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

10 MATEO GARCIA GAVILAN,  
11  
12 Petitioner,

13 v.

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

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

**Second Amended Petition  
for a  
Writ of Habeas Corpus**

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1 INTRODUCTION

2 Because Respondents have improperly detained Mr. Garcia Gavilan under  
3 8 U.S.C. § 1225, and apparently did not “compl[y] with the express terms of  
4 section 1226 when [they] detained” him through the “[i]ssuance of a[n  
5 administrative] warrant,” this Court must order his “immediate release.” *JAACP v.*  
6 *Wofford*, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, \*8 (E.D. Cal. Oct. 27,  
7 2025); *accord R.D. v. Bondi*, No. 26-cv-1904-ECT-EMB, 2026 WL 788263, \*2  
8 (D. Minn. Mar. 20, 2026) (collecting cases ordering immediate release in the  
9 absence of a warrant). At least one judge in this district recently concluded the  
10 same. *See Cruz Pedraza v. Larose*, 26-cv-2697-LL-MSB, ECF 12 at 4 (S.D. Cal.  
11 May 27, 2026) (finding that because petitioner was “arrested by ICE without a  
12 warrant,” immediate release is the “appropriate remedy”).

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

1 Courts do not agree.<sup>1</sup> This Court should reject that argument, too, and order  
2 Mr. Garcia Gavilan's immediate release, or at least a bond hearing.

3 **STATEMENT OF FACTS**

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

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

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

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

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24 <sup>1</sup> See, e.g., *Rodriguez*, 779 F. Supp. 3d at 1260; *Romero v. Hyde*, 2025 WL  
25 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D.  
26 Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y.  
27 Aug. 13, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24,  
28 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-  
Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Carmona-  
Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at \*5 (D. Neb. Sept. 3,  
2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at \*7 (C.D. Cal. Sept. 8,  
2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025);  
*Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025),

1 LEGAL BACKGROUND

2 I. Noncitizens who enter without inspection are entitled to the process  
3 outlined in 8 U.S.C. § 1226(a).

4 A. In *Yajure Hurtado*, the BIA stripped most noncitizens who enter  
5 without inspection of the right to seek bond.

6 This habeas petition turns on the BIA’s recent decision in *Yajure Hurtado*.  
7 The issue in *Yajure Hurtado* revolves around two statutes, 8 U.S.C. § 1226(a) and  
8 8 U.S.C. § 1225(b)(2)(A).

9 “Section 1226(a) provides for the arrest and detention of noncitizens  
10 ‘pending a decision on whether the alien is to be removed from the United  
11 States.’” *Hernandez Nieves*, 2025 WL 2533110, at \*3. It instructs that, “[o]n a  
12 warrant issued by the Attorney General, an alien may be arrested and detained.”  
13 8 U.S.C. § 1226(a). Then, the Attorney General “may continue to detain”  
14 arrestees or “may release [them] on bond of at least \$1,500 with security approved  
15 by, and containing conditions prescribed by, the Attorney General.” *Id.*  
16 (punctuation latered). “Federal regulations” implementing this statute “provide  
17 that aliens detained under § 1226(a) receive bond hearings at the outset of  
18 detention.” *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R.  
19 § 1236.1(d)(1)).

20 Section 1225(b)(2)(A), by contrast, provides that “in the case of an alien  
21 who is an applicant for admission, if the examining immigration officer  
22 determines that an alien seeking admission is not clearly and beyond a doubt  
23 entitled to be admitted, the alien shall be detained for” certain immigration  
24 proceedings. 8 U.S.C. § 1225(b)(2)(A). Federal regulations do not prescribe bond  
25 hearings for people detained under that section. Instead, “DHS has the sole  
26 discretion to temporarily release on parole ‘any alien applying for admission to  
27 the United States’ on a ‘case-by-case basis for urgent humanitarian reasons or  
28 significant public benefit.’” *Hernandez Nieves*, 2025 WL 2533110, at \*3 (quoting  
8 U.S.C. § 1182(d)(5)(A)).

1 By their terms, these statutes apply to different groups of immigrants.  
2 “Section 1226(a) sets out the default rule,” which governs unless some other,  
3 more specific detention provision overrides it. *Rodriguez* 779 F. Supp. 3d at 1246  
4 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an  
5 “applicant for admission” who is also an “alien seeking admission.” 8 U.S.C.  
6 § 1225(b)(2)(A).

7 *Yajure Hurtado* considered which of these provisions—the default rule in  
8 § 1226(a) or the mandatory detention provision in § 1225(b)(2)(A)—applies to  
9 immigrants who enter the United States without inspection but live for years in  
10 the country’s interior. 29 I.&N. Dec. at 216. The BIA concluded that noncitizens  
11 who enter without inspection have no right to seek bond from an IJ, regardless of  
12 how long they have been residing in the country and irrespective of whether they  
13 were apprehended by immigration authorities. *Id.* at 228.

14 **B. Courts disagree with the BIA’s reasoning.**

15 Since *Yajure Hurtado* was decided, many immigrants who otherwise would  
16 have received bond hearings under § 1226(a) have challenged that decision in the  
17 federal courts. Courts broadly agree that the BIA’s novel constructions of  
18 § 1225(b)(2)(A) and § 1226(a) are not correct.

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

21 *First*, § 1225(b)(2)(A)’s statutory context strongly suggests that it applies  
22 only to persons apprehended at or near the border. As the Supreme Court  
23 recognized in *Jennings*, § 1225(b) is concerned “primarily [with those] seeking  
24 entry,” and is generally imposed “at the Nation’s borders and ports of entry,  
25 where the Government must determine whether [a noncitizen] seeking to enter the  
26 country is admissible.” 583 U.S. at 297, 287. Throughout its text, the statute refers  
27 to “inspections”—a term not defined in the INA but which typically connotes an  
28 examination upon or soon after physical entry. 8 U.S.C. § 1225 (“Inspection by

1 immigration officers; expedited removal of inadmissible arriving [noncitizens];  
2 referral for hearing”); *id.* § 1225(b)(1)–(2) (referring to “inspections” in their  
3 titles); *id.* § 1225(d)(1) (authorizing immigration officials to search certain  
4 conveyances in order to conduct “inspections” where noncitizens “are being  
5 brought into the United States”). Many statutory provisions, various regulations,  
6 and BIA precedent discuss “inspection” in the context of admission processes at  
7 ports of entry, further supporting the conclusion that § 1225 has a limited  
8 temporal and geographic scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a;  
9 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA  
10 2010). Petitioner’s interpretation accords with these usages.

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

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

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

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

19           On the other hand, § 1226(a) is best read to apply to some inadmissible  
20  persons. It cannot plausibly be the case that all inadmissible persons fall under  
21  § 1225(b)(2)(A) and none fall under § 1226(a).

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

1 those noncitizens who are deemed inadmissible, including for being ‘present in  
2 the United States without being admitted or paroled,’ and who have been arrested,  
3 charged with, or convicted of certain crimes.” *Rosado*, 2025 WL 2337099, at \*9  
4 (citing 8 U.S.C. § 1226(c)(1)(E); LRA, Pub. L. No. 119-1). If § 1226(a) did not  
5 apply to inadmissible noncitizens, then the longstanding carve outs that refer to  
6 inadmissibility and Congress’ most recent amendments would all be surplusage.  
7 *See Garcia*, 2025 WL 2549431, at \*6. The better reading is the Supreme Court’s  
8 in *Jennings*: that § 1226(a) “applies to aliens already present in the United States.”  
9 583 U.S. at 303.

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

19 Thus, the best reading of 8 U.S.C. §§ 1225 and 1226 shows that Petitioner  
20 is not subject to detention under § 1225 and can instead only fall within § 1226.  
21 And under the Supreme Court’s recent decision in *Loper Bright v. Raimondo*, this  
22 Court must independently interpret the meaning and scope of §§ 1225(b), 1226(a)  
23 using the traditional tools of statutory construction. 603 U.S. 369, 385, 401  
24 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025 WL 2472136,  
25 at \*2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*8  
26 n.9 (D. Mass. July 7, 2025). Because the BIA’s decision in *Yajure Hurtado* is a  
27 deviation from the agency’s long-standing interpretation of §§ 1225 and 1226; is  
28 not guidance issued contemporaneously with enactment of the relevant statutes;

1 and contradicts the statutory interpretations of dozens of federal courts, this Court  
2 should give it no weight. If anything, the government’s “decades of practice”  
3 providing bond hearings to those who entered without inspection is a more  
4 persuasive guide. *Martinez*, 2025 WL 2084238, at \*4.

5 **II. The proper remedy for such a warrantless arrest is immediate release**  
6 **and an order that Petitioner cannot be re-detained absent the**  
7 **procedures of § 1226(a).**

8 Mr. Garcia Gavilan may be detained, if at all, pursuant to 8 U.S.C.  
9 § 1226(a). But, under section 1226, “[i]ssuance of a warrant is a necessary  
10 condition to justify discretionary detention under section 1226(a).” *Chogllo*  
11 *Chafla v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me. 2025). It provides that, “[o]n a  
12 warrant issued by the Attorney General, an alien may be arrested and detained.” 8  
13 U.S.C. § 1226(a) (emphasis added). “[I]t follows that absent a warrant a  
14 noncitizen may *not* be arrested and detained under section 1226(a).” *Chogllo*  
15 *Chafla*, 804 F. Supp. 3d at 264 (emphasis in original).

16 That is precisely what a judge in this district recently held. In *Cruz Pedraza*  
17 *v. Larose*, the petitioner was parked at a gas station when two unmarked cars  
18 blocked his truck. 26-cv-2697-LL-MSB, ECF 12 at 1 (S.D. Cal. May 27, 2026).  
19 Several ICE officers got out of their vehicles, asked the petitioner for proof of  
20 status, and then arrested him without a warrant. *Id.* at 1–2. The court found *Matter*  
21 *of Yahure Hurtado* “unpersuasive” and determined that the petitioner had been  
22 detained pursuant to § 1226(a), rather than § 1225(b). *Id.* at 4.

23 Importantly, the court then noted that the statutory language of § 1226(a)  
24 provides that “a noncitizen may only be arrested and detained pending a decision  
25 on removal ‘[o]n a warrant issued by the Attorney General.’” *Id.* (quoting 8  
26 U.S.C. § 1226(a)). And “[w]hen the government does not comply with the plain  
27 language of section 1226(a), a petitioner’s immediate release is justified.” *Id.*  
28 (quotations and alterations omitted). Because Respondents did not dispute that  
they lacked the necessary warrant to arrest the petitioner, the court held that

1 “Petitioner’s arrest and detention are unauthorized” and immediate release was  
2 the “appropriate remedy.” *Id.*

3 Other courts have similarly held that when ICE makes a warrantless arrest  
4 contrary to the plain language of § 1226(a), the “arrest and detention are therefore  
5 unauthorized, and the appropriate remedy for detention that lacks a proper  
6 statutory basis under § 1226(a) is release.” *Eslid. B.G. v. Bondi*, No. 26-cv-5020-  
7 RAL, 2026 WL 734992, \*6 (D.S.D. Mar. 16, 2026) (collecting cases); *see also*  
8 *JAACP v. Wofford*, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, \*8 (E.D. Cal.  
9 Oct. 27, 2025); *Diaz v. Albarran*, No. 25-cv-9837-JSC, 2025 WL 3214972 (N.D.  
10 Cal. Nov. 18, 2025); *R.D. v. Bondi*, No. 26-cv-1904-ECT-EMB, 2026 WL  
11 788263, \*2 (D. Minn. Mar. 20, 2026) (collecting cases ordering immediate release  
12 in the absence of a warrant).

13 Here, ICE arrested Mr. Garcia Gavilan outside of his house. Exhibit A at ¶  
14 2. He has never been shown a warrant, and it appears he was arrested without one.  
15 Because this arrest violated the plain language of § 1226(a), his “arrest and  
16 detention are unauthorized,” and immediate release is the “appropriate remedy.”  
17 *Cruz Pedraza*, 26-cv-2697-LL-MSB, ECF 12 at 4.

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

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

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

9 **PRAYER FOR RELIEF**

10 For the above reasons, this Court should order that:

- 11 1. Petitioner is not subject to mandatory detention under 8 U.S.C.  
12 § 1225(b)(2), and is instead subject to detention, if at all, pursuant to  
13 the discretionary provisions of 8 U.S.C. § 1226.
- 14 2. Respondents shall immediately release Petitioner from custody;
- 15 3. Respondents shall return to Petitioner any personal property; and
- 16 4. If Respondents seek to re-detain Petitioner, they shall hold a pre-  
17 deprivation bond hearing before a neutral arbiter pursuant to section  
18 1226(a) and its implementing regulations, at which Respondents  
19 shall demonstrate the issuance of a warrant and at which petitioner's  
20 eligibility for bond must be considered, *see, e.g., JAACP*, 2025 WL  
21 3013328 at \*8; or, at a minimum,
- 22 5. Respondents provide Petitioner with a hearing and individualized  
23 bond determination within fourteen days of its order, and  
24 Respondents shall make a complete record of the bond hearing  
25 available to Petitioner and his counsel at counsel's request; and  
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6. Any other relief that the Court deems just and proper.

Respectfully submitted,

Dated: May 28, 2026

s/ Kara Hartzler  
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