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

12 SALAS JACINTO, JUAN ADOLFO,
13 Petitioner,
14 v.
15 WARDEN, Otay Mesa Detention Center,
16 Respondents.

17 CIVIL CASE NO.:
18 '26CV3209 DMS AHG
19 **Petition**
20 **for a**
21 **Writ of Habeas Corpus**

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INTRODUCTION

This petition arises from a sudden change in the way that the Board of Immigration Appeals interprets 8 U.S.C. §§ 1225, 1226. “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) (quoting Petitioner’s brief and noting that Respondents had not contested that claim). 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).

Courts do not agree. The government has lost this argument in districts across the United States, *see, e.g., Rodriguez*, 779 F. Supp. 3d at 1260; *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 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), including this one, *see Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.). This Court should reject that argument, too, and order Petitioner’s immediate release on the bond imposed by the immigration judge (“IJ”).

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STATEMENT OF FACTS

Juan Adolfo Salas Jacinto came to the United States on August 1, 2023. Exh. A at ¶ 4. He lived in the U.S. for about three years. *Id.* Police arrested him on March 31, 2026 in Encinitas, California. *Id.* At a subsequent bond hearing, at the Otay Mesa Detention Center, the immigration judge said that the immigration court lacked jurisdiction to hear his application for bond. *Id.* at ¶ 3. His application for asylum remains pending. *Id.* at ¶ 5.

LEGAL BACKGROUND

I. Noncitizens who enter without inspection are entitled to a bond hearing under 8 U.S.C. § 1226(a).

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

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

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

Section 1225(b)(2)(A) provides that “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for” certain immigration proceedings. 8 U.S.C. § 1225(b)(2)(A). Federal regulations do not prescribe bond hearings for people

1 detained under that section. Instead, “DHS has the sole discretion to temporarily
2 release on parole ‘any alien applying for admission to the United States’ on a ‘case-
3 by-case basis for urgent humanitarian reasons or significant public benefit.”
4 *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting 8 U.S.C. § 1182(d)(5)(A)).

5 By their terms, these statutes apply to different groups of immigrants.
6 “Section 1226(a) sets out the default rule,” which governs unless some other, more
7 specific detention provision overrides it. *Rodriguez* 779 F. Supp. 3d at 1246
8 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an
9 “applicant for admission” who is also an “alien seeking admission.” 8 U.S.C.
10 § 1225(b)(2)(A).

11 *Yajure Hurtado* considered which of these provisions—the default rule in
12 § 1226(a) or the mandatory detention provision in § 1225(b)(2)(A)—applies to
13 immigrants who enter the United States without inspection but live for years in the
14 country’s interior. 29 I.&N. Dec. at 216. The respondent in *Yajure Hurtado* had
15 entered without inspection in November 2022, before obtaining Temporary
16 Protected Status (“TPS”). *Id.* at 216–17. He was arrested after his TPS expired in
17 April 2025. *Id.* An immigration judge (“IJ”) ruled that he was subject to mandatory
18 detention under § 1225(b)(2)(A). *Id.* at 217.

19 On appeal to the BIA, the respondent conceded that he was an “applicant for
20 admission” in the meaning of § 1225(b)(2)(A), *id.* at 221, because he had not been
21 legally “admitted”—that is, he had not effected a “lawful entry . . . into the United
22 States after inspection and authorization by an immigration officer.” 8 U.S.C.
23 § 1101(a)(13)(A). But he argued that he did not fall within § 1225(b)(2)(A)’s ambit
24 because he was not actively “seeking admission” at the border. 29 I&N Dec. at 221.
25 He had crossed the border and proceeded to the country’s interior years ago. *Id.*

26 The BIA disagreed, holding that only noncitizens who were legally admitted
27 retain bond eligibility. *Id.* at 218, 223. The BIA gave three reasons to support that
28 conclusion.

1 First, the BIA rejected the distinction between immigrants who are
2 “applicants for admission” and those who are “seeking admission.” In the BIA’s
3 view, that distinction would leave people like Mr. Yajure Hurtado without any
4 “legal status” and would create a line-drawing problem. *Id.* at 221.

5 Second, the BIA rejected the argument that interpreting § 1225(b)(2) to cover
6 noncitizens like Mr. Yajure Hurtado renders superfluous much of § 1226(c).
7 Instead, it asserted without explanation that limiting the reach of § 1225(b)(2)
8 would render that provision superfluous. *Id.* at 221–22.

9 Third, the BIA claimed that the legislative history supported its construction
10 of § 1225, because in enacting IIRIRA, Congress sought to remedy the inequity of
11 the prior statutory scheme, which provided greater procedural and substantive
12 rights to noncitizens who entered without inspection (and were placed in
13 deportation proceedings) than those who presented themselves to authorities for
14 inspection (and were placed in exclusion proceedings). *Id.* at 223–25. But the BIA
15 did not cite any legislative history specifically addressing detention statutes or
16 custody determinations that would support its interpretation. *Id.*

17 For these reasons, the BIA concluded that noncitizens who enter without
18 inspection have no right to seek bond from an IJ, regardless of how long they have
19 been residing in the country and irrespective of whether they were apprehended by
20 immigration authorities. *Id.* at 228.

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

22 Since *Yajure Hurtado* was decided, many immigrants who otherwise would
23 have received bond hearings under § 1226(a) have challenged that decision in the
24 federal courts. Courts broadly agree that the BIA’s novel constructions of
25 § 1225(b)(2)(A) and § 1226(a) are not correct.

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

28 *First*, § 1225(b)(2)(A)’s statutory context strongly suggests that it applies

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

18 *Second*, consistent with the statute’s overall focus on the moment of physical
19 entry, § 1225(b)(2)’s plain language limits the statute’s reach to persons actively
20 attempting to enter the United States. The statute applies only to those who are *both*
21 “applicants for admission” *and* in the process of “seeking admission.” 8 U.S.C.
22 § 1225(b)(2)(A). Because the statute’s first clause already limits the provision to
23 “applicants for admission,” the phrase “seeking admission” must have a different
24 meaning. Any other reading would constitute “an obvious violation of the rule
25 against surplusage.” *Romero*, 2025 WL 2403827, at *10.

26 On its face, the phrase “seeking admission” suggests an active attempt to
27 enter the country. Congress’s use of the present and present progressive tenses
28 “necessarily requires some sort of present-tense action,” excluding noncitizens in

1 the interior who are no longer in the process of seeking admission to the U.S.
2 *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL
3 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the
4 statute’s “present-tense active language”). “Realistically speaking,” it is hard to
5 accept that the statute’s plain language could mean anything else: “[I]f Congress’s
6 intention” to detain everyone who entered without inspection “was so clear, why
7 did it take thirty years to notice?” *Romero*, 2025 WL 2403827, at *12.

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

18 The BIA’s contrary reading of the legislative history is not persuasive. True,
19 IIRIRA “altered the typology of immigration *proceedings* to ‘place[] on equal
20 footing’ ‘all immigrants who have not been lawfully admitted.’” *Romero*, 2025 WL
21 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th
22 Cir. 2020)). But that “says nothing about *detention* pending the outcome of those
23 proceedings.” *Id.* (emphasis added). All these indicators suggest that
24 § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry, not
25 people who have already entered the country.

26 On the other hand, § 1226(a) is best read to apply to some inadmissible
27 persons. It cannot plausibly be the case that all inadmissible persons fall under
28 § 1225(b)(2)(A) and none fall under § 1226(a).

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

17 *Second*, § 1226(a)'s legislative history supports Petitioner's reading. "After
18 passing the IIRIRA, Congress declared the new § 1226(a) 'restates the current
19 provisions in [the predecessor statute] regarding the authority of the Attorney
20 General to arrest, detain, and release on bond' a noncitizen 'who is not lawfully in
21 the United States.'" *Rosado*, 2025 WL 2337099, at *9. Because noncitizens deemed
22 inadmissible "were entitled to discretionary detention under § 1226(a)'s
23 predecessor statute, and Congress declared the statute's scope unchanged by
24 IIRIRA," § 1226(a) must "allow for a discretionary release on bond for"
25 inadmissible noncitizens, too. *Id.*

26 Thus, the best reading of 8 U.S.C. §§ 1225, 1226 shows that petitioner is
27 eligible for bond. And under the Supreme Court's recent decision in *Loper Bright*
28 *v. Raimondo*, this Court must independently interpret the meaning and scope of

1 §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S.
2 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025
3 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
4 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA’s decision in *Yajure*
5 *Hurtado* is a deviation from the agency’s long-standing interpretation of §§ 1225,
6 1226; is not guidance issued contemporaneously with enactment of the relevant
7 statutes; and contradicts the statutory interpretations of dozens of federal courts,
8 this Court should give it no weight. If anything, the government’s “decades of
9 practice” providing bond hearings to those who entered without inspection is a
10 more persuasive guide. *Martinez*, 2025 WL 2084238, at *4.

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

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

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

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1 **CLAIMS AND PRAYER FOR RELIEF**

2 **Detaining Petitioner Without a Bond Hearing Violates 8 U.S.C. § 1226(a),**
3 **Associated Regulations, the Administrative Procedures Act, and the Fifth**
4 **Amendment Right to Due Process.**

5 For the reasons just given, Petitioner may be detained, if at all, pursuant to 8
6 U.S.C. § 1226(a). Both the statute and its associated regulations entitle Petitioner
7 to a bond hearing. *See* 8 C.F.R. §§ 326.1(d), 1236.1, 1003.19(a)-(f). Accordingly,
8 the Fifth Amendment's due process clause requires the government to provide the
9 legally required bond hearing before Petitioner is detained. *See Hernandez-Lara v.*
10 *Lyons*, 10 F.4th 19, 27 (1st Cir. 2021).

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

22 The government violated Petitioner's Fifth Amendment due process rights by
23 depriving him of his freedom from physical confinement without an individualized
24 determination of flight risk or danger to the public. *Mathews v. Elridge*, 424 U.S.
25 319, 321 (1976) (due process analysis considers (1) "the private interest that will
26 be affected by the [government] action"; (2) "the risk of an erroneous deprivation
27 of such interest through the procedures used, and the probable value, if any, of
28 additional procedural safeguards"; and (3) "the Government's interest, including the

1 fiscal and administrative burdens that the additional or substitute procedures would
2 entail." In *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017), the Ninth Circuit
3 recognized that a noncitizen's interest in freedom from physical confinement itself
4 constitutes a core liberty interest protected by the Due Process Clause. The
5 Petitioner has a criminal history, poses no danger to the community, nor presents a
6 flight risk. See 8 C.F.R. § 1236.1(c)(8). Petitioner has been subjected to
7 unconstitutional detention and his immediate release should be ordered.

8 Because Petitioner is entitled to a bond hearing to justify detention pursuant
9 to 8 U.S.C. § 1226, the Court should enjoin Respondents from redetaining him
10 without first providing a bond hearing before an immigration judge to justify a
11 deprivation of his liberty interest. See, e.g., *Aceros v. Kaiser*, No. 25-CV-06924-
12 EMC (EMC), 2025 WL 2637503, at *12 (N.D. Cal. Sept. 12, 2025); *Valencia*
13 *Zapata v. Kaiser*, 801 F. Supp. 3d 919, 938 (N.D. Cal. 2025); *O.G. v. Albarran*, No.
14 1:26-CV-00010-TLN-DMC, 2026 WL 19105, at *5 (E.D. Cal. Jan. 3, 2026). While
15 § 1226 ordinarily provides for a bond hearing after detention, a pre-deprivation
16 hearing is the more appropriate remedy for individuals like Petitioner who have
17 already been subjected to unconstitutional detention. In order to prevent any further
18 erroneous deprivation of his liberty interest and satisfy due process requirements,
19 this hearing should take place prior to any detention. See *Boumediene v. Bush*, 553
20 U.S. 723, 779-80 (2008) (while habeas relief commonly includes release from
21 physical imprisonment, "depending on the circumstances, more [relief] may be
22 required"); *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010) (holding that
23 petitioner's release--revocable at the government's discretion--did not provide
24 complete relief where petitioner sought a legal ruling that he could only be
25 redetained upon a bond hearing); *Clark v. Martinez*, 543 U.S. 371, 376 n.

26
27 Here, Petitioner never received the bond hearing required under § 1226(a),
28 but the government detained him anyway. That violated the statute, regulations, due

1 process, and the Administrative Procedures Act. This Court should therefore grant
2 the petition and order that Mr. Mendez-Espino receive an appropriate bond hearing.
3

4
5 Respectfully submitted,

6 Dated: May 21, 2026

s/ Edward Haase

7 Edward Haase

8 Law Office of Edward Haase

9 Attorney for Mr. Salas Jacinto

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CERTIFICATE OF SERVICE

SALAS JACINTO, JUAN ADOLFO,
Petitioner,
v.
WARDEN, Otay Mesa Detention Center,
Respondents.

CIVIL CASE NO.:

**Proof of Service of Petition
for a
Writ of Habeas Corpus**

I served the accompanying document by emailing it to
usacas.habeas2241@usdoj.gov.

Dated: May 21, 2026

S/Edward Haase
Edward Haase
Attorney for Petitioner