

1 TAMARA SOLOMAN
2 LAW OFFICES OF TAMARA L. SOLOMAN
3 901 H Street, Suite 400
4 Sacramento, CA 95814
5 Phone: (916) 712-8962
6 E-Mail: solomanlaw1@gmail.com

7 Attorney for Defendant
8 ROBERTO CASTRO
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10 **UNITED STATES OF DISTRICT COURT FOR THE**
11 **EASTERN DISTRICT OF CALIFORNIA**
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15 ROBERTO CASTRO,

16
17 Petitioner,

18 v.

19 Warden of the California Detention Facility,
20 et al. ,

21 Respondents.
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Case No.: 1:26-cv-05202

**TRAVERSE TO RESPONDENTS'
RETURN AND OPPOSITION TO
PETITIONER'S PETITION FOR
WRIT OF HABEAS CORPUS**

23
24 **I. INTRODUCTION**
25

26 Petitioner Roberto Castro asks this Court to order his immediate release. He does not ask
27 this Court to send him back into the immigration court system for a bond hearing before an
28 immigration judge ("IJ"), because on the current record — and on the mounting record of how

1 bond hearings are actually being conducted nationwide — that is not a meaningful remedy for a
2 31-year resident with no danger to the community and no risk of flight.

3 Respondents' Opposition confirms that the only real dispute is legal, not factual.

4 Respondents state that they “do not offer any opposition at this time to the Court ordering a bond
5 hearing” if the Court determines that Petitioner's detention is governed by 8 U.S.C. § 1226(a).

6 Opp. at 1. They offer no competing account of Petitioner's history, ties, or risk profile, and
7 “request to submit on this pleading without additional documentation.” Id. at 2. Respondents'
8 sole argument is that Petitioner is instead subject to mandatory, no-bond detention under 8
9 U.S.C. § 1225(b)(2)(A) because he entered without inspection. Id. at 1–2. That argument does
10 not fit the facts of this case and does not reflect the majority rule among the courts to have
11 addressed it — including the courts of this District. See *infra* Part III.A.

12 But this Court need not stop at resolving that statutory question and remanding Petitioner
13 to the very immigration court system whose bond process is now the subject of mounting,
14 documented concern in courts across the country. Petitioner has lived continuously in the United
15 States for 31 years. Pet. at 6 (Statement of Facts ¶ 23). He entered without inspection near
16 Matamoros in July 1995 and was released the following day; he was not encountered again by
17 immigration authorities until March 27, 2026, when he was arrested at a worksite in Florida
18 while performing routine labor. Id. He has worked continuously, filed taxes every year, and
19 previously held Temporary Protected Status. Id. He has no history of flight and every incentive
20 to appear and litigate his case, given his fear of persecution if returned to Honduras. On this
21 record, Respondents cannot show by clear and convincing evidence that Petitioner's continued
22 detention is justified, and this Court can and should make that determination itself and order his
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1 immediate release, rather than remand him to a bond process that federal courts around the
2 country have found produces preordained results. See *infra* Part III.B.

3 For these reasons, and for the due process reasons already set out in the Petition,
4 Petitioner respectfully requests that this Court order his immediate release under appropriate
5 conditions of supervision. In the alternative, and only if the Court is not prepared to order release
6 on this record without further proceedings, Petitioner requests that any further hearing be
7 conducted with the safeguards described in Part III.B.3 below — not a bare remand to an
8 immigration judge.
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11 **II. SUPPLEMENTAL STATEMENT OF FACTS**

12 Petitioner filed his Petition *pro se*. The following facts, drawn from the Petition and
13 attached exhibits, are relevant to the statutory question Respondents raise and are undisputed by
14 Respondents' Opposition, which offers no competing factual account and “request[s] to submit
15 on this pleading without additional documentation.” *Opp.* at 2.
16

17 **Entry and continuous residence.** Petitioner is a native and citizen of Honduras who last entered
18 the United States near Matamoros, Tamaulipas, in July 1995, and was released the following
19 day. *Pet.* at 6. He has resided continuously in the United States for 31 years, at all times in
20 Florida until his detention. *Id.*
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22 **Immigration history.** Petitioner previously held Temporary Protected Status on account of
23 Hurricane Mitch. *Pet.* at 6. Petitioner's counsel understands, based on client communications,
24 that a TPS renewal was denied years after a 2016 misdemeanor DUI conviction.
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26 **Criminal history.** Petitioner reports two prior encounters with law enforcement: a DUI, for
27 which he paid a fine and completed a course, and a 2016 incident involving a domestic dispute
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1 with an ex-partner, which he states he “already paid.” Pet. at 6. Client indicated he completed
2 every part of his sentence and has had no contact with his ex-wife for the past 10 years.

3 **Circumstances of arrest and current detention.** Petitioner was arrested at a worksite on March
4 27, 2026, while working as a laborer, and has been detained since that date — approximately
5 four months — without any bond hearing before a neutral decisionmaker. Pet. at 4–5. He is
6 currently held at the California City Detention Facility. Id. at 18.

8 9 **III. ARGUMENT**

10 **A. Petitioner's Detention Is Governed by 8 U.S.C. § 1226(a), Not § 1225(b)(2)(A), Because** 11 **He Was Arrested in the Interior Decades After Entry and Is Not “Seeking Admission.”**

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13 Respondents' entire opposition rests on the proposition that any noncitizen who entered
14 without inspection — no matter when, and no matter how long ago — remains perpetually an
15 “applicant for admission” subject to mandatory detention under § 1225(b)(2)(A). That reading
16 has been adopted by a minority of courts and rejected by a growing majority, including this
17 District.

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19 *1. The statutory text distinguishes “applicant for admission” from “seeking admission,” and*
20 *Petitioner is neither.*

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22 Section 1225(b)(2)(A) applies only “in the case of an alien who is an applicant for
23 admission, if the examining immigration officer determines that an alien seeking admission is
24 not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis
25 added). Respondents, consistent with the Fifth and Eighth Circuits, effectively treat every
26 person deemed an “applicant for admission” under §1225(a)(1) as necessarily “seeking
27 admission” for purposes of §1225(b)(2)(A). The majority of courts to consider the question
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1 have rejected that equation as inconsistent with ordinary rules of construction, because it renders
2 “seeking admission” superfluous. *See Castañon-Nava v. U.S. Dep’t of Homeland Sec.*, 161 F.4th
3 1048, 1060–61 (7th Cir. 2025) (the government’s reading “would render . . . the phrase ‘seeking
4 admission’ superfluous,” violating “one of the cardinal rules of statutory construction”);
5 *Hernandez Alvarez v. Warden, Fed. Detention Ctr. Miami*, No. 25-14065, 2026 WL 1243395, at
6 *— (11th Cir. May 6, 2026) (Congress defined “applicant for admission” as a technical,
7 “deemed” status under § 1225(a)(1), and that legal fiction cannot be collapsed into the separate,
8 active requirement of “seeking admission” — i.e., pursuing lawful entry after inspection).
9

10
11 Petitioner is not, and at the time of his arrest was not, seeking admission in any sense the
12 statute contemplates. He was not at a port of entry, not in expedited removal, and not engaged in
13 any present attempt to be admitted; he was working at a jobsite in the community where he has
14 lived for three decades. That is precisely the fact pattern the majority-view courts have held falls
15 outside § 1225(b)(2)(A). *See Barbosa Da Cunha v. Freden*, No. 25-3141 (2d Cir. April 28,
16 2026) (§ 1225(b)(2)(A) does not govern a long-present interior noncitizen arrested away from
17 the border, whose detention instead falls under § 1226(a)); *Santillan Quiroz v. Mullin*, No. 26-
18 6019, 2026 WL 1876709 (10th Cir. June 30, 2026) (same, joining the Second, Sixth, and
19 Eleventh Circuits, as to a petitioner “by all accounts . . . a valued and contributing” member of
20 his community apart from a single prior DUI who completed of all of the community service.
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23 2. Respondents’ reading would make portions of § 1226(c) superfluous and departs from thirty
24 years of settled practice.

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26 Reading § 1225(b)(2)(A) to reach every unadmitted alien anywhere in the interior
27 collides with § 1226(c), which separately enumerates specific categories of “inadmissible”
28 noncitizens subject to mandatory detention and specific exceptions to that mandatory detention.

1 See 8 U.S.C. § 1226(c)(1)(E)(i) and related provisions. If all inadmissible noncitizens were
2 already swept into mandatory, no-bond detention under § 1225(b)(2)(A), those enumerated
3 categories and exceptions in § 1226(c) would serve no purpose. See *Buenrostro-Mendez*, 166
4 F.4th at 518 (Douglas, J., dissenting) (“[E]xceptions referring to inadmissible noncitizens . . .
5 would have been largely unnecessary if all inadmissible noncitizens were already subject to
6 mandatory detention without a bond hearing under § 1225(b)(2)(A).”). Several courts have also
7 found persuasive the structural implications of Respondents’ reading, together with the Supreme
8 Court’s admonition that Congress does not “hide elephants in mouseholes.” See *Whitman v. Am.*
9 *Trucking Ass’ns*, 531 U.S. 457, 468 (2001); *Barbosa Da Cunha*, *supra*.

10 The statutory structure independently forecloses Respondents’ expansive reading.
11 Congress enacted two separate detention regimes that correspond to two distinct stages of the
12 immigration process. Section 1225 governs the inspection and processing of individuals seeking
13 admission into the United States, whereas § 1226 governs the arrest and detention of individuals
14 already present in the country while removal proceedings are pending. The opening sentence of §
15 1226(a) confirms as much, authorizing the arrest of a noncitizen “on a warrant issued by the
16 Attorney General” and detention “pending a decision on whether the alien is to be removed from
17 the United States.” 8 U.S.C. § 1226(a). That language naturally encompasses the circumstances
18 presented here: Petitioner was arrested at his workplace more than three decades after entering
19 the country and detained pending removal proceedings. Respondents’ interpretation would
20 transform § 1225(b)(2)(A)—a provision directed to the inspection process at the threshold of
21 entry—into the default detention authority for virtually every noncitizen who ever entered
22 without inspection, leaving § 1226(a) with little work to do for a substantial class of interior
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1 arrests. Nothing in the statutory text or structure suggests Congress intended such a sweeping
2 displacement of § 1226(a).

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4 This is not merely an abstract textual point. For nearly three decades following IIRIRA's
5 enactment, § 1225(b)(2)(A) generally operated as a border-processing statute. Noncitizens who
6 had established their lives in the interior, regardless of the circumstances of their entry, were
7 generally detained under § 1226(a) and afforded individualized bond hearings. Respondents'
8 interpretation reflects a recent departure from that longstanding understanding of the statutory
9 scheme. Although a change in agency interpretation does not itself determine the meaning of the
10 statute, such a dramatic break from decades of settled practice reinforces the conclusion that
11 Respondents' expansive reading is inconsistent with the structure Congress enacted.

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14 *3. Respondents' reading raises serious constitutional concerns that this Court should avoid.*

15 Even if the statutory text were ambiguous — and Petitioner submits it is not — the canon
16 of constitutional avoidance favors the majority rule. Respondents' interpretation would authorize
17 mandatory detention, without any individualized custody determination for potentially millions
18 of long-term residents found anywhere in the interior of the United States, regardless of how
19 long they have resided here, regardless of family ties, regardless of danger or flight risk.

20
21 Courts adopting the majority view have held that this reading raises “severe Fifth
22 Amendment due process concerns” by mandating detention without bond for large numbers of
23 non-dangerous, non-flight-risk interior residents for potentially lengthy periods, and have
24 distinguished *Demore v. Kim*, 538 U.S. 510 (2003), as addressing a narrow criminal class and
25 detention of typically brief duration. *See Barbosa Da Cunha*, *supra*; see also *Velasco Lopez v.*
26 *Decker*, 978 F.3d 842 (2d Cir. 2020); *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024). Petitioner's
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own circumstances — 31 years of continuous residence, a stable work history, and no history of flight — illustrate exactly the concern these courts identified.

4. *This Court's own decisions, on directly analogous facts, have already rejected Respondents' position.*

Respondents cite a single, earlier decision of this Court, *Cortes Alonzo v. Noem*, No. 1:25-cv-01519-WBS-SCR, Dkt. 14 (E.D. Cal. Nov. 17, 2025). Opp. at 2. That decision predates the fuller development of the circuit split described above and several more recent decisions from this District rejecting the government's § 1225(b)(2)(A) theory on materially indistinguishable facts. In *Alvarez Maciel v. Noem*, the Court ruled that an unadmitted noncitizen who had resided in the United States for over 20 years after entering without inspection was entitled to a bond hearing under § 1226(a). No. 1:26-cv-1318 DC CKD (HC), 2026 WL 496948, at *4 (E.D. Cal. Feb. 23, 2026).

Shortly thereafter, in *Barajas Ortiz v. Chestnut*, the Court reached the same conclusion for a petitioner who had resided in the United States for 34 years after entering without inspection. No. 1:26-cv-1167 DC SCR (HC), 2026 WL 508419, at *4 (E.D. Cal. Feb. 24, 2026). And in a related order, the Court expressly considered and declined to follow *Buenrostro-Mendez*, finding the Seventh Circuit's contrary reasoning in *Castañon-Nava* more persuasive. See, e.g., *Iskandar Wasef v. Chestnut*, Order Granting Prelim. Inj., No. 1:26-cv-01078 (E.D. Cal. Feb. 11, 2026). Petitioner's 31 years of continuous residence following entry without inspection places him squarely within the facts these decisions addressed, and this Court should reach the same result.

Respondents' remaining citations are inapposite. *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), and *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), both involved

1 noncitizens seeking entry at the border — a returning lawful permanent resident denied re-entry
2 in Mezei, and a recent entrant apprehended near the border and placed in expedited removal in
3 Thuraissigiam. Neither case addresses, let alone controls, the detention of a person who has
4 resided continuously in the interior for three decades and was arrested at his workplace far from
5 any border. Those cases involved the constitutional rights of aliens at or immediately adjacent to
6 the threshold of initial entry. Neither addressed the statutory detention authority applicable to a
7 noncitizen who has lived continuously in the United States for decades after an unlawful entry.
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9 Finally, the Ninth Circuit's own resolution of this question remains pending in *Rodriguez*
10 *Vazquez v. Bostock*, No. 25-6842 (9th Cir., argued Mar. 4, 2026), and this Court is not bound by
11 any contrary circuit authority. Nothing prevents this Court from following its own recent, well-
12 reasoned decisions and the weight of authority from other circuits pending the Ninth Circuit's
13 decision.
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16 **B. This Court Should Order Petitioner's Immediate Release Rather Than Remand Him for**
17 **a Bond Hearing Before an Immigration Judge.**

18 Resolving the § 1225/§ 1226(a) question in Petitioner's favor does not require this Court
19 to simply hand Petitioner back to the immigration court system for a bond hearing. This Court
20 possesses broad habeas authority to fashion appropriate relief, including ordering Petitioner's
21 release where the undisputed record demonstrates that continued detention is unlawful. That
22 authority is particularly important here, where the ordinary remedy of remand to an IJ has
23 become, for a growing number of federal courts, an empty gesture rather than a meaningful
24 process.
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26
27 *1. On this record, Respondents cannot show by clear and convincing evidence that Petitioner is*
28 *a danger or a flight risk.*

1 The government bears the burden of justifying continued detention by clear and
2 convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). Respondents have
3 made no such showing here — indeed, they have made no factual showing at all, electing to
4 “submit on th[e] pleading[s] without additional documentation.” Opp. at 2. The undisputed
5 record shows a 31-year continuous resident with a stable, decades-long work history, consistent
6 tax filings, no history of flight, and no criminal history beyond a single decade-old DUI for
7 which he paid a fine and completed a course and a dispute with his ex-wife.. Pet. at 6. He has a
8 strong, and unusual, incentive to remain and pursue every avenue of relief available to him: he
9 fears persecution and violence if returned to Honduras, where members of his family have been
10 killed and he continues to be in danger from the ones who murdered his family. Id. Where, as
11 here, the government offers nothing to meet its burden, this Court need not manufacture a further
12 proceeding to reach the only conclusion the existing record supports.

15 This case does not present a disputed factual record requiring an agency's expertise.
16 Respondents elected to submit the matter without declarations, criminal history evidence beyond
17 the record already before the Court, or any evidence suggesting Petitioner presents either a
18 danger to the community or a risk of flight. Because the government has failed to come forward
19 with evidence sufficient to justify continued detention under the governing constitutional
20 standard, there is nothing left for an immigration judge to decide. Requiring Petitioner to remain
21 detained while the government receives a second opportunity to satisfy a burden it chose not to
22 meet in this proceeding would be inconsistent with the purpose of the writ of habeas corpus.

25 *2. Remand to an immigration judge is not a meaningful safeguard on the current record*
26 *of how bond hearings are being conducted.*
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1 Federal courts around the country are increasingly confronting evidence that bond
2 hearings before immigration judges are not functioning as the individualized, neutral proceedings
3 due process requires. *In Singh v. Hagan*, No. 1:26-cv-01109-WJM (D. Colo. Apr. 1, 2026), the
4 court ordered a petitioner's immediate release rather than remand for a bond hearing, explaining
5 that "the mounting evidence that bond determination hearings conducted in immigration court
6 have preordained outcomes has become impossible to ignore," and citing an instance in which an
7 IJ denied bond in a summary decision that provided no citation to specific facts or reasoning.
8 The concern is not confined to one district: in *Singh v. Valdez, et al.*, Judge Martinez quoted
9 Judge O'Hearn's order in the District of New Jersey cataloging similar instances nationwide and
10 concluded that they "raise a serious question as to whether the constitutional guarantee of an
11 impartial decisionmaker is being honored in any case brought before an IJ."

14 Petitioner is aware of no Ninth Circuit or Eastern District of California decision yet
15 applying this reasoning and offers it to this Court as a developing but serious and well-
16 documented line of persuasive authority, not as settled law in this Circuit. But the underlying due
17 process principle is not new: a hearing that is a foregone conclusion is not the individualized
18 process *Zadvydas*, *Mathews*, and *Singh v. Holder* require. Where, as here, the government has
19 made no case at all for continued detention, remanding Petitioner to a system that other federal
20 courts have found systematically predetermines its outcomes would not vindicate his due process
21 rights — it would simply delay the inevitable while he remains confined.

24 *3. If the Court is not prepared to order release outright, any further proceeding should include*
25 *meaningful safeguards or be conducted by this Court rather than by remand to EOIR.*

27 Should the Court conclude that further proceedings are warranted before ordering release,
28 Petitioner respectfully requests that the Court not simply remand him to an immigration judge for

an ordinary bond hearing under 8 C.F.R. § 1236.1, but instead: (a) require that any bond determination be made in a written decision with specific, individualized findings addressing the evidence of record on danger and flight risk, with Respondents bearing the burden of proof by clear and convincing evidence and Petitioner permitted counsel; (b) order that Petitioner be released if that hearing has not occurred within a short, date-certain period; (c) retain jurisdiction, to enforce compliance and to order Petitioner's immediate release if the hearing does not comport with these requirements; and, (d) refer the custody determination to a Judge of this Court, rather than to an immigration judge, to ensure an unquestionably neutral decisionmaker consistent with the concerns described above.

C. Alternatively, Even If § 1225(b)(2)(A) Applied, Petitioner's Prolonged Detention Without Any Individualized Hearing Violates Due Process.

Should this Court conclude that § 1225(b)(2)(A) technically applies, that conclusion would not end the inquiry. In *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), the Supreme Court held only that § 1225(b) contains no implicit statutory requirement of periodic bond hearings; it expressly left open whether prolonged detention under that provision, without any individualized review, violates the Due Process Clause as applied to a particular petitioner. *Id.* at 851 (remanding for consideration of petitioners' constitutional claims). This is precisely such a case. Petitioner has now been detained for approximately four months with no bond hearing, no danger determination, and no flight-risk determination of any kind. He has resided in the United States for 31 years, has a stable 31-year work history, has consistently filed taxes, and has powerful reasons to appear at every hearing in his case: he fears for his life if returned to Honduras, where his father and two brothers were killed and where he states his “enemies” continue to look for him. *Pet.* at 6. This due process argument applies independently of, and in

1 addition to, the arguments for immediate release set out in Part III.B above. Under the *Mathews*
2 *v. Eldridge* balancing test already set out in the Petition, Pet. ¶¶ 32–36, and under the reasoning
3 of *Zadvydas v. Davis*, 533 U.S. 678 (2001), continued detention of this kind without any
4 individualized review is precisely the arbitrary deprivation of liberty the Due Process Clause
5 forbids.
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7 IV. CONCLUSION

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9 For the foregoing reasons, Petitioner respectfully requests that this Court grant the
10 Petition and order Petitioner's immediate release under appropriate conditions of supervision, on
11 the ground that Respondents have not shown, and cannot show, by clear and convincing
12 evidence that Petitioner's continued detention is justified by danger to the community or risk of
13 flight.
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15 In the alternative, and only if the Court is not prepared to order release on the present
16 record, Petitioner requests that the Court order a custody hearing conducted with the specific
17 safeguards described in Part III.B.3 above — including a written, individualized decision,
18 Respondents' burden of proof by clear and convincing evidence, a date-certain deadline with
19 automatic release for noncompliance, retained jurisdiction to enforce compliance, and, at
20 Petitioner's election, referral to a Judge of this Court rather than to an immigration judge.
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22
23 Dated: July 27, 2026
24

25 Respectfully submitted,

26 /s/ Tamara Soloman

27 Tamara L. Soloman
28 Attorney for Petitioner