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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Guillermo Gallardo-Barrera,
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;
Luis Rosa, Jr., Warden of the Florence Service
Processing 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 Guillermo Gallardo-Barrera, at the Florence Service Processing 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

1 noncitizens present in the United States without admission – no matter how long they
2 have resided here – are still “applicants for admission” under 8 U.S.C. § 1225(a) and
3 not entitled to bond hearings because they are subject to mandatory detention under §
4 1225(b)(2)(A). *See, Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) filed
5 herewith as Exhibit 2.
6

7 But this interpretation of the Immigration and Naturalization Act (INA) violates
8 both procedural and substantive Fifth Amendment protections, ignores the plain
9 statutory language of both § 1225 and § 1226, and is contrary to numerous recent Federal
10 Court decisions in this District that have rejected these exact arguments. *See e.g.*
11 10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-
12 PHX-DWL (ESW), (D. Ariz. 10/3/2025), filed herewith as Exhibit 3.
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14

15 Here, Respondents’ reliance on *Yajure-Hurtado* to justify Petitioner’s continued
16 detention without a bond hearing is legally and factually misplaced. Petitioner has lived
17 in the United States continuously since July 2005 and is not a recent entrant or arriving
18 alien. *See* Declaration of Counsel in Support of Petition for Writ of Habeas Corpus, filed
19 herewith as Exhibit 5. He has no non-immigration criminal convictions. *Id.*
20
21

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
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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 Guillermo Gallardo-Barrera, is in the physical custody of
16 Respondents and Immigration and Customs Enforcement (ICE), an agency within the
17 Department of Homeland Security.
18

19 2. Petitioner is currently detained at Florence Service Processing Center
20 and is under 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 4. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of
25 the United States Constitution, 28 U.S.C. § 1331, and the common law. This Court may
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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).

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.

26 PARTIES

1 10. Petitioner Guillermo Gallardo-Barrera was born on [REDACTED] in
2 Distrito Federal, Mexico. Petitioner is currently detained by ICE at Florence Service
3 Processing 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 Luis Rosa, Jr. is the Warden of the Florence Service
14 Processing Center. Respondent Rosa, Jr. is a legal custodian of Petitioner. Respondent
15 Rosa, Jr. is sued in 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 Guillermo Gallardo-Barrera was born on [REDACTED] in
25 Distrito Federal, Mexico.
26
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1 16. Petitioner entered the United States on July 2005 without being
2 inspected. *See*, Notice to Appear, filed herewith as Exhibit 6.

3
4 17. Respondents arrested Petitioner and issued a notice to appear on
5 August 12, 2025. *Id.* DHS charged Petitioner with being subject to removal under
6 Section 212(a)(6)(A)(i) of the Immigration and Nationality Act. *Id.* This placed him in
7 full removal proceedings under section 240 of the Act.

8
9 18. The Notice to Appear identified him as an “alien present in the United
10 States” even though “arriving alien” was an alternate option. *Id.*

11 19. Petitioner applied for Cancellation of Removal for Nonpermanent
12 Residents (Form EOIR-42B), citing the hardship his removal would cause his U.S.
13 citizen children. On January 12, 2026, an Immigration Judge denied his application for
14 cancellation of removal but granted him voluntary departure. *See* Order of the
15 Immigration Judge, filed herewith as Exhibit 8. Guillermo filed an appeal of this
16 decision with the Board of Immigration Appeals (BIA) on February 10, 2026, which
17 remains pending. *See* Filing Receipt for Appeal or Motion, filed herewith as Exhibit 9.

18
19 20. Petitioner is detained at the Florence Service Processing Center where
20 he remains in custody. *See* ICE Online Detainee Locator Printout, filed herewith as
21 Exhibit 7.

22
23 21. Petitioner has no criminal history other than civil traffic violations.
24 *See*, Declaration of Counsel in Support of Petition for Writ of Habeas Corpus, filed
25 herewith as Exhibit 5.
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1 § 1226(a). The Attorney General has delegated that authority to IJs. 8 C.F.R. §§ 1003.19,
2 1236.1.

3
4 27. On July 8, 2025, DHS adopted a new policy on mandatory detention
5 for noncitizens who have been residing in the United States. *See*, ICE Memo: Interim
6 Guidance Regarding Detention Authority for Applications for Admission filed herewith
7 as Exhibit 1.

8
9 28. On September 5, 2025, the BIA entered the precedential decision
10 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed herewith as Exhibit 2,
11 which holds that all noncitizens who enter without inspection are “applicants for
12 admission” under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under
13 § 1225(b)(2), without regard for the length of time they have lived in the United States.

14
15 29. The Ninth Circuit has held that § 1226(a) is the “default” detention
16 statute for aliens in removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the
17 default detention statute for noncitizens in removal proceedings and applies to
18 noncitizens “[e]xcept as provided in [Subsection C].” 8 U.S.C. § 1226(a).” *Avilez v.*
19 *Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord*, *Rodriguez Diaz v. Garland*,
20 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD
21 Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-*
22 *Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

23
24
25
26 30. In 1997, after Congress amended the INA through the Illegal
27 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and
28

1 the then-Immigration and Naturalization Service issued an interim rule to interpret and
2 apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and
3 Detention of Aliens,” the agencies explained that:
4

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

9 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that
10 individuals who had entered without inspection ***were*** eligible for consideration for
11 bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing
12 regulations.

13 31. Thus, for almost 30 years, all participants in the immigration system
14 have understood that people arrested inside the United States generally fall within §
15 1226 for detention purposes and are therefore required to receive a bond hearing upon
16 request—even if they initially entered the country without permission. *See Martinez v.*
17 *Hyde*, No. 25-11613, 2025 WL 2084238, at *4 n.9 (D. Mass. July 24, 2025) (citing the
18 United States Solicitor General’s representation to the Supreme Court at oral argument
19 that “DHS’s long-standing interpretation has been that 1226(a) applies to those who
20 have crossed the border between ports of entry and are shortly thereafter apprehended”).
21 22 23

24 32. This Court and numerous district courts have rejected that
25 interpretation, holding that § 1226(a) governs detention of long-present noncitizens
26 apprehended within the United States and requires access to bond hearings. *See*
27 *Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (ESW) (D. Ariz. Oct. 3, 2025)
28

1 (collecting cases). While a minority of courts have adopted Respondents' position, those
2 decisions are not binding and conflict with the statutory text, legislative history, and
3 overwhelming district court authority.
4

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

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

23 35. Although the Fifth Circuit recently adopted a contrary interpretation in
24 *Buenrostro-Mendez v. Bondi*, No. 25-20496, slip op. at 9 (5th Cir. Feb. 6, 2026),
25 concluding that noncitizens who entered without inspection are subject to mandatory
26 detention under 8 U.S.C. § 1225(b)(2) based on an equivalence between the terms
27
28

1 “applicant for admission” and “seeking admission,” that decision is not binding on this
2 Court and represents a minority view. Courts within this Circuit, including the court in
3 *Maldonado Bautista*, have rejected that interpretation as inconsistent with the INA’s
4 structure distinguishing border inspection under § 1225 from interior detention under §
5 1226.
6

7 36. Respondents continue to misclassify long-present noncitizens under §
8 1225(b)(2) and deny access to bond hearings in violation of statutory authority, binding
9 precedent, and due process. Petitioner’s continued detention without a custody
10 redetermination hearing is therefore unlawful and warrants habeas relief.
11

12
13 **CLAIMS FOR RELIEF**
14 **FIRST CLAIM FOR RELIEF**

15 **Violation of Fifth Amendment – Substantive Due Process**

16 37. Petitioner realleges and incorporates herein the allegations contained
17 in the preceding paragraphs of the petition as if fully set forth herein.
18

19 38. The Due Process Clause of the Fifth Amendment forbids the
20 government from depriving any “person” of liberty “without due process of law,”
21 including noncitizens. U.S. Const. amend. V.
22

23 39. Substantive due process asks whether a person’s life, liberty, or
24 property is deprived without sufficient purpose. There is no question that Petitioner has
25 been deprived of his liberty in this case.
26

27 40. The government’s continued detention of Petitioner is not supported
28 by any special interest or compelling justification that outweighs his liberty interest.

1 41. Petitioner's ongoing detention when so many federal courts have held
2 that he is entitled to be considered for release upon posting an appropriate bond under §
3 1226 constitutes prolonged detention and violates his substantive due process rights.
4

5 **SECOND CLAIM FOR RELIEF**
6 **Violation of Fifth Amendment Right - Procedural Due Process**

7 42. Petitioner realleges and incorporates herein the allegations contained
8 in the preceding paragraphs of the petition as if fully set forth herein.
9

10 43. The Due Process Clause of the Fifth Amendment guarantees Petitioner
11 the right to procedural due process in seeking a bond redetermination and the
12 government may not unreasonably restrict this right.
13

14 44. The government's knowing misclassification of Petitioner as an
15 "applicant for admission" under § 1225 in order to justify its argument for mandatory
16 detention is not supported by any special interest or compelling justification that
17 outweighs Petitioner's liberty interest.
18

19 45. The continued detention of Petitioner is not supported by any special
20 interest or compelling justification that outweighs his liberty interest.
21

22 **PRAYER FOR RELIEF**

23 **WHEREFORE** Petitioner Guillermo Gallardo-Barrera respectfully requests
24 that the Court grant the following relief:

- 25 1. Assume jurisdiction over this matter;
26 2. Order Respondents not to transfer Petitioner out of this District during the
27 pendency of these proceedings, to preserve jurisdiction;
28

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. Order Respondents to return all personal property, legal documents, identification documents, and other belongings confiscated at the time of detention;
5. Award Petitioner reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
6. 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 Guillermo Gallardo-Barrera 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	Order of the Immigration Judge
Exhibit 9	Filing Receipt for Appeal or Motion