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

11 MATEO GARCIA GAVILAN,
 12
 13 Petitioner,

14 v.

15 MARKWAYNE MULLIN, Secretary of
 16 the Department of Homeland Security,
 17 TODD BLANCHE, Acting Attorney
 18 General, TODD M. LYONS, Acting
 19 Director, Immigration and Customs
 20 Enforcement, JESUS ROCHA, Acting
 21 Field Office Director, San Diego Field
 22 Office, CHRISTOPHER LAROSE,
 23 Warden at Otay Mesa Detention Center,
 24
 25 Respondents.

Civil Case No.: 26-cv-2794-BAS-AHG

**Amended Petition for Writ
 of
 Habeas Corpus**
**[Civil Immigration Habeas,
 28 U.S.C. § 2241]**

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I. Introduction 1

I. Mr. Garcia Gavilan is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)..... 2

 A. Courts disagree with the BIA’s reasoning in *Yajure Hurtado*, that stripped most noncitizens who enter without inspection of the right to seek bond. 2

 B. Detaining Mr. Garcia Gavilan without a bond hearing violates 8 U.S.C. § 1226(a), associated regulations, the administrative procedures act, and the Fifth Amendment right to due process. 6

 C. The Ninth Circuit’s stay in *Maldonado Bautista* does not prevent this Court from granting relief. 6

II. This Court must hold an evidentiary hearing on any disputed facts. 7

III. Prayer for relief 7

1 **I. Introduction**

2 Mr. Garcia Gavilan was born in Mexico and entered the United States
3 unlawfully in 2000. For 26 years, he has remained in the U.S. But on July 23,
4 2025, he was arrested and placed in removal proceedings. In the ten months that
5 he has been detained, Mr. Garcia Gavilan has never received a bond hearing.

6 On April 17, 2026, the immigration judge denied Mr. Garcia Gavilan's
7 request for a bond hearing, citing *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216
8 (BIA 2025). For the following reasons, this Court should grant Mr. Garcia
9 Gavilan's petition and order that he receive a bond hearing.

10 **STATEMENT OF FACTS**

11 Mr. Garcia Gavilan was born in Mexico and entered the United States
12 without permission in September 2000. Exhibit A, Declaration of Mateo Garcia
13 Gavilan, at ¶ 1. Since then, he has mostly lived in New York. *Id.* at ¶ 1. He has
14 five U.S. citizen children. *Id.* at ¶ 1. Mr. Garcia Gavilan does not have any
15 criminal history and has never been deported. *Id.* at ¶ 1.

16 On July 23, 2025, ICE agents arrested Mr. Garcia outside of his house. *Id.*
17 at ¶ 2. They took him into custody and eventually brought him to Otay Mesa,
18 where they placed him in removal proceedings. *Id.* at ¶¶ 2, 3. His next hearing is
19 on May 28, 2026. *Id.* at ¶ 3. He has now been detained for ten months.

20 Mr. Garcia Gavilan has never had a bond hearing where the immigration
21 judge decided whether he was a danger or a flight risk. *Id.* at ¶ 4. The only bond
22 hearing he had was on April 17, 2026, when the immigration judge said they did
23 not have jurisdiction because Mr. Garcia Gavilan entered without permission. *Id.*
24 at ¶ 4.

25 Mr. Garcia Gavilan's daughter is in the military and has filed a petition for
26 him. *Id.* at ¶ 5. This petition allows him to apply for lawful permanent residence
27 while he is inside the United States. *Id.* at ¶ 5.

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ARGUMENT

I. Mr. Garcia Gavilan is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

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

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

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

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

First, § 1225(b)(2)(A)’s statutory context strongly suggests that it applies only to persons apprehended at or near the border. As the Supreme Court recognized in *Jennings*, § 1225(b) is concerned “primarily [with those] seeking entry,” and is generally imposed “at the Nation’s borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281 at 297, 287(2018). Throughout its text, the statute refers to “inspections”—a term not defined in the INA but which typically connotes an examination upon or soon after physical entry. 8 U.S.C. § 1225 (“Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing”); *id.* § 1225(b)(1)–(2) (referring to “inspections” in their titles); *id.* § 1225(d)(1) (authorizing

1 immigration officials to search certain conveyances in order to conduct
2 “inspections” where noncitizens “are being brought into the United States”).
3 Many statutory provisions, various regulations, and BIA precedent discuss
4 “inspection” in the context of admission processes at ports of entry, further
5 supporting the conclusion that § 1225 has a limited temporal and geographic
6 scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a; 8 U.S.C. § 1752a; 8 C.F.R.
7 § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Petitioner’s
8 interpretation accords.

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

17 On its face, the phrase “seeking admission” suggests an active attempt to
18 enter the country. Congress’s use of the present and present progressive tenses
19 “necessarily requires some sort of present-tense action,” excluding noncitizens in
20 the interior who are no longer in the process of seeking admission to the U.S.
21 *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL
22 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the
23 statute’s “present-tense active language”). “Realistically speaking,” it is hard to
24 accept that the statute’s plain language could mean anything else: “[I]f Congress’s
25 intention” to detain everyone who entered without inspection “was so clear, why
26 did it take thirty years to notice?” *Romero*, 2025 WL 2403827, at *12.

27 *Third*, the statutory history supports a limited reading of § 1225(b)’s reach.
28 When Congress amended § 1225(b)’s predecessor statute—which authorized

1 detention only of arriving noncitizens—to include individuals who had not been
2 admitted, legislators expressed concerns about recent arrivals to the United States
3 who lacked the documents to remain in the country. H.R. Rep. No. 104-469, pt. 1,
4 at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.).
5 There was no suggestion in the legislative history that Congress intended to
6 subject all people present in the United States after an unlawful entry to
7 mandatory detention and thereby transform immigration detention and sweep
8 millions of noncitizens into § 1225(b).

9 The BIA’s contrary reading of the legislative history is not persuasive.
10 True, IIRIRA “altered the typology of immigration *proceedings* to ‘place[] on
11 equal footing’ ‘all immigrants who have not been lawfully admitted.’” *Romero*,
12 2025 WL 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d
13 918, 928 (9th Cir. 2020)). But that “says nothing about *detention* pending the
14 outcome of those proceedings.” *Id.* (emphasis added). All these indicators suggest
15 that § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry,
16 not people who have already entered the country.

17 On the other hand, § 1226(a) is best read to apply to some inadmissible
18 persons. It cannot plausibly be the case that all inadmissible persons fall under
19 § 1225(b)(2)(A) and none fall under § 1226(a).

20 *First*, § 1226(a)’s statutory structure makes clear that it reaches some
21 individuals who have not been admitted and have entered without inspection.
22 Section 1226(c) exempts specific categories of noncitizens from the default
23 eligibility to seek release on bond in § 1226(a). “Among the individuals carved
24 out and subject to mandatory detention are certain categories of ‘inadmissible’
25 noncitizens.” *Rodriguez*, 779 F. Supp. 3d at 1246 (quoting 8 § 1226(c)(1)(A), (D),
26 (E)). The 2025 Laken Riley Act (“LRA”) added to that list. “This ‘new’ category”
27 of persons not eligible for bond “includes those noncitizens who are deemed
28 inadmissible, including for being ‘present in the United States without being

1 admitted or paroled,’ and who have been arrested, charged with, or convicted of
2 certain crimes.” *Rosado*, 2025 WL 2337099, at *9 (citing 8 U.S.C. §
3 1226(c)(1)(E); LRA, Pub. L. No. 119-1). If § 1226(a) did not apply to
4 inadmissible noncitizens, then the longstanding carve outs that refer to
5 inadmissibility and Congress’ most recent amendments would all be surplusage.
6 *See Garcia*, 2025 WL 2549431, at *6. The better reading is the Supreme Court’s
7 in *Jennings*: that § 1226(a) “applies to aliens already present in the United States.”
8 583 U.S. at 303.

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

18 Thus, the best reading of 8 U.S.C. §§ 1225, 1226 shows that petitioner is
19 eligible for bond. And under the Supreme Court’s recent decision in *Loper Bright*
20 *v. Raimondo*, this Court must independently interpret the meaning and scope of
21 §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S.
22 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025
23 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
24 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA’s decision in *Yajure*
25 *Hurtado* is a deviation from the agency’s long-standing interpretation of §§ 1225,
26 1226; is not guidance issued contemporaneously with enactment of the relevant
27 statutes; and contradicts the statutory interpretations of dozens of federal courts,
28 this Court should give it no weight. If anything, the government’s “decades of

1 practice” providing bond hearings to those who entered without inspection is a
2 more persuasive guide to the proper outcome here. *Martinez*, 2025 WL 2084238,
3 at *4.

4 **B. Detaining Mr. Garcia Gavilan without a bond hearing violates 8**
5 **U.S.C. § 1226(a), associated regulations, the administrative**
6 **procedures act, and the Fifth Amendment right to due process.**

7 Both the 8 U.S.C. § 1226(a) and its associated regulations entitle Petitioner
8 to a bond hearing. *See* 8 C.F.R. §§ 326.1(d), 1236.1, 1003.19(a)-(f). Accordingly,
9 the Fifth Amendment’s due process clause requires the government to provide the
10 legally required bond hearing before Petitioner is detained. *See Hernandez-Lara*
11 *v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021).

12 The statute and regulations implement the due process protection that
13 attends any civil detention. *See Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir.
14 2018) (expressing “grave doubts that any statute that allows for arbitrary
15 prolonged detention without any process is constitutional or that those who
16 founded our democracy precisely to protect against the government’s arbitrary
17 deprivation of liberty would have thought so”). The Supreme Court has
18 “repeatedly recognized that civil commitment for any purpose constitutes a
19 significant deprivation of liberty that requires due process protection,” including
20 an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425
21 (1979); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987); *Foucha v.*
22 *Louisiana*, 504 U.S. 71, 81–83 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357
23 (1997).

24 Here, Mr. Garcia Gavilan has not received a bond hearing. That violated
25 the statute, regulations, due process, and the Administrative Procedures Act.

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

28 In *Maldonado-Bautista v. DHS*, 25-cv-1873-SSS-BFM (C.D. Cal.), a
district judge granted national, class-wide relief to plaintiffs challenging the

1 BIA’s interpretation of §§ 1225, 1226. *Bautista v. Santacruz*, No. 5:25-CV-
2 01873-SSS-BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025), *judgment*
3 *entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM,
4 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). The Ninth Circuit subsequently
5 stayed the order, “insofar as the district court’s judgment extends beyond the
6 Central District of California.” *Maldonado Bautista v. DHS*, No. 26-1044, Dkt.
7 No. 5.1 (Mar 6, 2026). The Ninth Circuit left the judgement in place in the
8 Central District. *Id.*

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

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

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

19 **III. Prayer for relief**

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

23 Respectfully submitted,

24
25 Dated: May 26, 2026

26 *s/ Kara Hartzler*
27 Federal Defenders of San Diego, Inc.
28 Attorneys for Mr. Garcia Gavilan
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