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

JOSE MANUEL PASTOR-ROSALES,
Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, CHRISTOPHER LAROSE,
Warden at Otay Mesa Detention Center,
Respondents.

Civil Case No.: 26-cv-2395-JES-JLB

**Amended Petition for Writ
of
Habeas Corpus**

**[Civil Immigration Habeas,
28 U.S.C. § 2241]**

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I. Introduction

“For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the borders of the United States long after their entry.” *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025). But in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (“BIA”) accepted the government’s new position that inadmissible immigrants are not eligible for bond under § 1226(a), even if they have been living in the United States for years or decades. Instead, the BIA held that all inadmissible immigrants are subject to the mandatory detention provisions in 8 U.S.C. § 1225(b)(2)(A).

But in November 2025, District Judge Sunshine S. Sykes of the U.S. District Court for Central District of California issued an order certifying a nationwide class consisting of noncitizens who have entered the United States without inspection and who were not apprehended upon arrival and who are not otherwise subject to detention under INA §§ 236(c), 235(b)(1), or 241. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). Judge Sykes also issued an order granting declaratory relief concluding that the detention of class members is governed by INA § 236(a) and that class members are not subject to mandatory detention pursuant to INA § 235(b)(2). *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Nov. 20, 2025 C.D. Cal.) *Maldonado Bautista* rejected the Board of Immigration Appeal’s (BIA) decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). And on February 18, 2026, Judge Sykes vacated *Matter of Yahure Hurtado* altogether.¹

¹ Order available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://storage.courtlistener.com/recap/gov.uscourts.cacd.980210/gov.uscourts.cacd.980210.116.0.pdf>.

1 Mr. Pastor-Rosales is a member of the *Maldonado Bautista* class, as he is
2 alleged to have entered the United States without inspection and is not otherwise
3 subject to mandatory detention. Although the Ninth Circuit recently stayed the
4 district court's decision in *Maldonado Bautista*, that does not prevent this Court
5 from granting relief on the merits.

6 **STATEMENT OF FACTS**

7 Mr. Pastor-Rosales was born in Mexico and entered the United States
8 unlawfully in December 2000. Exhibit A, Declaration of Jose Manuel Pastor-
9 Rosales, at ¶ 1. For over 25 years, he has lived in southern California. *Id.* at ¶ 1.
10 He has never been deported. *Id.* at ¶ 1. He has three children who were born in the
11 United States and two siblings who are lawful permanent residents. *Id.* at ¶ 2.

12 On March 27, 2026, Mr. Pastor-Rosales was driving home from work when
13 ICE began following him. *Id.* at ¶ 3. When he got home and got out of his car,
14 ICE arrested him outside of his house and took him into custody. *Id.* at ¶ 3.

15 Mr. Pastor-Rosales was transferred to Otay Mesa Detention Center and put
16 into removal proceedings. *Id.* at ¶ 4. However, to his knowledge he has never had
17 a bond hearing before an immigration judge. *Id.* at ¶ 4. His next master calendar
18 hearing is on May 7, 2026. *Id.* at ¶ 5.

19 **ARGUMENT**

20 **I. Mr. Pastor-Rosales is not subject to mandatory detention under 8**
21 **U.S.C. § 1225(b)(2)(A).**

22 **A. Courts disagree with the BIA's reasoning in *Yajure Hurtado*,**
23 **that stripped most noncitizens who enter without inspection of**
the right to seek bond.

24 In *Yajure Hurtado*, the BIA concluded that noncitizens who enter without
25 inspection have no right to seek bond from an IJ, regardless of how long they
26 have been residing in the country and irrespective of whether they were
27 apprehended by immigration authorities. 29 I&N Dec. at 228.

1 Since *Yajure Hurtado* was decided, many immigrants who otherwise would
2 have received bond hearings under § 1226(a) have challenged that decision in the
3 federal courts. As mentioned above in the introduction and as the government
4 recognizes in its Return, numerous courts disagree with the BIA's decision. Doc.
5 6 at 12-13. Courts broadly agree that the BIA's novel constructions of
6 § 1225(b)(2)(A) and § 1226(a) are not correct.

7 On the one hand, § 1225(b)(2)(A) is best read to apply to immigrants who
8 are at or near the border or other ports of entry, for at least three reasons.

9 First, § 1225(b)(2)(A)'s statutory context strongly suggests that it applies
10 only to persons apprehended at or near the border. As the Supreme Court
11 recognized in *Jennings*, § 1225(b) is concerned "primarily [with those] seeking
12 entry," and is generally imposed "at the Nation's borders and ports of entry,
13 where the Government must determine whether [a noncitizen] seeking to enter the
14 country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281 at 297, 287(2018).
15 Throughout its text, the statute refers to "inspections"—a term not defined in the
16 INA but which typically connotes an examination upon or soon after physical
17 entry. 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of
18 inadmissible arriving [noncitizens]; referral for hearing"); *id.* § 1225(b)(1)–(2)
19 (referring to "inspections" in their titles); *id.* § 1225(d)(1) (authorizing
20 immigration officials to search certain conveyances in order to conduct
21 "inspections" where noncitizens "are being brought into the United States").
22 Many statutory provisions, various regulations, and BIA precedent discuss
23 "inspection" in the context of admission processes at ports of entry, further
24 supporting the conclusion that § 1225 has a limited temporal and geographic
25 scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a; 8 U.S.C. § 1752a; 8 C.F.R.
26 § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Petitioner's
27 interpretation accords.

1 *Second*, consistent with the statute’s overall focus on the moment of
2 physical entry, § 1225(b)(2)’s plain language limits the statute’s reach to persons
3 actively attempting to enter the United States. The statute applies only to those
4 who are *both* “applicants for admission” *and* in the process of “seeking
5 admission.” 8 U.S.C. § 1225(b)(2)(A). Because the statute’s first clause already
6 limits the provision to “applicants for admission,” the phrase “seeking admission”
7 must have a different meaning. Any other reading would constitute “an obvious
8 violation of the rule against surplusage.” *Romero*, 2025 WL 2403827, at *10.

9 On its face, the phrase “seeking admission” suggests an active attempt to
10 enter the country. Congress’s use of the present and present progressive tenses
11 “necessarily requires some sort of present-tense action,” excluding noncitizens in
12 the interior who are no longer in the process of seeking admission to the U.S.
13 *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL
14 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the
15 statute’s “present-tense active language”). “Realistically speaking,” it is hard to
16 accept that the statute’s plain language could mean anything else: “[I]f Congress’s
17 intention” to detain everyone who entered without inspection “was so clear, why
18 did it take thirty years to notice?” *Romero*, 2025 WL 2403827, at *12.

19 *Third*, the statutory history supports a limited reading of § 1225(b)’s reach.
20 When Congress amended § 1225(b)’s predecessor statute—which authorized
21 detention only of arriving noncitizens—to include individuals who had not been
22 admitted, legislators expressed concerns about recent arrivals to the United States
23 who lacked the documents to remain in the country. H.R. Rep. No. 104-469, pt. 1,
24 at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.).
25 There was no suggestion in the legislative history that Congress intended to
26 subject all people present in the United States after an unlawful entry to
27 mandatory detention and thereby transform immigration detention and sweep
28 millions of noncitizens into § 1225(b).

1 The BIA's contrary reading of the legislative history is not persuasive.
2 True, IIRIRA "altered the typology of immigration *proceedings* to 'place[] on
3 equal footing' 'all immigrants who have not been lawfully admitted.'" *Romero*,
4 2025 WL 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d
5 918, 928 (9th Cir. 2020)). But that "says nothing about *detention* pending the
6 outcome of those proceedings." *Id.* (emphasis added). All these indicators suggest
7 that § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry,
8 not people who have already entered the country.

9 On the other hand, § 1226(a) is best read to apply to some inadmissible
10 persons. It cannot plausibly be the case that all inadmissible persons fall under
11 § 1225(b)(2)(A) and none fall under § 1226(a).

12 *First*, § 1226(a)'s statutory structure makes clear that it reaches some
13 individuals who have not been admitted and have entered without inspection.
14 Section 1226(c) exempts specific categories of noncitizens from the default
15 eligibility to seek release on bond in § 1226(a). "Among the individuals carved
16 out and subject to mandatory detention are certain categories of 'inadmissible'
17 noncitizens." *Rodriguez*, 779 F. Supp. 3d at 1246 (quoting 8 § 1226(c)(1)(A), (D),
18 (E)). The 2025 Laken Riley Act ("LRA") added to that list. "This 'new' category"
19 of persons not eligible for bond "includes those noncitizens who are deemed
20 inadmissible, including for being 'present in the United States without being
21 admitted or paroled,' and who have been arrested, charged with, or convicted of
22 certain crimes." *Rosado*, 2025 WL 2337099, at *9 (citing 8 U.S.C. §
23 1226(c)(1)(E); LRA, Pub. L. No. 119-1). If § 1226(a) did not apply to
24 inadmissible noncitizens, then the longstanding carve outs that refer to
25 inadmissibility and Congress' most recent amendments would all be surplusage.
26 *See Garcia*, 2025 WL 2549431, at *6. The better reading is the Supreme Court's
27 in *Jennings*: that § 1226(a) "applies to aliens already present in the United States."
28 583 U.S. at 303.

1 *Second*, § 1226(a)’s legislative history supports Petitioner’s reading. “After
2 passing the IIRIRA, Congress declared the new § 1226(a) ‘restates the current
3 provisions in [the predecessor statute] regarding the authority of the Attorney
4 General to arrest, detain, and release on bond’ a noncitizen ‘who is not lawfully in
5 the United States.’” *Rosado*, 2025 WL 2337099, at *9. Because noncitizens
6 deemed inadmissible “were entitled to discretionary detention under § 1226(a)’s
7 predecessor statute, and Congress declared the statute’s scope unchanged by
8 IIRIRA,” § 1226(a) must “allow for a discretionary release on bond for”
9 inadmissible noncitizens, too. *Id.*

10 Thus, the best reading of 8 U.S.C. §§ 1225, 1226 shows that petitioner is
11 eligible for bond. And under the Supreme Court’s recent decision in *Loper Bright*
12 *v. Raimondo*, this Court must independently interpret the meaning and scope of
13 §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S.
14 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025
15 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
16 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA’s decision in *Yajure*
17 *Hurtado* is a deviation from the agency’s long-standing interpretation of §§ 1225,
18 1226; is not guidance issued contemporaneously with enactment of the relevant
19 statutes; and contradicts the statutory interpretations of dozens of federal courts,
20 this Court should give it no weight. If anything, the government’s “decades of
21 practice” providing bond hearings to those who entered without inspection is a
22 more persuasive guide to the proper outcome here. *Martinez*, 2025 WL 2084238,
23 at *4.

24 **B. Detaining Mr. Pastor-Rosales without a bond hearing violates 8**
25 **U.S.C. § 1226(a), associated regulations, the administrative**
26 **procedures act, and the Fifth Amendment right to due process.**

27 Both the 8 U.S.C. § 1226(a) and its associated regulations entitle Petitioner
28 to a bond hearing. *See* 8 C.F.R. §§ 326.1(d), 1236.1, 1003.19(a)-(f). Accordingly,
the Fifth Amendment’s due process clause requires the government to provide the

1 legally required bond hearing before Petitioner is detained. *See Hernandez-Lara*
2 *v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021).

3 The statute and regulations implement the due process protection that
4 attends any civil detention. *See Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir.
5 2018) (expressing “grave doubts that any statute that allows for arbitrary
6 prolonged detention without any process is constitutional or that those who
7 founded our democracy precisely to protect against the government’s arbitrary
8 deprivation of liberty would have thought so”). The Supreme Court has
9 “repeatedly recognized that civil commitment for any purpose constitutes a
10 significant deprivation of liberty that requires due process protection,” including
11 an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425
12 (1979); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987); *Foucha v.*
13 *Louisiana*, 504 U.S. 71, 81–83 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357
14 (1997).

15 Here, Mr. Pastor-Rosales has not received a bond hearing. That violated the
16 statute, regulations, due process, and the Administrative Procedures Act.

17 **C. The Ninth Circuit’s stay in *Maldonado Bautista* does not prevent**
18 **this Court from granting relief.**

19 In *Maldonado-Bautista v. DHS*, 25-cv-1873-SSS-BFM (C.D. Cal.), a
20 district judge granted national, class-wide relief to plaintiffs challenging the
21 BIA’s interpretation of §§ 1225, 1226. *Bautista v. Santacruz*, No. 5:25-CV-
22 01873-SSS-BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025), *judgment*
23 *entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM,
24 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). The Ninth Circuit subsequently
25 stayed the order, “insofar as the district court’s judgment extends beyond the
26 Central District of California.” *Maldonado Bautista v. DHS*, No. 26-1044, Dkt.
27 No. 5.1 (Mar 6, 2026). The Ninth Circuit left the judgement in place in the
28 Central District. *Id.*

1 Because of the stay order, the government is no longer required to follow
2 *Maldonado Bautista* in this district. But the stay order does not indicate any opinion
3 on the stay order's merits or prevent this Court from finding in Petitioner's favor.
4 It means only that this Court must do an independent evaluation on the merits. For
5 the reasons given above, that independent evaluation demands relief here.

6 **II. This Court must hold an evidentiary hearing on any disputed facts.**

7 Resolution of a prolonged-detention habeas petition may require an
8 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).
9 Mr. Pastor-Rosales hereby requests such a hearing on any material, disputed facts.

10 **III. Prayer for relief**

11 Petitioner respectfully asks that this Court order Respondents to provide
12 him a bond hearing before a neutral immigration judge, as well as any other relief
13 that the Court deems just and proper.

14 Respectfully submitted,

15
16 Dated: April 27, 2026

s/ Kara Hartzler

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