

Bashir Ghazialam (CA Bar No. 212724)  
Kirsten Zittlau (CA Bar No. 220809)  
LAW OFFICES OF BASHIR GHAZIALAM  
P.O. Box 928167  
San Diego, California 92192  
Tel: (619) 795-3370  
Fax: (866) 685-4543  
[bg@lobg.net](mailto:bg@lobg.net)  
[zittlawlaw@gmail.com](mailto:zittlawlaw@gmail.com)

Attorneys for Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LUCAS MENDOZA CASTRO; and  
YESENIA MORALES CALIXTO,

Petitioners,

v.

Christopher LAROSE, Facility  
Administrator at Otay Mesa Detention  
Center, San Diego, California; Joseph  
FREDEN, Field Office Director of San  
Diego Office of Detention and Removal,  
U.S. Immigrations and Customs  
Enforcement; U.S. Department of  
Homeland Security; Todd M. LYONS,  
Acting Director, Immigration and  
Customs Enforcement, U.S. Department  
of Homeland Security; Kristi NOEM, in  
her Official Capacity, Secretary, U.S.  
Department of Homeland Security;  
Pam BONDI, in her Official Capacity,  
Attorney General of the United States;  
PAM BONDI, Attorney General of the  
United States;

Respondents.

Case No.: '25CV2645 BAS JLB

**PETITION FOR WRIT OF HABEAS  
CORPUS AND ORDER TO SHOW  
CAUSE WITHIN THREE DAYS;  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Challenge to Unlawful Incarceration  
Under Color of Immigration Detention  
Statutes; Request for Declaratory and  
Injunctive Relief

**PETITIONERS' DHS NO.:**

A   
A

Petitioners LUCAS MENDOZA CASTRO and YESENIA MORALES CALIXTO petition this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents' detaining them unlawfully, and state as follows:

### INTRODUCTION

1. Petitioners, LUCAS MENDOZA CASTRO; and YESENIA MORALES CALIXTO, by and through their undersigned counsel, hereby file this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to compel their immediate release from immigration detention where they have been held by the U.S. Department of Homeland Security (DHS) since being detained on June 25, 2025. Petitioners are in the physical custody of Respondents at the Otay Mesa Detention Center in Otay Mesa, California.

2. Petitioners are unlawfully detained. The Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have improperly concluded that Petitioners, despite being physically present within the interior of and residing in the United States and being arrested in the parking lot of their apartment complex in San Diego, California, should be deemed to be seeking admission to the United States and therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

3. DHS has placed Petitioners in removal proceedings pursuant to 8 U.S.C. § 1229a and has charged Petitioners with being present in the United States without admission and therefore removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i).

4. Based on the charge of removability, DHS has denied Petitioners' release from immigration custody. This denial is in large part based upon a new DHS policy issued on

1 July 8, 2025,<sup>1</sup> instructing all Immigration and Customs Enforcement (ICE) employees to  
2 consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) - i.e., present without  
3 admission - to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and  
4 therefore subject to mandatory detention during the removal hearing process.

5 5. Petitioners sought a bond hearing before an immigration judge (IJ), and on July 18,  
6 2025, the IJ accepted jurisdiction and granted Petitioners each bond over DHS’ objection.  
7 DHS reserved appeal and filed Form EOIR-43, Notice of Service of Intent to Appeal  
8 Custody Redetermination.

9 6. This notice not only appeals any IJ decision granting bond but also triggers and  
10 automatic stay of the bond decision during the appeal, resulting in the continued unlawful  
11 detention of Petitioners to date. *See* § 1003.19(i)(2). The “auto-stay” provision of 8  
12 C.F.R. § 1003.19(i)(2) prevents noncitizens from posting bond and being released even  
13 though the IJ granted bond. DHS subsequently filed an appeal with the Board of  
14 Immigration Appeals (BIA), which is presently pending adjudication.

15 7. About a month and a half after the IJ granted the Petitioners bond, the BIA issued  
16 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) which defies decades of  
17 precedent and practice by Respondents stating that the plain language of INA 235(b)(2)(  
18 A) divests jurisdiction from immigration judges to redetermine the custody of aliens who  
19 are present in the United States without admission.  
20  
21  
22

23 <sup>1</sup> “Interim Guidance Regarding Detention Authority for Applicants for Admission”,  
24 ICE, July 8, 2025. Available at: <https://immpolicytracking.org/policies/ice-issuesmemo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policydocuments>.

1 8. Both prior to and since the issuance of *Matter of Yajure Hurtado*, other district  
2 courts nationwide have overwhelmingly concluded that individuals similarly situated to  
3 Petitioners, present and residing within the United States, are not “applicants for  
4 admission” who are “seeking admission” and subject to mandatory detention under §  
5 1225(b)(2)(A).

6 9. Petitioners’ detention on this basis violates the plain language of the Immigration  
7 and Nationality Act (INA), 8 U.S.C. § 1101 et seq. Section 1225(b)(2)(A) does not apply  
8 to individuals like Petitioners who previously entered and are now present and residing in  
9 the United States. Instead, such individuals are subject to a different statute, § 1226(a),  
10 that allows for release on conditional parole or bond. That statute expressly applies to  
11 people who, like Petitioners, are charged as removable for having entered the United  
12 States without inspection and being present without admission.

13 10. The BIA and Respondents’ new legal interpretation of the INA is plainly contrary  
14 to the statutory framework and contrary to decades of agency practice applying § 1226(a)  
15 to people like Petitioners who are present within the United States. The new  
16 interpretation also conflicts with Ninth Circuit and Supreme Court precedent. See  
17 Jennings v. Rodriguez, 583 U.S. 281, 288, 301 (2018); Torres v. Barr, 976 F.3d 918, 926  
18 (9th Cir. 2020); and United States v. Gambino-Ruiz, 91 F.4th 981, 989 (9th Cir. 2024).

19 11. In addition to Petitioners’ statutory right to a bond hearing under § 1226(a),  
20 individuals within the United States have constitutional rights. “[T]he Due Process  
21 Clause applies to all ‘persons’ within the United States, including aliens, whether their  
22  
23  
24

1 presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S.  
2 678, 693 (2001).

3 12. Accordingly, the Petitioners seek a writ of habeas corpus requiring that they be  
4 released, or at a minimum that they each be released upon payment of the \$2,000 bond  
5 ordered by the IJ at the prior bond hearing.

### 6 JURISDICTION

7  
8 13. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. § 1331 (federal  
9 question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of sovereign  
10 immunity), 28 U.S.C. § 2241 (habeas corpus jurisdiction), and Article I, Section 9, clause  
11 2 of the United States Constitution (the Suspension Clause).

12 14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory  
13 Judgment Act, 28 U.S.C. § 2201 et seq., and the All-Writs Act, 28 U.S.C. § 1651.

### 14 VENUE

15 15. Pursuant to Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484,  
16 493- 500 (1973), venue lies in the U.S. District Court for the Central District of  
17 California, the judicial district in which Petitioners are currently detained.

18 16. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
19 Respondents are employees, officers, and agencies of the United States, and because a  
20 substantial part of the events or omissions giving rise to the claims occurred in the  
21 Southern District of California.

22  
23 ///

24 ///

## PARTIES

17. Petitioners LUCAS MENDOZA CASTRO and YESENIA MORALES CALIXTO are a Mexican national couple who entered the U.S. without inspection in 2001 and 2004, respectively. Petitioners were arrested by ICE agents on June 25, 2025 in the parking lot of the apartment complex in which they and their children reside. They have been in immigration detention since that date. After arresting Petitioners, ICE did not set bond and Petitioners requested review of their custody by an IJ. On July 18, 2025, after considering all the information, evidence, and arguments presented by the parties, the Immigration Judge (“IJ”) found that Petitioners demonstrated that they neither pose a danger to the community nor such a significant flight risk that they could not be released after payment of a bond and with the imposition of other mitigating conditions. Accordingly, the Court granted the Petitioners’ request for a change in their custody status, allowing their release upon payment of a \$2,000 bond for each of them. DHS appealed the IJ’s order granting bond. In light of the recent issuance of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) by the Board, the bonds granted by the IJ will be reversed.

18. Respondent Joseph FREDEN is the Acting Field Office Director of ICE in San Diego, California and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

1 19. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his  
2 official capacity. Among other things, ICE is responsible for the administration and  
3 enforcement of the immigration laws, including the removal of noncitizens. In his official  
4 capacity as head of ICE, he is the legal custodian of Petitioner.

5 20. Defendant Sirce OWEN is the Acting Director of EOIR and has ultimate  
6 responsibility for overseeing the operation of the immigration courts and the Board of  
7 Immigration Appeals, including bond hearings. Executive Office for Immigration Review  
8 (EOIR) is the federal agency responsible for implementing and enforcing the INA in  
9 removal proceedings, including for custody redeterminations in bond hearings. She is  
10 sued in her official capacity.

11 21. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official  
12 capacity. DHS is the federal agency encompassing ICE, which is responsible for the  
13 administration and enforcement of the INA and all other laws relating to the immigration  
14 of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the  
15 administration and enforcement of the immigration and naturalization laws pursuant to  
16 section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135  
17 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Noem is the ultimate legal custodian of  
18 Petitioner.

19 22. Respondent Pam BONDIE is the Attorney General of the United States and the  
20 most senior official in the U.S. Department of Justice (DOJ) and is named in her official  
21 capacity. She has the authority to interpret the immigration laws and adjudicate removal  
22  
23  
24

1 cases. The Attorney General delegates this responsibility to the Executive Office for  
2 Immigration Review (EOIR), which administers the immigration courts and the BIA.

3 23. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention  
4 Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-  
5 to-day operations of the Otay Mesa Detention Center and acts at the Direction of  
6 Respondents Freden, Lyons and Noem. Respondent Christopher LaRose is a custodian of  
7 Petitioner and is named in their official capacity.  
8

### 9 **LEGAL FRAMEWORK**

10 24. The INA prescribes three basic forms of detention for the vast majority of  
11 noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a.

12 25. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in § 1229a removal  
13 proceedings before an IJ. Individuals covered by § 1226(a) detention are generally  
14 entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a),  
15 1236.1(d), while certain noncitizens who have been arrested, charged with, or convicted  
16 of certain crimes are subject to mandatory detention. See 8 U.S.C. § 1226(c).  
17

18 26. Second, the INA provides for mandatory detention of noncitizens subject to an  
19 Expedited Removal order imposed pursuant to 8 U.S.C. § 1225(b)(1) and for other  
20 noncitizen applicants for admission to the U.S. who are deemed not clearly entitled to be  
21 admitted. See 8 U.S.C. § 1225(b)(2).

22 27. Last, the INA provides for detention of noncitizens who have been ordered  
23 removed, including individuals in withholding-only proceedings. See 8 U.S.C. §  
24 1231(a)–(b).

1 28. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a) and 1225(b)(2).

2 29. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
3 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L.  
4 No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–  
5 585. Section 1226(a) was most recently amended in early 2025 by the Laken Riley Act,  
6 Pub. L. No. 119-1, 139 Stat. 3 (2025).

7 30. Following the enactment of the IIRIRA, EOIR drafted new regulations applicable  
8 to proceedings before immigration judges explaining that, in general, people who entered  
9 the country without inspection – also referred to as being “present without admission” –  
10 were not considered detained under § 1225 and that they were instead detained under §  
11 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of  
12 Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312,  
13 10323 (Mar. 6, 1997).

14 31. Thus, in the decades that followed, most people who entered without inspection  
15 and were placed in standard § 1229a removal proceedings received bond hearings before  
16 IJs, unless their criminal history rendered them ineligible. That practice was consistent  
17 with many more decades of prior practice, in which noncitizens who were not deemed  
18 “arriving” were entitled to a custody hearing before an IJ or other hearing officer. See 8  
19 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that  
20 § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).  
21

22 32. This practice both pre- and post-enactment of IIRIRA is consistent with the fact  
23 that noncitizens present within the United States – as opposed to noncitizens present at a  
24

border and seeking admission – have constitutional rights. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

33. On July 8, 2025, ICE “in coordination with” the Department of Justice, announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice.

34. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”<sup>2</sup> claims that all noncitizens present within the United States who entered without inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

35. On September 5, 2025, the Board of Immigration Appeals (BIA) adopted this same position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) stating that all persons who entered without inspection are applicants for admission and are subject to mandatory detention under INA 235(b)(2). The BIA stated that “[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.”

---

<sup>2</sup> Available at: <https://immpolicytracking.org/policies/ice-issues-memoeliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents>.

1 36. The overwhelming majority of district courts to consider this question across the  
2 country (including this Court), however, have rejected the ICE policy memo and the  
3 BIA's decision. Courts have instead held that Section 1225 governs detention of  
4 noncitizens outside the country who are "seeking admission" to the United States, while  
5 Section 1226 governs those living in the United States who entered without inspection.  
6 See Maldonado Bautista, No. 5:25-cv-01873-SSS-BFM (C.D. Calif July 28, 2025) Order  
7 Granting Temporary Restraining Order, Dkt. 14 at 9 ("[T]he Court finds that the potential  
8 for Petitioners' continued detention without an initial bond hearing would cause  
9 immediate and irreparable injury, as this violates statutory rights afforded under §  
10 1226(a)."); Ceja Gonzalez, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August 13, 2025),  
11 Order Granting Ex Parte Application for TRO and OSC, Dkt. 12 at 7 (§ 1226 applies to  
12 aliens present in the United States.); see also Arrazola- Gonzalez v. Noem, No. 5:25-  
13 cv01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); Lopez Benitez, 2025 WL  
14 2371588; Rosado v. Figueroa, No. CV-25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11,  
15 2025), report and recommendation adopted without objection, 2025 WL 2349133 (D.  
16 Ariz. Aug. 13, 2025); Martinez v. Hyde, No. CV 25-11613-BEM, (D. Mass. July 24,  
17 2025); Gomes v. Hyde, No. 1:25-cv-11571, 2025 WL 1869299 (D. Mass. July 7, 2025);  
18 Ceja Gonzalez, et al. v. Noem, et al., No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August  
19 13, 2025); Rodriguez Vazquez v. Bostock, 2025 WL 1193850, 779 F. Supp. 3d 1239  
20 (W.D. Wash. 2025).

21  
22  
23 37. As the court in Rodriguez Vazquez explained, the plain text of the statutory  
24 provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioners.

1 Section 1226(a) applies by default to all persons “pending a decision on whether the  
2 [noncitizen] is to be removed from the United States.” Rodriguez Vazquez, 2025 WL  
3 1193850 at \*12.

4 38. Other portions of the text of § 1226 also explicitly apply to people charged as  
5 being inadmissible, including those who entered without inspection. See 8 U.S.C. §  
6 1226(c)(1)(E). Subparagraph (E)’s reference to inadmissible individuals makes clear that,  
7 by default, inadmissible individuals not subject to subparagraph (E)(ii) are afforded a  
8 bond hearing under subsection (a). As the Rodriguez Vazquez court explained, “[w]hen  
9 Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent  
10 those exceptions, the statute generally applies. Rodriguez Vazquez, 2025 WL 1193850, at  
11 \*12 (citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400  
12 (2010)).

14 39. On September 19, 2025, the Western District of Kentucky, Louisville Division,  
15 reached the same conclusion taking notice of the recent Congressional amendments, the  
16 Laken Riley Act, to Section 1226. See Barrera v. Tindall, No. 3:25-cv-541-RGJ (W.D.  
17 Ken., Sept. 19, 2025). The Laken Riley Act added new a new subsection under Section  
18 1226(c) for certain individuals who would have otherwise fallen under Section 1226(a).  
19 The Barrera Court noted that if § 1225(b)(2) already mandated detention of any alien who  
20 has not been admitted, regardless of how long they have been here, then “adding §  
21 1226(c)(1)(E) to the statutory scheme was pointless and this Court, too, will not find that  
22 Congress passed the Laken Riley Act to ‘perform the same work’ that was already  
23 covered by § 1225(b)(2).” See Barrera, at \*9-10.

1 40. In its further analysis of the text, the Barrera Court observed, “Respondents  
2 ‘completely ignore,’ or even read out, the term ‘seeking’ from ‘seeking admission.’”  
3 (citing Lopez-Campos, 2025 WL 2496379, at \*6). The term “seeking” “implies action.”  
4 Id. Noncitizens who are present in the country for years, like Barrera who has been here  
5 20 years, are not actively “seeking admission.” Id. Since the plain language of Section  
6 1225 requires someone to be “seeking admission” to be subject to mandatory detention,  
7 the Petitioners here (like Barrera) are not subject to mandatory detention.

8 41. Relying on the Supreme Court’s decision in Jennings v. Rodriguez, 583 U.S. 281  
9 (2018), the court in Lopez Santos v. Noem, 3:25-cv-01193-TAD-KDM (W.D. La.,  
10 September 11, 2025) also reached the same conclusion. The Lopez Santos Court noted  
11 that the Supreme Court in Jennings held that Section 1225(b), the provision at issue in the  
12 instant habeas petition, “applies primarily to aliens seeking entry into the United States”  
13 (Jennings at 297), and that Section 1226 “applies to aliens already present in the United  
14 States.” Id. at 303. As such the Court in Lopez Santos v. Noem, too determined that a  
15 noncitizen residing in the U.S. is entitled to a bond hearing. Lopez Santos v. Noem at  
16 \*11.

17  
18 42. In light of the foregoing and the plain language of Sections 1225 and 1226, Section  
19 1226 applies to noncitizens who are present without admission and who face charges in  
20 removal proceedings of being inadmissible to the U.S.

21  
22 43. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
23 recently entered the United States and are encountered at or near the border. The statute’s  
24

1 entire framework is premised on inspections at the border of people who are “seeking  
2 admission” to the United States. 8 U.S.C. § 1225(b)(2)(A).

3 44. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to  
4 people like Petitioners who have already entered and were residing in the United States at  
5 the time they were apprehended.

6 45. Finally, courts have further found that the invocation of the auto-stay regulation  
7 itself violates due process. The “auto-stay” provision of 8 C.F.R. § 1003.19(i)(2) prevents  
8 noncitizens from posting bond and being released during the pendency of an appeal to the  
9 BIA even though the IJ granted bond.

10 46. In Garcia Silva v. LaRose et al, 3:25-cv-02329-JES-KSC, (S.D. Ca. Sept. 29,  
11 2025), this Court stated that “under the automatic stay regulation, Petitioner's detention  
12 could very well span months, or even years, despite his significant interest in freedom  
13 from physical confinement.” Garcia Silva v. LaRose, at \*7-8. The Court went on to find  
14 that “DHS’ unchecked power to prolong an individual’s detention, cannot possibly be  
15 construed as a ‘carefully limited exception’ to one’s right to liberty as required by the  
16 Due Process Clause” and that “the automatic stay provision creates a substantial risk of  
17 erroneous and arbitrary confinement.” Id. at \*8-9.

18 47. The Garcia Silva Court concluded that that, “under these circumstances and as  
19 applied to him, the Petitioner's detention under the automatic stay regulation violates his  
20 procedural due process rights.” Id. at \*10. See also Sampiao v. Hyde, No. 1:25-cv-11981,  
21 2025 WL 2607924, at \*10 (D. Mass. Sept. 9, 2025) (noting that the automatic stay  
22  
23  
24

1 provision “allows the government to bypass its burden of proof at bond hearings and  
2 usurp the role of the Immigration Judge.”).

### 3 **FACTS**

4 48. Petitioners LUCAS MENDOZA CASTRO and YESENIA MORALES CALIXTO  
5 are from Mexico and have been residing in San Diego, California since 2001 and 2004,  
6 respectively, when they entered the U.S. without inspection.  
7

8 49. Petitioners are devoted parents to their five children ages eight, thirteen, sixteen,  
9 eighteen and twenty-one. D.M.M. graduated from San Diego High School. She currently  
10 works at an Ice Cream Shop and was attempting to enroll in City College along with  
11 J.M.M. who just graduated from San Diego High School this year. E.D.M.M. is now in  
12 10th grade goes to High Tech High Media Arts because in that program offers starting in  
13 the 11th grade it was four days of school and one day of work and he wanted to start  
14 working. E.I.M.M. is in 7<sup>th</sup> grade and attends KIPP Adelante Charter School. J.C.M.M.  
15 attends Perkins Elementary School and is in the 2nd grade.  
16

17 50. For over two decades, the Petitioners have raised their children, paid taxes, gone to  
18 church and volunteered in the community. Petitioners have an extensive support network  
19 of friends and family in San Diego. Petitioners have no criminal history.

20 51. On June 25, 2025 the Petitioners were arrested by ICE in the parking lot where  
21 they and their children reside in San Diego, California.  
22

23 52. On July 18, 2025, after considering all the information, evidence, and  
24 arguments presented by the parties, the Immigration Judge (“IJ”) found that Petitioners

1 both demonstrated that they neither pose a danger to the community nor such a significant  
2 flight risk that they could not be released after payment of a bond and with the imposition  
3 of other mitigating conditions. Accordingly, the Court granted Petitioners' request for a  
4 change in their custody status, allowing their release upon payment of a \$2,000 bond each.  
5

6 53. DHS reserved appeal and filed Form EOIR-43, Notice of Service of Intent to  
7 Appeal Custody Redetermination. This notice not only appeals any IJ decision granting  
8 bond but also triggers and automatic stay of the bond decision during the appeal, resulting  
9 in the continued unlawful detention of Petitioner to date. *See* § 1003.19(i)(2). The "auto-  
10 stay" provision of 8 C.F.R. § 1003.19(i)(2) prevents noncitizens from posting bond and  
11 being released even though the IJ rejected DHS' unlawful reinterpretation of § 1225(b)(2)  
12 and granted bond. DHS subsequently filed an appeal with the Board of Immigration  
13 Appeals (BIA), which is presently pending adjudication.  
14

### 15 EXHAUSTION

16 54. Exhaustion in this case is futile. In fact, it is plainly evident that DHS's appeal  
17 to the BIA will result in the bond granted by the IJ being reversed.

18 55. First, ICE's new policy was issued "in coordination with DOJ," which  
19 oversees the immigration courts. Moreover, as noted, the most recent published BIA  
20 decision on this issue (*Matter of Yajure Hurtado*) states that persons like Petitioners are  
21 subject to mandatory detention as applicants for admission.  
22

23 56. Furthermore, in the *Rodriguez Vazquez* litigation, where EOIR and the  
24 Attorney General are defendants, the DOJ has affirmed its position that individuals like

Petitioners are applicants for admission and subject to detention under § 1225(b)(2)(A). See Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

57. The DOJ has taken the same position in the *Maldonado Bautista* litigation, see Opp. to Ex Parte TRO Application, *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, (C.D. Cal. July 24, 2025), Dkt. 8, and in the *Ceja Gonzalez* litigation. See Opp. to Ex Parte TRO Application and OSC, *Ceja Gonzalez*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August 8, 2025), Dkt. 7 at 17-21.

58. As such, for the reasons discussed above, exhaustion is futile.

**FIRST CLAIM FOR RELIEF**  
**Petitioners' Detention is in Violation of 8 U.S.C. § 1226(a)**

59. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

60. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Petitioners who are present and residing in the United States and have been placed under § 1229a removal proceedings and charged with inadmissibility pursuant 8 U.S.C. § 1182(a)(6)(A)(i). As relevant here, § 1225(b)(2) does not apply to those who previously entered the country and have been present and residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens may only be detained pursuant to § 1226(a), unless subject to § 1226(c), or § 1231.

61. The application of § 1225(b)(2) to Petitioners unlawfully mandates their continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).

**SECOND CLAIM FOR RELIEF**  
**Petitioners' Detention Violates the Administrative Procedure Act,**  
**5 U.S.C. § 706(2)**

62. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

63. Under the Administrative Procedure Act, a court must “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law,” that is “contrary to constitutional right [or] power,” or that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).

64. Respondents' detention of Petitioners pursuant to § 1225(b)(2) is arbitrary and capricious. Respondents' detention of Petitioners violates the INA and the Fifth Amendments. Respondents do not have statutory authority under § 1225(b)(2) to detain Petitioners.

65. Petitioners' detention is arbitrary, capricious, an abuse of discretion, violative of the Constitution, and without statutory authority in violation of 5 U.S.C. § 706(2).

**THIRD CLAIM FOR RELIEF**  
**Petitioners' Detention Violates Their Fifth Amendment Right to Due Process**

66. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

69. The Respondents' continued detention of Petitioners without allowing the Petitioners to post bond when an IJ granted bond (determining Petitioners are not a danger to the community and not such a flight risk that bond is inappropriate) violates their right to Due Process.

## PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully ask that this Court take jurisdiction over this matter and grant the following relief:

a. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioners, or in the alternative, that the Respondents allow Petitioners to pay the existing \$2,000 bonds and then release Petitioners (as an IJ has already held a bond hearing pursuant to 8 U.S.C. § 1226(a) and granted Petitioners bond);

b. Award Petitioners' attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

c. Grant any other and further relief that this Court deems just and

proper.

Dated: October 6, 2025

Respectfully submitted,

By: /s/ Bashir Ghazialam  
Bashir Ghazialam  
Attorney for Petitioner

**VERIFICATION PURSUANT TO 28 U.S.C. 2242**

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this October 6, 2025, in San Diego, California.

/s/ Kirsten Zittlau  
Kirsten Zittlau  
Attorney for Petitioner