The first form of detention under 8 U.S.C. § 1226 pertains to noncitizens placed in standard, non-expedited removal proceedings before an Immigration Judge (“IJ”). See 8 U.S.C. § 1229(a). Individuals detained pursuant to § 1226(a) are entitled to a bond hearing at the commencement of their detention. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). By contrast,

1 noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to  
2 mandatory detention under § 1226(c).

3 15. As for the second form of detention, INA provides for mandatory detention of noncitizens  
4 subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking  
5 admission referred to under § 1225(b)(2).

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

8 17. This case concerns the detentions provisions at §§ 1226(a) and 1225(b)(2).

9 18. The detention provisions at §§ 1226(a) and 1225(b)(2) were enacted as part of the Illegal  
10 Immigration Reform Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104-208, Div. C, §§  
11 302-03, 110 Stat. 3009-54, 3009-582 to 3009-583, 3009-585. Section § 1226(a) was most  
12 recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3  
13 (2025).

14 19. Following enactment of IIRIRA, EOIR drafted new regulations explaining that, in general,  
15 people who have entered the country without inspection were not considered detained under §  
16 1225 and that they were instead detained under § 1226(a). See *Inspection and Expedited  
17 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;  
18 Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

19 20. Accordingly, in the decades that followed, individuals who entered the United States without  
20 inspection— unless they were subject to some other detention authority— were routinely  
21 afforded bond hearings. This practice aligned with longstanding historical procedures under  
22 which noncitizens who were not classified as “arriving” were entitled to a custody  
23 determination before an Immigration Judge or adjudicatory officer. See 8 U.S.C. § 1252(a)  
24 (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining that § 1226(a) merely  
25 “restates” the detention authority previously codified at § 1252(a)).

26 21. On September 25, 2025, the Board of Immigration Appeals issued a precedential decision in  
27 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that noncitizens who entered  
28 the United States without inspection are ineligible for bond redetermination hearings because  
they are deemed to be “seeking admission” and therefore fall within the scope of 8 U.S.C. §  
1225(b)(2)(A).

- 1 22. This legal theory that noncitizens that entered the United States without admission or parole are  
2 ineligible for bond hearings has been universally rejected by several district courts. *Rodriguez*  
3 *v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at \*9 (W.D. Wash. Sept. 30, 2025);  
4 *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at \*3 (C.D. Cal.  
5 Sept. 8, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256,  
6 at \*9 (E.D. Cal. Sept 9, 2025); *Vasquez Garcia v. Noem*, 3:25-CV-02180-DMS-MMP (SD. Cal.  
7 Sept. 3, 2025); *Benitez v. Noem*, No. 5:25-CV-02190-RGK-AS (C.D. Cal. Aug. 26, 2025).  
8 *Arrazola Gonzalez v. Noem*, 5:25-CV-01789-ODW-DFM (C.D. Cal. Aug. 15, 2025);  
9 *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal. July 28, 2025);  
10 *Carmona-Lorenzo v. Trump*, No. 4:25-CV-3172, 2025 WL 2531521, at \*2 (D. Neb. Sept. 3,  
11 2025); *Perez v. Berg*, No. 8:28-CV-494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025);  
12 *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at \*8 (E.D. Mich. Aug.  
13 29, 2025); *Jose J O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at \*6 (D.  
14 Minn. Aug. 27, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at \*3 (W.D.  
15 La. Aug 27, 2025); *Rodriguez v. Bostock*, 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025).
- 16 23. The BIA's interpretation is contrary to the structure and text of the INA. The plain language of  
17 the relevant statutory provisions establishes that § 1226(a)—not § 1225(b)—governs the  
18 detention of individuals like the Petitioner.
- 19 24. Section § 1226(a), applies by default to all persons “pending a decision on whether the  
20 [noncitizen] is to be removed from the United States.” These removal hearings are held under §  
21 1229(a), which “decid[e] the inadmissibility or deportability of a[] [noncitizen].”
- 22 25. The text of § 1226 expressly encompasses individuals charged as inadmissible, including those  
23 who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). The inclusion of such  
24 individuals in subparagraph (E) confirms that, absent mandatory detention under subsection (c),  
25 they are presumptively entitled to a bond hearing pursuant to subsection (a). Accordingly, §  
26 1226 leaves no ambiguity that it governs the detention of individuals charged with  
27 inadmissibility to the United States, including those present without admission or parole.
- 28 26. By contrast, § 1225(b) governs individuals who present themselves at U.S. ports of entry or  
who have only recently entered the United States. The statutory scheme is predicated on the  
inspection and processing of persons deemed to be “seeking admission” to the United States.  
See 8 U.S.C. § 1225(b)(2)(A)

1 27. Accordingly, the mandatory detention provision of § 1225(b)(2) does not extend to individuals,  
2 such as Petitioner, who are alleged to have entered the United States without being admitted or  
3 paroled.

4 **FACTS**

- 5 28. Petitioner Yesenia Carolina Reyes Hernandez, was placed in removal proceedings on March  
6 12, 2023 and charged with inadmissibility for having entered the United States without  
7 inspection. 8 U.S.C. § 1182(a)(6)(A)(i).
- 8 29. Petitioner entered the country without inspection on November 25, 2008, but was subsequently  
9 arrested by immigration authorities and is currently detained at the Otay Mesa Detention  
10 Center. Petitioner is 36 years old.
- 11 30. Petitioner is in pending removal proceedings and is currently detained at the Otay Mesa  
12 Detention Center.
- 13 31. Petitioner is precluded from seeking a bond redetermination hearing before an Immigration  
14 Judge pursuant to the Board of Immigration Appeals' precedential decision in *Matter of Yajure*  
15 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), because Petitioner is charged with having entered the  
16 United States without inspection or admission.
- 17 32. Petitioner is next scheduled for a hearing before an Immigration Judge in the removal case on  
18 March 23, 2026.

19 **CAUSES OF ACTION**

20 **COUNT I**

21 **Violation of 8 U.S.C. § 1226(a)**

22 ***Unlawful Denial of Bond Hearing***

- 23 33. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation set forth  
24 in the preceding paragraphs as though fully stated herein.
- 25 34. The mandatory detention provision set forth in 8 U.S.C. § 1225(b)(2) does not apply to  
26 noncitizens residing within the United States who are charged as inadmissible on the basis that  
27 they originally entered the United States without inspection or parole. Such individuals are  
28 instead subject to detention under 8 U.S.C. § 1226(a), unless they fall within the scope of a  
separate detention provision, including 8 U.S.C. § 1225(b)(1), 8 U.S.C. § 1226(c), or 8 U.S.C.  
§ 1231.

1 35. The Government's application of § 1225(b)(2) to preclude Petitioner from obtaining a bond  
2 redetermination hearing before an Immigration Judge is arbitrary, capricious, and contrary to  
3 law, in violation of the Administrative Procedure Act. See 5 U.S.C. § 706(2).

4 **COUNT II**

5 ***Violation of Procedural Due Process***

6 36. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation set forth  
7 in the preceding paragraphs as though fully stated herein.

8 37. The government may not deprive a person of life, liberty, or property without due process of  
9 law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody,  
10 detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause  
11 protects." *Zadifas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L.Ed.2d 653 (2001).

12 38. Petitioner has a fundamental interest in liberty and being free from official restraint.

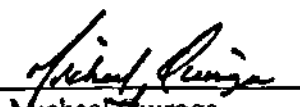
13 39. The government's detention of Petitioner without a bond redetermination hearing to determine  
14 whether Petition is a flight risk or danger to other violates Petitioner's right to due process.

15 **PRAAYER FOR RELIEF**

16 WHEREFORE, Petitioner respectfully request that this Court:

- 17 a. Assume jurisdiction over this matter;
- 18 b. Declare that the denial of Petitioner's access to a bond redetermination hearing before  
19 an Immigration Judge violates the Immigration and Nationality Act, the Administrative  
20 Procedure Act, and the Due Process Clause of the United States Constitution;
- 21 c. Issue a writ of habeas corpus directing Respondents to release Petitioner or, in the  
22 alternative, to provide Petitioner with the bond hearing to which Petitioner is legally  
23 entitled within seven (7) days;
- 24 d. For such other relief as this Court deems just and appropriate.

25 Date: 3/25/2026

26 By:   
27 Michael Quiroga  
28 Attorney for Petitioner