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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Martin Coc Pacham,

Petitioner,

vs.

Gregory John Archambeault, San Diego
Field Office Director, Enforcement and
Removal Operations, United States
Immigration and Customs Enforcement
(ICE); Christopher J. LaRose, Senior
Warden, Otay Mesa Detention Center;
Kristi NOEM, Secretary, United States
Department of Homeland Security;
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; Pamela
BONDI, Attorney General of the United
States; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW (EOIR);
Daren K. Margolin, Director, EOIR;
OTAY MESA IMMIGRATION
COURT,

Respondents.

Case No.: '25CV3163 GPC DEB

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
ADMINISTRATIVE PROCEDURE
ACT RELIEF
[IMMEDIATE BOND HEARING
REQUESTED]**

INTRODUCTION

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3 1. Petitioner Martin Coc Pacham, respectfully petitions this Court for a writ of
4 habeas corpus under 28 U.S.C. § 2241 to challenge the unlawful detention imposed
5 by Respondents.

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7 2. Petitioner entered the United States without inspection on or about November
8 2022.

9
10 3. On or around August 14, 2025, ICE officers arrested Martin outside his home
11 in Farmville, VA, while seeking another individual. Since that date, Petitioner has
12 been detained and eventually transferred to Otay Mesa Detention Center without an
13 individualized bond hearing before a neutral decision-maker, despite having no
14 criminal history, posing no flight risk, and having deep family and community ties.

15
16 4. Up to the date of the filing on this Writ of Habeas Corpus, the Petitioner has
17 never missed a hearing before an Immigration Judge or missed an appointment with
18 ICE. Petitioner is effectively languishing in detention without judicial or
19 administrative oversight, with no active removal proceedings reflected in the EOIR
20 system, no opportunity to present his fear of return, and no meaningful access to
21 counsel or the courts.

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23 5. Respondents have relied on *Matter of Yajure Hurtado*, 29 I&N Dec. 216
24 (BIA 2025) and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), to argue that Petitioner
25 is categorically ineligible for a bond hearing under 8 U.S.C. § 1226(a). That reliance
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1 is legally and constitutionally flawed: Yajure Hurtado improperly strips
2 Immigration Judges of jurisdiction to review detention, conflicts with Ninth Circuit
3 precedent, and has been rejected by multiple federal courts across several circuits.
4

5 6. Petitioner's detention is therefore governed by 8 U.S.C. § 1226(a), which
6 entitles him to a prompt, individualized bond hearing. Respondents' continued
7 detention without due process violates the Fifth Amendment and the Suspension
8 Clause.
9

10
11 7. Petitioner accordingly seeks a writ of habeas corpus under 28 U.S.C. § 2241;
12 Declaratory relief confirming that he was not paroled into the United States and
13 thus falls under the jurisdiction of the immigration court; Injunctive relief requiring
14 Respondents to recognize his procedural and statutory rights; and Any other
15 appropriate relief under the Administrative Procedure Act, as the reclassification or
16 denial of jurisdiction constitutes final agency action that is arbitrary, capricious, an
17 abuse of discretion, and contrary to law under 5 U.S.C. § 706(2).
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21 8. Petitioner respectfully requests that this Court order his immediate release,
22 or alternatively, require Respondents to provide a bond hearing within ten days,
23 consistent with statutory and constitutional requirements.
24

25 JURISDICTION AND VENUE

26 9. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C.
27 §§ 1101–1538, and its implementing regulations; the Administrative Procedure Act
28

1 (APA), 5 U.S.C. §§ 500–596, 701–706; and the U.S. Constitution.

2 10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas
3 corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United
4 States Constitution (Suspension Clause).
5

6 11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C.
7 § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All
8 Writs Act, 28 U.S.C. § 1651; Federal Rule of Civil Procedure 65; and the Court’s
9 inherent equitable powers.
10

11 12. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)
12 because Respondents are U.S. agencies and officers of the United States acting in
13 their official capacities or because they reside in this district. In addition, a
14 substantial part of the events or omissions giving rise to the claims occurred in this
15 District, Petitioner is detained in this District, and no real property is involved in
16 this action.
17

18 **REQUIREMENTS OF 28 U.S.C. § 2243**
19

20 13. The Court must grant the petition for writ of habeas corpus or issue an order
21 to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not
22 entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court
23 must require respondents to file a return “within *three days* unless for good cause
24 additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).
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1 14. Courts have long recognized the significance of the habeas statute in
2 protecting individuals from unlawful detention. The Great Writ has been referred
3 to as “perhaps the most important writ known to the constitutional law of England,
4 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
5 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).
6
7

8 PARTIES

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10 15. Petitioner Martin Coc Pacham is a native and citizen of Guatemala who
11 entered the United States without inspection on or about November 2022, and
12 currently resides in Virginia. On or around August 14, 2025, ICE arrested Petitioner
13 outside his home, and he has since been detained and transferred to Otay Mesa
14 Detention Center.
15

16
17 16. Respondent Gregory John Archambeault is the Field Office Director for ICE
18 Enforcement and Removal Operations (ERO) in San Diego, California. As the ERO
19 Seattle Field Office Director, he is Petitioner’s immediate custodian, responsible
20 for her detention at Otay Mesa Detention Center (OMDC), and the person with the
21 authority to authorize her detention or release. Respondent Archambeault is sued in
22 his official capacity.
23
24

25 17. Respondent Christopher J. LaRose is the Senior Warden of the Otay Mesa
26 Detention Center, oversees the day-to-day functioning of OMDC, and has
27 immediate physical custody of Petitioner pursuant to a contract with ICE to detain
28

1 noncitizens. Mr. LaRose is sued in his official capacity as the Warden of a federal
2 detention facility.
3

4 18. Respondent Kristi Noem is the Secretary of the Department of Homeland
5 Security. As Secretary, she oversees the federal agency responsible for
6 implementing and enforcing the INA, including the detention of noncitizens. She is
7 sued in her official capacity.
8

9 19. Respondent Department of Homeland Security (DHS) is the federal agency
10 responsible for implementing and enforcing the INA, including the detention of
11 noncitizens.
12

13 20. Respondent Pamela Bondi is the Attorney General of the United States and
14 head of the U.S. Department of Justice. In that capacity, she oversees EOIR and the
15 immigration court system the agency administers. She is ultimately responsible for
16 the agency's operation. She is sued in her official capacity.
17

18 21. Respondent EOIR is a component agency of the Department of Justice
19 responsible for conducting removal and bond hearings of noncitizens. EOIR is
20 comprised of a lower adjudicatory body administered by IJs and an appellate body
21 known as the Board of Immigration Appeals. IJs issue initial decisions in bond
22 hearings, which are then subject to appeal to the BIA.
23

24 22. Respondent Daren K. Margolin is the Director of EOIR and has ultimate
25 responsibility for overseeing the operation of the immigration courts and the Board
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1 of Immigration Appeals, including bond hearings. He is sued in her official capacity.

2
3 23. The Otay Mesa Immigration Court is the adjudicatory body within EOIR
4 with jurisdiction over the removal and bond cases of all individuals detained at the
5 OMDC.

6
7 **STATEMENT OF FACTS**

8 24. Petitioner Martin Coc Pacham entered the United States without inspection
9 on or November 2022.

10
11 25. He was not detained, nor was he granted parole under INA § 212(d)(5).

12 26. Petitioner has no criminal history, poses no danger to the community, and
13 has not been charged with any offenses.

14
15 27. On or around August 14, 2025, ICE officers arrested Petitioner outside his
16 home while seeking another individual. He has since been detained at Otay Mesa
17 Detention Center, where he remains in custody.

18
19 28. Petitioner has a well-founded fear of returning to Guatemala, and his life in
20 grave danger should he be removed to Guatemala.

21
22 29. Petitioner's counsel for immigration court has filed an asylum application for
23 Petitioner in October 2025. That application remains pending.

24
25 30. Petitioner has strong family and community ties to the United States. He has
26 made his life here, and his continued detention prevents him from participating in
27 their ongoing immigration proceedings and any connection with his counsel.
28

1 31. Petitioner's detention severely impairs his ability to communicate with
2 counsel and participate in his immigration case, creating a substantial risk of
3 prejudice to his legal rights.
4

5 32. Despite being detained for over two months, Petitioner does not appear in the
6 Executive Office for Immigration Review (EOIR) system as having a pending case.
7 As a result, no attorney can enter an appearance or file a Form EOIR-28 on his
8 behalf, effectively depriving him of access to counsel and due process.
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11 33. Petitioner is effectively languishing in detention without judicial or
12 administrative oversight, with no active removal proceedings reflected in the EOIR
13 system, no opportunity to present his fear of return, and no meaningful access to
14 counsel or the courts.
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16 34. Conditions at Otay Mesa have further exacerbated his distress, including
17 lack of adequate medical care, restricted communication with his family and
18 counsel, and intimidation by certain facility staff. This mistreatment shows the
19 urgent need for judicial intervention in his ongoing detention.
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22 35. Investigations have also confirmed substantiated allegations of sexual abuse
23 by correctional staff, overuse of solitary confinement, and unsafe conditions at the
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1 facility^{1 2 3}.

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3 36. These conditions of confinement further show the urgency of Petitioner's
4 release, as her continued detention not only subjects her to an unreasonable risk of
5 harm but also serves no legitimate governmental purpose given her lack of
6 dangerousness or flight risk.
7

8 37. Petitioner poses no danger or flight risk, and there has been no individualized
9 determination of necessity for his continued detention. Under the current
10 misapplication of *Matter of Q. Li* and *Matter of Yahure Hurtado*, Petitioner is
11 effectively denied any meaningful opportunity to challenge his detention, in
12 violation of the Fifth Amendment's Due Process Clause and the Administrative
13 Procedure Act.
14
15

16 38. Petitioner remains in ICE custody with no available administrative
17 mechanism to seek release. He seeks relief from this Court through a writ of habeas
18 corpus under 28 U.S.C. § 2241 and declaratory relief under the Administrative
19 Procedure Act, to remedy this ongoing unlawful detention.
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24 ¹ California Attorney General, *Completely Unacceptable: California Attorney General Report Finds Immigration*
25 *Detention Centers Are Failing* (Feb. 1, 2024), https://www.10news.com/completely-unacceptable-california-attorney-general-report-finds-immigration-detention-centers-are-failing?utm_source=chatgpt.com

26 ² KPBS, *Overcrowded Conditions Plague Otay Mesa and Other Immigrant Detention Facilities* (July 28, 2025),
27 https://www.kpbs.org/news/local/2025/07/28/overcrowded-conditions-plague-otay-mesa-and-other-immigrant-detention-facilities?utm_source=chatgpt.com

28 ³ A federal press report revealed a **sexual misconduct case**, where a DHS case manager assigned to oversight duties at Otay Mesa allegedly had a sexual relationship with a detainee https://www.justice.gov/usao-sdca/pr/otay-mesa-detention-facility-case-manager-accused-having-sex-detainee?utm_source=chatgpt.com

LEGAL FRAMEWORK

Detention under 8 U.S.C. § 1226(a) and § 1225(b)(2)

39. The Immigration and Nationality Act (“INA”) authorizes the detention of noncitizens in removal proceedings under three primary provisions: INA § 236(a) (8 U.S.C. § 1226(a)), INA § 235(b) (8 U.S.C. § 1225(b)), and 8 U.S.C. § 1231(a)–(b).

40. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

41. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

42. Last, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

43. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

44. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part

1 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of
2 1996, Pub. L. No. 104--208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to
3 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year
4 by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).
5

6
7 45. Following enactment of the IIRIRA, EOIR drafted new regulations
8 explaining that, in general, people who entered the country without inspection were
9 not considered detained under § 1225 and that they were instead detained under §
10 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal
11 of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg.
12 10312, 10323 (Mar. 6, 1997).
13
14

15 46. Thus, in the decades that followed, most people who entered without
16 inspection—unless they were subject to some other detention authority—received
17 bond hearings. That practice was consistent with many more decades of prior
18 practice, in which noncitizens who were not deemed “arriving” were entitled to a
19 custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);
20
21 *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
22 “restates” the detention authority previously found at § 1252(a)).
23
24

25 47. The text of § 1226 also explicitly applies to people charged as being
26 inadmissible, including those who entered without inspection. *See* 8 U.S.C. §
27 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by
28

1 default, such people are afforded a bond hearing under subsection (a). Section 1226
2 therefore leaves no doubt that it applies to people who face charges of being
3 inadmissible to the United States, including those who are present without
4 admission or parole.
5

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7 48. 8 U.S.C. § 1225(b), by contrast, mandates detention of certain arriving aliens
8 and applicants for admission during the pendency of expedited or full removal
9 proceedings. However, this provision only applies to individuals who are “seeking
10 admission” and who are either subject to expedited removal or placed into § 240
11 proceedings as applicants for admission.
12

13
14 49. A key distinction in this framework is “parole” under INA § 212(d)(5),
15 which permits the Secretary of Homeland Security, in his discretion, to parole an
16 individual into the United States temporarily for urgent humanitarian reasons or
17 significant public benefit. Parole is an express legal status that must be granted
18 affirmatively and documented by the issuance of Form I-94 or other evidence of
19 parole.
20
21

22 50. The Board of Immigration Appeals’ decision in *Matter of Q. Li*, 29 I&N Dec.
23 66 (BIA 2025), held that individuals who have been formally “paroled” into the
24 United States under § 212(d)(5) are not eligible for a bond hearing under INA §
25 236(a), because they are considered “arriving aliens” subject to § 235.
26
27

28 51. However, *Q. Li* does not apply to individuals who, like Petitioner, were

1 never formally granted parole but were instead released on their own recognizance
2 after being processed and issued an NTA. DHS cannot unilaterally designate an
3 individual as “paroled” absent a formal parole determination under § 212(d)(5) and
4 issuance of appropriate documentation.
5

6
7 52. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA extended
8 this reasoning, holding that noncitizens who entered without inspection and were
9 later apprehended in the interior are categorically ineligible for bond hearings under
10 § 236(a), effectively stripping IJs of jurisdiction.
11

12 53. These decisions are recent, agency-specific interpretations. They are binding
13 within EOIR but not controlling in federal courts. Following the Supreme Court’s
14 decision in *Loper Bright Enterprises v. Raimondo*, courts now review statutes de
15 novo without deference to agency interpretations.
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17

18 54. Federal courts have increasingly recognized that reliance on *Q. Li* and *Yajure*
19 *Hurtado* to deny bond hearings violates statutory and constitutional principles,
20 particularly when the detainee:
21

- 22 • Entered without inspection but was never formally paroled;
- 23 • Has strong family or community ties;
- 24 • Poses no danger or flight risk; and
- 25 • Faces prolonged detention without an individualized custody determination
- 26
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28 55. As courts in multiple circuits have found, including *Ponte-Guanare v.*

1 *Archambeault*, No. 3:25-cv-02081 (S.D. Cal. Sep. 25, 2025), and *Sampiao v. Hyde*,
2 No. 1:25-cv-11981-JEK (D. Mass. Sept. 9, 2025), administrative exhaustion is
3 futile when detention is based solely on these BIA precedents, making habeas
4 review appropriate and ordering that: “*Respondents SHALL NOT deny Petitioner's*
5 *bond on the basis that 8 U.S.C. § 1225(b)(2) requires mandatory detention*”.
6

7
8 56. The Fifth Amendment guarantees that no person shall be deprived of liberty
9 without due process of law. Prolonged detention without an individualized custody
10 determination by a neutral arbiter violates due process. See *Zadvydas v. Davis*, 533
11 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583
12 U.S. 131 (2018).
13
14

15 57. Where DHS has misclassified a person as paroled to avoid judicial review
16 of custody under § 236(a), courts retain habeas jurisdiction to correct such errors
17 and order a bond hearing. See *Padilla v. ICE*, 354 F. Supp. 3d 1218, 1228 (W.D.
18 Wash. 2018); *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *7
19 (S.D.N.Y. May 23, 2018).
20
21

22 58. The Administrative Procedure Act, 5 U.S.C. §§ 701–706, provides a cause
23 of action for individuals aggrieved by final agency action that is arbitrary,
24 capricious, contrary to law, or in excess of statutory authority. DHS’s and the
25 Immigration Judge’s reliance on *Q. Li* under the mistaken belief that Petitioner had
26 been “paroled” constitutes final agency action that is contrary to law and subject to
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1 review under the APA.

2 **The BIA's Practice of Delayed Decisions in Bond Proceedings**

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4 59. The BIA's appellate process does not offer a meaningful avenue to correct
5 the Otay Mesa Immigration Court's errors.

6
7 60. According to the agency's own data, during FY 2024, the agency's average
8 processing time for a bond appeal was 204 days, or nearly seven months.

9
10 61. The lengthy delays in bond appeal determinations do not affect only Mrs.
11 Ponte-Guanare and similarly situated individuals subject to the Board of
12 Immigration Appeals' decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025)
13 described above. It also affects all noncitizens who are detained, who have a right
14 to a bond hearing, and who have their request for a bond denied or cannot afford
15 the bond they are provided.
16

17
18 62. This average of 204 days tells only part of the story. The data released by
19 EOIR shows that in many cases, the BIA review takes far longer—in some cases, a
20 year or more—to decide a person's bond appeal.
21

22 63. These processing times defy the Due Process Clause.

23
24 64. The Supreme Court and the Ninth Circuit have explained that appellate
25 review is a critical component of a constitutional civil detention scheme, including
26 in immigration cases. *See, e.g., Schall v. Martin*, 467 U.S. 253, 280 (1984); *Singh*
27 *v. Holder*, 638 F.3d 1196, 1209 (9th Cir. 2011); *Prieto-Romero v. Clark*, 534 F.3d
28

1 1053, 1065–66 (9th Cir. 2008).

2
3 65. The Supreme Court has also made clear that *timely* appellate review is a key
4 feature of any civil detention scheme. As the Court has explained, “[r]elief [when
5 seeking review of detention] must be speedy if it is to be effective.” *Stack v. Boyle*,
6 342 U.S. 1, 4 (1951).
7

8 66. Most notably, the Court upheld the federal pretrial detention under the Bail
9 Reform Act in part because the statute “provide[s] for immediate appellate review
10 of the detention decision.” *United States v. Salerno*, 481 U.S. 739, 752 (1987). As
11 the Ninth Circuit later elaborated, “[e]ffective review of pretrial detention orders
12 necessarily entails a speedy review in order to prevent unnecessary and lengthy
13 periods of incarceration on the basis of an incorrect magistrate’s decision.” *United*
14 *States v. Fernandez-Alfonso*, 813 F.2d 1571, 1572 (9th Cir. 1987).
15
16
17

18 67. These principles derive from the federal pretrial context, where, by
19 definition, individuals are subject to federal criminal proceedings. Yet here, where
20 only civil proceedings are at issue, the BIA provides nothing like the speedy review
21 federal district and appellate courts provide of magistrate judge detention decisions.
22

23 68. Without timely review, appellate review is meaningless. Indeed, the
24 Supreme Court has explained that the opportunity to obtain “freedom before
25 conviction permits the unhampered preparation of a defense, and serves to prevent
26 the infliction of punishment prior to conviction.” *Stack*, 342 U.S. at 4. Additionally,
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28

1 such detention “may imperil the [detained person’s] job, interrupt his source of
2 income, and impair his family relationships.” *Gerstein v. Pugh*, 420 U.S. 103, 114
3 (1975).
4

5 69. During the many months the BIA takes to review a bond appeal, a detained
6 noncitizen will be forced to defend themselves against their removal on the merits,
7 depriving them of a meaningful chance to assemble evidence outside detention,
8 coordinate with family, or communicate with potential witnesses in other countries.
9
10

11 70. Indeed, their very detention significantly reduces their likelihood of
12 obtaining legal representation. In removal proceedings, noncitizens have the right
13 to be represented by legal counsel but “at no expense to the government.” 8 U.S.C.
14 § 1362. Those detained while in removal proceedings face significant challenges to
15 accessing and communicating with counsel or other forms of legal assistance. *See*,
16 e.g., ACLU, No Fighting Chance: ICE’s Denial of Access to Counsel in U.S.
17 Immigration Detention Centers 6 (June 9, 2022). ⁴
18
19

20 71. The lack of legal representation in turn dramatically reduces the potential for
21 successful outcomes in their underlying removal proceedings. *Id.* at 12.
22

23 72. The months a noncitizen waits for appellate review also deprives them of
24 time with their spouses, children, parents, and other family members. These
25

26
27 ⁴ [https://www.aclu.org/publications/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-](https://www.aclu.org/publications/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-centers)
28 [centers.](https://www.aclu.org/publications/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-centers)

1 individuals—who are often U.S. citizens or lawful permanent residents—are
2 similarly deprived of the love, care, and financial support that the detained person
3 provides.
4

5 73. Time in detention is also difficult in other ways. Detained persons are often
6 incarcerated in jail-like settings, forced to sleep in communal spaces, receive
7 inadequate medical care, and subjected to other degrading treatment.
8

9 74. While not all noncitizens succeed in their appeals, some do. The BIA's
10 months-long appellate review means that for those individuals, they have spent
11 months of unnecessary time in detention and suffered the many harms outlined
12 above.
13
14

15 75. Such review processing times violate the Due Process Clause and do not
16 constitute a reasonable time as required by the APA.
17

18 **Bia's Precedent in *Matter of Q.Li* and *Matter of Hurtado* Should Not Be**
19 **Applied in This Matter**

20 76. The Board of Immigration Appeals (BIA) decision in *Matter of Q. Li* and
21 *Matter of Hurtado* should be viewed as an agency interpretation of a statute. The
22 Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, which
23 overturned the *Chevron deference*, fundamentally alters how courts should review
24 such agency interpretations.
25

26 77. The Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo* (U.S.
27
28

1 June 28, 2024) represents a significant shift in administrative law. The Court
2 expressly abrogated the Chevron framework, which previously instructed courts to
3 defer to an agency's reasonable interpretation of an ambiguous statute. The Court
4 concluded that the Chevron doctrine was a misapplication of judicial power and
5 that it improperly shifted the judicial function of interpreting the law to the
6 executive branch. The judiciary's role is to say, "what the law is," as established in
7 *Marbury v. Madison*. This means that courts must now interpret statutes *de novo*,
8 or as if for the first time, without any special deference to an agency's interpretation.
9

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11
12 78. The BIA, as part of the Department of Justice, is an administrative body
13 charged with interpreting and applying the Immigration and Nationality Act (INA).
14 Its decisions, such as *Matter of Q. Li* and *Yajure Hurtado*, are classic examples of
15 agency interpretations of a statute. In this case, the BIA interpreted a specific
16 provision of the INA to determine eligibility for a particular form of relief. Under
17 the old *Chevron* framework, a court would have likely deferred to the BIA's
18 interpretation as long as it was a reasonable construction of an ambiguous statute.
19

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21
22 79. With *Loper Bright*, the legal landscape has changed. When a court now
23 reviews BIA's decision in *Matter of Q.* and *Yajure Hurtado*, it cannot simply
24 accept the BIA's interpretation. Instead, the court must undertake its own
25 independent analysis of the statute. The court must use all traditional tools of
26 statutory interpretation, such as the plain language of the statute, legislative history,
27
28

1 and statutory context, to determine the correct meaning of the law. The BIA's
2 interpretation is no longer entitled to deference. It is simply one possible reading
3 of the statute, which the court can consider but is not bound by. This new approach
4 restores the judiciary's power to serve as the ultimate arbiter of statutory meaning,
5 ensuring a more uniform and consistent application of the law.
6
7

8 80. *Matter of Q. Li* (29 I&N Dec. 66 (BIA 2025)) and *Matter of Yajure Hurtado*
9 (29 I&N Dec. 216 (BIA 2025)) contradict the plain language of the statute by
10 expanding the scope of "arriving aliens" beyond the clear meaning of the law. The
11 decision's interpretation effectively erases the distinction between individuals
12 apprehended at the border and those who have already entered the United States,
13 which is a critical distinction in the Immigration and Nationality Act (INA). By
14 doing so, it subjects a broader category of individuals to mandatory detention under
15 § 235(b) of the INA, despite the fact that they would otherwise be eligible for a
16 bond hearing under § 236(a).
17
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20

21 81. The legal principle of statutory interpretation, specifically the "plain
22 meaning" rule dictates that if the language of a statute is clear and unambiguous, a
23 court must apply it as written, without looking at outside sources to interpret its
24 meaning.
25

26 82. INA § 235(b) governs the processing of "arriving aliens" and those seeking
27 admission to the United States. It mandates the detention of individuals who are
28

1 "applicants for admission" and are found to be inadmissible. The plain language of
2 this statute applies to individuals who are physically presenting themselves at a
3 port of entry or are otherwise in the process of seeking admission.
4

5 83. INA § 236(a), in contrast, applies to a broader class of non-citizens who are
6 in the United States and have been arrested for a removable offense. It explicitly
7 allows for the release of these individuals on bond while their removal proceedings
8 are pending.
9
10

11 84. The key legal distinction between these two sections is whether a non-citizen
12 is an "arriving alien" or has already "entered" the United States. Traditionally, an
13 individual apprehended miles away from a port of entry has been considered to
14 have already entered and, therefore, is eligible for a bond hearing under § 236(a).
15
16

17 85. The Board of Immigration Appeals (BIA) in *Matter of Q. Li* contradicts this
18 established understanding by reclassifying a person apprehended several miles
19 from the border as an "arriving alien." This classification is a direct expansion of
20 the statutory language. The BIA's decision essentially holds that an individual is
21 an "arriving alien" so long as they were apprehended "while arriving in the United
22 States," regardless of their physical location or distance from a port of entry.
23
24

25 86. The BIA's ruling effectively renders the geographic distinction between "at
26 a port of entry" and "in the United States" meaningless. The statute's structure, with
27 its two separate detention provisions, clearly intended for these to be different
28

1 categories.

2
3 87. By defining "arriving" so broadly, the BIA's decision expands the scope of
4 mandatory detention under § 235(b) to encompass individuals who would have
5 previously been subject to the bond-eligible detention provisions of § 236(a).
6

7 88. The purpose of § 236(a) is to provide a mechanism for releasing certain non-
8 citizens on bond. By moving these individuals into a mandatory detention category,
9 *Matter of Q. Li* and *Yajure Hurtado* bypasses the discretionary authority of
10 immigration judges and thwarts the legislative intent to allow for bond hearings in
11 these cases.
12

13
14 89. Here, the petitioner was apprehended already in the United States, released
15 on his own recognizance, and later re-apprehended when ICE was seeking another
16 individual. This fact pattern differs entirely from the Congressional intent at the
17 time § 235(b) was written.
18

19 90. Federal district courts across multiple circuits have consistently rejected the
20 government's position that noncitizens who previously entered without inspection
21 and were later apprehended in the interior are subject to mandatory detention under
22 INA § 235(b)(2). These courts instead hold that INA § 236 governs detention for
23 such individuals and preserves access to bond hearings before an Immigration
24 Judge. The following decisions, grouped by circuit, illustrate the growing
25 consensus against *Matter of Yajure Hurtado*.
26
27
28

A. First Circuit

91. District courts within the First Circuit have been particularly active in issuing habeas relief and rejecting the government's new interpretation of INA § 235(b)(2).

- *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)
- *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025)
- *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025)
- *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025)
- *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025)
- *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025)
- *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025)
- *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025)
- *Orellana Juarez v. Moniz*, 2025 WL 1698600 (D. Mass. June 11, 2025)

92. These cases uniformly hold that individuals arrested in the interior after living in the United States are detained under § 236(a) and are entitled to a bond hearing. In particular, *Sampiao* directly disagreed with the BIA's reasoning in *Yajure Hurtado*, finding that INA § 235(b)(2) does not apply in these circumstances.

B. Second Circuit

1 93. Courts within the Second Circuit have also struck down the government's
2 expansive reading of § 235(b)(2).
3

- 4 • *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025)
- 5 • *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025)

6
7 **C. Fourth Circuit**

- 8 • *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025)

9
10 **D. Fifth Circuit**

- 11 • *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025)

12
13 **E. Sixth Circuit**

- 14 • *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)

15
16 **F. Eighth Circuit**

17 94. The District of Nebraska and District of Minnesota have issued numerous
18 decisions rejecting *Yajure Hurtado*'s interpretation:

- 19 • *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025)
- 20 • *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025)
- 21 • *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025)
- 22 • *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025)
- 23 • *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025)
- 24 • *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025)
- 25 • *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025)

- *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025)
- *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025)

G. Ninth Circuit

95. Courts within the Ninth Circuit have not only rejected *Yajure Hurtado* but have also explicitly noted that its issuance makes BIA administrative exhaustion futile.

- *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025)
- *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025)
- *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025)
- *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025)
- *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025)
- *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025)

H. Key Ninth Circuit Trend:

96. In *Zaragoza Mosqueda*, the court expressly held that requiring prudential exhaustion of administrative remedies was **futile** given the binding nature of *Matter of Yajure Hurtado*. This supports our position that habeas review in district court is appropriate and necessary without first appealing to the BIA or even requesting a bond hearing from the Immigration Judge.

I. Summary

1 97. Across **seven circuits**, federal district courts have consistently:

- 2 • Rejected DHS's interpretation of INA § 235(b)(2) as applying to noncitizens
3 apprehended in the interior after an unlawful entry.
4
5 • Affirmed that § 236(a) provides the statutory framework for discretionary
6 detention and bond hearings.
7
8 • Found that *Matter of Yajure Hurtado* improperly strips immigration judges
9 of jurisdiction and is contrary to the statutory scheme, Supreme Court
10 precedent (*Jennings v. Rodriguez*), and decades of practice.
11

12 98. These decisions create a strong foundation for arguing that petitioner's
13 detention is unlawful and that immediate habeas relief is warranted without
14 exhausting BIA administrative remedies.
15
16
17

18 **CAUSES OF ACTION**

19 **COUNT I**

20 **Violation of 8 U.S.C. § 1226(a) – Unlawful Denial of Bond Hearings**

21

22 99. Petitioner realleges and incorporates by reference all preceding paragraphs
23 as if fully set forth herein.
24

25 100. Under 8 U.S.C. § 1226(a), the Attorney General may detain an alien pending
26 a decision on removal proceedings, but the statute expressly authorizes release on
27 bond or conditional parole after a custody redetermination.
28

1 101. Despite being detained for over three months, Petitioner has not been
2 afforded any opportunity for a bond hearing under § 1226(a). ICE and EOIR
3 officials have failed to place his case on the court's docket, and as a result, no
4 Immigration Judge has reviewed the legality or necessity of his continued detention.
5

6
7 102. Even if Petitioner were to be scheduled for a custody redetermination, the
8 Immigration Judge would likely deny jurisdiction based on *Matter of Q. Li*, 29 I&N
9 Dec. 66 (BIA 2025) and *Matter of Hurtado* (BIA 2025), two recent BIA decisions
10 that erroneously interpret § 236(a) as inapplicable to certain noncitizens who were
11 not paroled but released after entry.
12

13
14 103. Under the clear language of the INA, § 235(b) governs the treatment of
15 "applicants for admission" who present themselves at a port of entry or are
16 intercepted while seeking entry. Section 236(a) applies to noncitizens who have
17 already entered the country and are awaiting removal proceedings.
18

19 104. The Immigration Judge's denial of bond without consideration of the
20 statutory factors in § 1226(a) and applicable regulations deprived Petitioner of the
21 individualized custody determination guaranteed by law.
22

23 105. Petitioner falls squarely within the latter category and is thus entitled to an
24 individualized bond hearing under § 236(a). The IJ's denial of jurisdiction under
25 *Matter of Q. Li* and *Matter of Hurtado* constitutes an error of law and a violation of
26 the INA.
27
28

1 106. Following the Supreme Court’s decision in *Loper Bright Enterprises v.*
2 *Raimondo* (U.S. June 28, 2024), agency interpretations of ambiguous statutes are
3 no longer entitled to Chevron deference. Courts must interpret statutory provisions
4 *de novo*, using the traditional tools of statutory construction.
5

6
7 107. Because *Matter of Q. Li* and *Matter of Hurtado* constitute agency
8 interpretations inconsistent with the INA’s plain text, they are not entitled to
9 deference and cannot lawfully strip Immigration Judges of jurisdiction to conduct
10 bond hearings for individuals like Petitioner.
11

12 108. Respondents’ assertion that Petitioner is detained under 8 U.S.C. §
13 1225(b)(2)(A) as an “applicant for admission” is both factually unsustainable and
14 legally indefensible. The administrative record and governing precedent make clear
15 that Petitioner’s custody falls squarely within 8 U.S.C. § 1226(a).
16
17

18 109. Petitioner entered the United States without inspection in November 2022,
19 over three years ago, and has since resided here continuously. He was not
20 apprehended at or near a port of entry, nor was he seeking admission or parole when
21 taken into ICE custody on August 14, 2025. DHS issued an NTA August 26, 2025,
22 more than two years after Petitioner entered the United States. The timing and
23 circumstances of his arrest confirm that he was treated as a noncitizen already
24 present in the United States, not an “arriving alien” under § 1225(b).
25
26
27

28 110. The Ninth Circuit has long held that § 1226(a) governs the detention of

1 noncitizens who have entered the United States and are later placed in removal
2 proceedings, not § 1225(b). *See Casas-Castrillon v. Dep't of Homeland Sec.*, 535
3 F.3d 942, 948 (9th Cir. 2008) (“Once removal proceedings are initiated for an alien
4 who is already present in the country, his detention is governed by § 1226.”); *Preap*
5 *v. Johnson*, 831 F.3d 1193, 1199 (9th Cir. 2016), reversed on other grounds, *Nielsen*
6 *v. Preap*, 139 S. Ct. 954 (2019). This distinction flows directly from the structure
7 of the INA, which divides custody authority based on whether the individual is
8 seeking admission at the border (§ 1225) or has already entered the country (§ 1226).
9
10
11
12 111. The Supreme Court in *Jennings v. Rodriguez*, reinforced that § 1225(b)
13 applies to “arriving aliens” who are stopped at or near a port of entry and are still in
14 the process of being “admitted” to the United States. By contrast, § 1226(a)
15 “generally governs the detention of aliens who are already in the country pending
16 the outcome of their removal proceedings.” *Id.* at 296. Nothing in the record
17 supports DHS’s attempt to reclassify Petitioner, who has lived in the United States
18 since 2022, as a recent “applicant for admission.”
19
20
21

22 112. Petitioner was never paroled under § 1182(d)(5), never treated as an “arriving
23 alien” in DHS custody, and was not detained at the border or while seeking entry.
24 Instead, DHS’s own conduct confirms its view that Petitioner was subject to the
25 removal procedures for individuals already inside the United States, consistent with
26 § 1226(a). The belated issuance of an NTA, coupled with ICE’s initial
27
28

determination that he would be “held without bond,” demonstrates that DHS proceeded under the § 1226 framework from the outset.

113. This constitutes an unlawful application of § 1226(a), warranting habeas relief.

COUNT II
Violation of the Administrative Procedure Act – Unlawful Denial of Bond

114. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

115. The APA, 5 U.S.C. §§ 701–706, prohibits agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

116. Respondents’ failure to docket Petitioner’s case with EOIR and to afford him any opportunity for a custody redetermination under 8 U.S.C. § 1226(a) constitutes arbitrary and capricious agency action. Despite more than two months in ICE detention, Petitioner has not received a bond hearing or any individualized assessment of flight risk or danger, in violation of statutory and constitutional requirements.

117. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they originally entered the United States without inspection. Such noncitizens are detained under § 1226(a), unless they are subject to another

1 detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

2 118. The BIA's holdings in *Matter of Q. Li* and *Matter of Hurtado* are agency
3 actions that reinterpret the INA to eliminate jurisdiction for Immigration Judges to
4 hold bond hearings in cases governed by § 236(a).
5

6 119. These decisions are contrary to the plain text, structure, and legislative
7 history of the INA and thus not in accordance with law.
8

9 120. Moreover, under *Loper Bright Enterprises v. Raimondo*, courts may not defer
10 to such interpretations. Instead, the judiciary must independently construe the
11 INA's statutory scheme. Upon such review, *Matter of Q. Li* and *Matter of Hurtado*
12 constitute unlawful, ultra vires agency actions.
13
14

15 121. Respondents' bond decision was not in accordance with the INA, the APA,
16 or due process, and therefore must be set aside under 5 U.S.C. § 706(2).
17
18

19 **PRAYER FOR RELIEF**

20
21 WHEREFORE, Petitioner respectfully requests that this Court grant the following
22 relief:
23

- 24 1) Assume jurisdiction and proper venue over this matter;
25 2) Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Respondents
26 to immediately release Petitioner from immigration detention or, in the
27 alternative, order the immigration court to schedule a custody determination
28

1 hearing without considering *Matter of Q.Li* and *Matter of Hurtado* within 10
2 days or any time this court deems reasonable.

3
4 3) Declare that Respondents' denial of bond under *Matter of Q-Li* and *Matter*
5 *of Hurtado* was or would have been unlawful under 8 U.S.C. § 1226(a), the
6 Administrative Procedure Act, and the Due Process Clause of the Fifth
7 Amendment;
8

9
10 4) Enjoin Respondents from further detaining Petitioner without providing a
11 lawful and individualized custody determination;

12
13 5) Award Petitioner reasonable attorneys' fees and costs under the Equal Access
14 to Justice Act, 28 U.S.C. § 2412; and

15 6) Grant such other and further relief as this Court deems just and proper.
16

17 /s/ Marcelo Gondim

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24 *Attorneys for Petitioner*

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

26 I represent Petitioner, Martin Coc Pacham, and submit this verification on
27 his behalf. I hereby verify that the factual statements made in the foregoing
28

1 Petition for Writ of Habeas Corpus are true and correct to the best of my
2 knowledge.
3

4 November 14, 2025.
5

6 /s/ Marcelo Gondim

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