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Angel Diaz Moreno

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ANGEL DIAZ MORENO, 



Petitioner,

v.

Kristi NOEM, in her official capacity as
Secretary of the Department of
Homeland Security,

Pamela BONDI, in her official capacity
as Attorney General,

Christopher CHESTNUT, in his official
capacity as Warden of California City
Detention Facility,

Sergio ALBARRAN, in his official
capacity as ICE Field Office Director,

U.S. DEPARTMENT OF HOMELAND
SECURITY,

U.S. DEPARTMENT OF JUSTICE,
Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241;
VERIFIED PETITION**

INTRODUCTION

1. Petitioner Angel Diaz Moreno is in the physical custody of Respondents at the California City ICE Processing Center in California City, California.

2. Petitioner is unlawfully detained. The Department of Homeland Security (DHS) and the Department of Justice (DOJ) have improperly concluded that Petitioner, despite being physically present within the interior of and residing in the United States when arrested on November 25, 2025, at his adjustment of status interview in Fresno, 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). *See* Exhibit A (adjustment of status interview notice).

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

4. On July 8, 2025, DHS issued a new policy, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or

1 inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore
2 ineligible to be released on bond during the removal hearing process.¹

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4 5. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or
5 Board), a component of the DOJ, issued a precedent decision, binding on all
6 immigration judges, holding that an immigration judge has no authority to consider
7 bond requests for any person who entered the United States without admission. *See*
8 *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined
9 that such individuals are subject to mandatory detention under 8 U.S.C. §
10 1225(b)(2)(A) and therefore ineligible to be released on bond.

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13 6. Petitioner's detention on this basis violates the plain language of the
14 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.* Section
15 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered,
16 often decades ago, and are now present and residing in the United States. Instead,
17 such individuals are subject to a different statute, § 1226(a), that allows for release
18 on conditional parole or bond issued by DHS or an immigration judge. That statute
19 expressly applies to people who, like Petitioner, are charged as removable for
20 having entered the United States without inspection and being present without
21 admission.

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26 ¹ "Interim Guidance Regarding Detention Authority for Applicants for Admission",
27 ICE, July 8, 2025. *Available at:* [https://immpolicytracking.org/policies/ice-issues-](https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents)
28 [memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-](https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents)
[documents](https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents).

1 7. Respondents' new legal interpretation of the INA is plainly contrary to the
2 statutory framework and to decades of agency practice applying § 1226(a) to people
3 like Petitioner who are present within the United States.

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5 8. Respondents' new legal interpretation of the INA also violates Petitioner's
6 right to due process. All individuals within the United States have constitutional
7 rights. "[T]he Due Process Clause applies to all 'persons' within the United States,
8 including aliens, whether their presence here is lawful, unlawful, temporary, or
9 permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
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11
12 9. In addition, Petitioner is a kidney transplant patient, who requires monthly
13 infusions to prevent his body from rejecting the transplanted organ. *See* Exhibit C
14 (letters from Petitioner's medical providers). On December 2, 2025, Petitioner,
15 through undersigned counsel, advised the ICE offices in both San Francisco and
16 Bakersfield of his medical needs and the urgency of ensuring he was transported for
17 his next infusion on December 4, 2025. *See* Exhibit D. ICE did not respond, and
18 Petitioner was not taken to his infusion appointment or provided with the necessary
19 infusion in ICE custody. Petitioner also suffers from diabetes. *Id.* His family
20 provided his insulin to ICE officials on November 25, 2025 when he was detained.
21 As of December 2, 2025, Petitioner had not received any insulin. His family has
22 not received a phone call from Petitioner since December 4, 2025, to check if the
23 insulin has since been provided.
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1 10. Finally, undersigned counsel contacted the California Detention Center to
2 request a confidential attorney-client call on December 4, 2025. *See* Exhibit E.

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4 The facility indicated that there were no appointments available until December 16,
5 2025. *Id.* Because the facility is unable to provide an attorney call for more than
6 two weeks, counsel was forced to appear at a first master calendar hearing on
7 December 8, 2025 without having met with Petitioner to review the charges in the
8 Notice to Appear.
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10 11. In addition, U.S. Citizenship and Immigration Services issued a new edition
11 of the adjustment of status application (Form I-485) on January 20, 2025. *See*
12 USCIS, I-485, Application to Register Permanent Residence or Adjust Status,
13 available at <https://www.uscis.gov/i-485>, accessed on Dec. 9, 2025. Because
14 Petitioner filed for adjustment of status on October 11, 2024, he must file an
15 updated application with the Immigration Court to continue pursuing his permanent
16 residency application. The application is 24 pages long. As such, it will likely
17 require multiple one-hour phone calls with counsel's paralegal to complete the
18 application. The availability of only one one-hour telephone call every 12 days will
19 inhibit Petitioner's ability to timely submit a new application to the Immigration
20 Court.
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25 12. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be
26 released immediately to obtain the life-sustaining medical care that Respondents are
27 unwilling to provide him while in custody. In addition, he seeks release to exercise
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1 his right to counsel, which has been unconstitutionally burdened by Respondents'
2 inability to provide him with more than a one-hour telephone call every 12 days
3 with his attorney. Alternatively, if the Court does not believe immediate release is
4 appropriate under the circumstances, Petitioner asks for an order requiring
5 Respondents provide a bond hearing under § 1226(a) within seven days of the
6 court's order.
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9 JURISDICTION

10 13. This Court has jurisdiction over the present action pursuant to 28 U.S.C.
11 § 1331, general federal question jurisdiction; 5 U.S.C. §§ 701 et seq., the
12 Administrative Procedure Act (APA); habeas jurisdiction pursuant to 28 U.S.C.
13 § 2241 et seq.; Art I, § 9, Cl. 2 of the United States Constitution (the Suspension
14 Clause); 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (Declaratory
15 Judgment Act); the Fourth and Fifth Amendments to the U.S. Constitution; and the
16 common law.
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20 14. This action arises under the Due Process Clause of the Fifth Amendment of
21 the U.S. Constitution and the INA.
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23 15. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. §
24 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2001 et seq., and the All-
25 Writs Act, 28 U.S.C. § 1651.
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VENUE

16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Eastern District of California, the judicial district in which Petitioner is currently detained.

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

REQUIREMENTS OF 28 U.S.C. § 2243

18. The Court must grant a petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless a petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

19. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

20. Petitioner Angel Diaz Moreno is a native and citizen of Mexico, currently detained by DHS at the California City Detention Center.

21. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner. She is sued in her official capacity.

22. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review, and the BIA and immigration court system it operates, is a component agency. She is sued in her official capacity.

23. Respondent Sergio Albarran is Director of the San Francisco Field Office of ICE's Enforcement and Removal Operations division. As such, he is the custodian of all persons held at the ICE facilities within the San Francisco Field Office, which includes the California City Detention Facility. He is Petitioner's immediate custodian and is responsible for Petitioner's detention. He is sued in his official capacity.

24. Respondent Christopher Chestnut is the Warden of the California City Processing Center, Adelanto, California, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

1 25. Respondent Department of Justice is the agency responsible for
2 administering the immigration courts and the Board of Immigration Appeals. As
3 such, it is responsible for the publication of the decision in *Matter of Yajure*
4 *Hurtado*.

6 26. Respondent Department of Homeland Security (DHS) is the federal
7 agency responsible for implementing and enforcing the INA, including the
8 detention and removal of noncitizens.

10 LEGAL FRAMEWORK

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12 27. The INA prescribes three basic forms of detention for most noncitizens in
13 removal proceedings conducted pursuant to 8 U.S.C. § 1229a.

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

20 29. Second, the INA provides for the mandatory detention of noncitizens
21 subjected to an expedited removal order imposed pursuant to 8 U.S.C. § 1225(b)(1)
22 and for certain other noncitizen applicants for admission to the U.S. who are
23 deemed not clearly entitled to be admitted. *See* 8 U.S.C. § 1225(b)(2).
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1 30. Last, the INA provides for the detention of noncitizens who have been
2 ordered removed, including individuals in withholding-only proceedings. *See* 8
3 U.S.C. § 1231(a)–(b).

4
5 31. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a) and
6 1225(b)(2) described in paragraphs 28 and 29.

7
8 32. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part
9 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of
10 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to
11 3009–583, 3009–585. Section 1226 was most recently amended in early 2025 by
12 the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

13
14 33. Following the enactment of the IIRIRA in 1996, EOIR drafted new
15 regulations applicable to proceedings before immigration judges explaining that, in
16 general, people who entered the country without inspection – also referred to as
17 being “present without admission” - were not considered detained under § 1225 and
18 that they were instead detained under § 1226(a). *See* Inspection and Expedited
19 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
20 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

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24 34. Thus, in the decades that followed, most noncitizens who entered without
25 inspection and were placed in standard § 1229a removal proceedings received bond
26 hearings before IJs, unless their criminal history rendered them ineligible pursuant
27 to § 1226(c). That practice was consistent with many more decades of practice prior
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1 to IIRIRA, in which noncitizens who were not deemed “arriving” were entitled to a
2 custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
3 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)
4 simply “restates” the detention authority previously found at § 1252(a)).
5

6 35. This practice both pre- and post-enactment of IIRIRA in 1996 is
7 consistent with the fact that noncitizens present within the United States – as
8 opposed to noncitizens present at the border and seeking admission - have
9 constitutional rights. “[T]he Due Process Clause applies to all ‘persons’ within the
10 United States, including aliens, whether their presence here is lawful, unlawful,
11 temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
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13 36. On July 8, 2025, ICE, “in coordination with” the Department of Justice,
14 announced a new policy that rejected this well-established understanding of the
15 statutory framework and reversed decades of practice.
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17 37. The new policy, entitled “Interim Guidance Regarding Detention Authority
18 for Applicants for Admission,”² claims that all noncitizens who entered the United
19 States without inspection shall now be deemed “applicants for admission” and
20 subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The policy applies
21 regardless of when a person is apprehended and applies equally to those who have
22 resided in the United States for months, years, and even decades.
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27 ² Available at: [https://immpolicytracking.org/policies/ice-issues-memo-](https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents)
28 [eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents](https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents).

1 38. On September 5, 2025, the BIA adopted this same position in a published
2 decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board
3 held that all noncitizens who entered the United States without admission or parole
4 are subject to mandatory detention under § 1225(b)(2)(A) and are ineligible for
5 bond hearings before immigration judges.
6

7 39. Since Respondents adopted their new policies, dozens of federal courts have
8 rejected their new interpretation of the INA's detention authorities. Some of these
9 courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same
10 reading of the statute as ICE. See *Santiago Flores v. Noem*, Case No. 5:25-cv-2490-
11 AB-AJR (Sept. 29, 2025); *Arreola Armenta v. Noem*, 5:25-cv-2416-JFW-SP (C.D.
12 Cal. Sept. 16, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304-CAS-
13 BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Benitez v. Noem*, 5:25-cv-2190-
14 RGK-AS (C.D. Cal. Aug. 26, 2025); *Ceja Gonzalez v. Noem*, 5:25-cv-2054-ODW-
15 BFM (C.D. Cal. Aug. 13, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-
16 ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); and *Maldonado*
17 *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025);
18 *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7,
19 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025
20 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157
21 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and
22 recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133
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(D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same); *Hasan v. Crawford*, --- F.Supp.3d ----, 2025 WL 2682255, *8-9 (E.D. Va. Sept. 19, 2025))

(noting that Respondents' interpretation of 8 U.S.C. § 1225(b) "would render superfluous those provisions of § 1226 that apply to certain categories of inadmissible aliens, such as § 1226(c)(1)(A), (D), and (E)"); *Jimenez v. FCI Berlin*, --- F.Supp.3d ----, 2025 WL 2639390, *10 (D. N.H. Sept. 8, 2025); *but see, Sixtos Chavez v. Noem*, No. 3:25-cv-2325-CAB-SBC (S.D. Cal. Sept. 24, 2025) (denying TRO and accepting government's interpretation of § 1225(b)(2)). Indeed, on November 20, 2025, U.S. District Judge Sunshine Sykes granted summary judgment in the matter of *Maldonado Bautista et al v. Ernesto Santacruz Jr Et al*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025), explicitly rejecting *Matter of Yajure Hurtado*, 29 I&N Dec 216 (BIA 2025), and the predecessor ICE policy applying 235(b)(2)(A) detention without bond to all persons who entered without admission/inspection. *See* Exh. F. Nonetheless, Immigration Judges nationwide continue to apply *Yajure Hurtado* and state that they lack jurisdiction to issue bond orders on behalf of non-citizens who entered without inspection.

40. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. On September 30, 2025, the U.S. District Court for the Western District of Washington issued a partial summary judgment order concluding that such persons are subject to detention under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Rodriguez Vazquez v.*

1 *Bostock*, No. 3:25-cv-0524-TMC (W.D. Wash. Sept. 30, 2025), Order Granting
2 Plaintiffs' Partial Motion for Summary Judgment and Denying Defendants' Motion
3 to Dismiss, Dkt. 65.
4

5 41. Numerous courts have rejected DHS's and EOIR's new interpretation
6 because it defies the INA. As the *Rodriguez Vazquez* court and others have
7 explained, the plain text of the statutory provisions demonstrates that § 1226(a), not
8 § 1225(b), applies to people like Petitioners.
9

10 42. Section 1226(a) applies by default to all persons "pending a decision on
11 whether the [noncitizen] is to be removed from the United States." Removal
12 hearings are held pursuant to § 1229a, to "decid[e] the inadmissibility or
13 deportability of a[] [noncitizen]."
14

15 43. The text of § 1226(a) also explicitly applies to individuals charged as being
16 inadmissible, including those who entered without inspection. *See* 8 U.S.C.
17 § 1226(c)(1)(E). Subparagraph (E)'s reference to inadmissible individuals makes
18 clear that, by default, such individuals are afforded a bond hearing under subsection
19 (a). As the *Rodriguez Vazquez* court explained in its preliminary injunction order,
20 "[w]hen Congress creates "specific exceptions" to a statute's applicability, it
21 "proves" that absent those exceptions, the statute generally applies. *Rodriguez*
22 *Vazquez*, 779 F.Supp.3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v.*
23 *Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also* *Gomes*, 2025 WL 1869299, at
24 *7.
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1 44. Section 1226 therefore leaves no doubt that it applies to noncitizens present
2 in the United States who face charges of being inadmissible to the United States,
3 including those who are present without admission or parole.
4

5 45. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry. The
6 statute's entire framework is premised on inspections at the border of people who
7 are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the
8 Supreme Court has explained that this mandatory detention scheme applies "at the
9 Nation's borders and ports of entry, where the Government must determine whether
10 a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*,
11 583 U.S. 281, 287 (2018).
12
13

14 46. Accordingly, the mandatory detention provision of § 1225(b)(2) does not
15 apply to people like Petitioners, who have already entered and were residing in the
16 United States at the time they were apprehended.
17

18 **FACTS**

19
20 47. Petitioner Angel Diaz Moreno is a native and citizen of Mexico who resides
21 in Modesto, California. He has no previous contact with immigration authorities,
22 and his criminal record does not trigger mandatory detention pursuant to 8 U.S.C. §
23 1226(c) or on any other basis.
24

25 48. On November 25, 2025, Petitioner was arrested at the USCIS Field Office in
26 Fresno, California, when he appeared for his adjustment of status interview.
27
28

1 Petitioner is now detained at the California City ICE Detention Center in California
2 City, California.

3
4 49. ICE placed Petitioner in removal proceedings before the Adelanto
5 Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with
6 being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is present
7 without admission in the United States.
8

9 50. Considering the BIA's September 5, 2025 decision in *Matter of Yajure*
10 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), Petitioner is unable to obtain a bond
11 hearing before an IJ pursuant to 8 U.S.C. § 1226(a).
12

13 **FIRST CLAIM FOR RELIEF**

14 **Petitioner's Detention is in Violation of 8 U.S.C. § 1226(a)**

15
16 51. Petitioner incorporates by reference the allegations of fact set forth
17 In paragraphs 1-50.

18
19 52. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does
20 not apply to noncitizens who have entered and were residing in the United States
21 prior to being arrested, have been placed under § 1229a removal proceedings, and
22 been charged with a ground of inadmissibility, including 8 U.S.C.

23
24 § 1182(a)(6)(A)(i), by Respondents. Such noncitizens may only be detained
25 pursuant to § 1226(a), unless subject to § 1225(b)(1), § 1226(c), or § 1231.

26
27 53. The application of § 1225(b)(2) to Petitioner unlawfully mandates his
28 continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).

SECOND CLAIM FOR RELIEF

Petitioner's Detention is in Violation of DHS and EOIR Bond Regulations

54. Petitioner incorporates by reference the allegations of fact set forth in paragraphs 1-50.

55. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

56. Nonetheless, pursuant to *Matter of Yajure Hurtado*, DOJ has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner and, pursuant to the July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission," DHS has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

57. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

THIRD CLAIM FOR RELIEF

Petitioner's Detention Violates the Administrative Procedure Act,

5 U.S.C. § 706(2)

58. Petitioner incorporates by reference the allegations of fact set forth in Paragraphs 1-50.

59. 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).

60. Respondents’ detention of Petitioner pursuant to § 1225(b)(2) is arbitrary and capricious, violates the INA and the Fifth Amendment, is not authorized under § 1225(b)(2), and therefore is in violation of 5 U.S.C. § 706(2).

FOURTH CLAIM FOR RELIEF

Petitioner's Detention Violates His Fifth Amendment Right to Due Process

61. Petitioner incorporates by reference the allegations of fact set forth in Paragraphs 1-50.

62. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment— from government custody, detention, or other forms of physical restraint—lies at

1 the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678,
2 690 (2001).

3
4 63. Petitioner has a fundamental interest in liberty and being free from
5 official restraint.

6 64. The Respondents’ detention of Petitioner without considering whether he is a
7 flight risk or a danger to others pursuant to 8 U.S.C. § 1226(a) violates his right to
8 Due Process.
9

10 **FIFTH CLAIM FOR RELIEF**

11 **Violation of Section 504 of the Rehabilitation Act**

12
13 65. Petitioner incorporates by reference the allegations of fact set forth in
14 Paragraphs 1-50.
15

16 66. The Rehabilitation Act prevents the federal government from discriminating
17 against individuals with disabilities in a manner that prevents the individuals from
18 meaningfully participating in any activity conducted by an executive agency.
19

20
21 67. Petitioner’s status as a transplant patient who requires monthly infusions to
22 remain alive qualifies as a disability under the Rehabilitation Act. Respondents’
23 failure to provide him with the necessary infusion has affected his ability to
24 participate in the removal process by putting his very life in danger.
25

26
27 68. Similarly, Petitioner’s diabetes diagnosis qualifies as a disability under the
28 Rehabilitation Act. Respondents’ failure to provide him with his insulin has

1 affected his ability to participate in the removal process by putting his very life in
2 danger.

3
4 69. Petitioner is entitled to release from custody, to obtain proper treatment for
5 his disability, and to facilitate his meaningful participation in the removal process.
6

7 **SIXTH CLAIM FOR RELIEF**

8 **Administrative Procedure Act – Arrest at Adjustment of Status Interview**

9
10 70. Petitioner incorporates by reference the allegations of fact set forth in
11 Paragraphs 1-50.
12

13 71. The APA forbids agency action that is “arbitrary, capricious, an abuse of
14 discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). A court
15 reviewing agency action “must assess . . . whether the decision was based on a
16 consideration of the relevant factors and whether there has been a clear error of
17 judgment”; it must “examin[e] the reasons for agency decisions—or, as the case
18 may be, the absence of such reasons.” *Judulang v. Holder*, 565 U.S. 42, 53 (2011)
19 (quotations omitted).
20
21

22 72. Mr. Diaz’s detention under the facts alleged here, including facts showing
23 that he was seized at a USCIS adjustment of status appointment while availing
24 himself of the legal process created under the INA, is arbitrary and capricious under
25 the APA. *See You v. Nielsen*, 321 F. Supp.3d 451, 465 (S.D.N.Y. Aug. 2, 2018)
26 (“By inviting Petitioner to interview for his green card and arresting him at this
27
28

1 interview appointment, Respondents deployed § 1255 to effectuate the opposite of
2 its intended outcome for aliens like Petitioner. Respondents used the adjustment of
3 status scheme as a sword when it was intended to be used as a shield.”); *id.* (“The
4 Court rejects arrest and detention practices predicated on manipulating the laws that
5 Congress has passed. Congress did not intend its carefully considered adjustment
6 of status process for a select group of aliens to become a mechanism for ‘gotcha’
7 law enforcement. Nor could it, without raising serious constitutional concerns.
8 These type of bait-and-switch tactics are not only a perversion of the statute, but
9 also likely offensive to the concept of ordered liberty.”) (internal quotation
10 omitted).

11 **SIXTH CLAIM TO RELIEF**

12 **Due Process – Violation of the Right to Counsel**

13 73. Petitioner incorporates by reference the allegations of fact set forth in
14 Paragraphs 1-60.

15 74. Respondents have unlawfully interfered with Petitioner’s right to counsel.
16 Respondents refuse to provide a simple attorney-client telephone call on an
17 unmonitored line without a 12 day wait time. Respondents’ failure to provide a
18 prompt and functional mechanism for scheduling an attorney-client appointment
19 violates Petitioner’s due process right to counsel.

PRAYER FOR RELIEF

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

- a. Order that Petitioner shall not be transferred outside of the Eastern District of California while this petition is pending;
- b. Issue an Order to Show Cause ordering Respondents to show cause within three days why this Petition should not be granted;
- c. Order Respondents to immediately release Petitioner from custody;
- d. Alternatively, order Respondents to provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- e. Declare that Petitioner's detention is unlawful;
- f. Award Petitioner 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
- g. Grant any other and further relief that this Court deems just and proper.

DATED: December 9, 2025.

/s/ Sabrina Damast

SABRINA DAMAST
LAW OFFICE OF SABRINA DAMAST,
INC.
Attorneys for Petitioner

TABLE OF EXHIBITS

Exhibit A: Interview Notice, Form I-485

Exhibit B: Notice to Appear

Exhibit C: Medical Letters

Exhibit D: Emails to ICE re: Medical Needs

Exhibit E: Emails to California City Detention Center re: Available Attorney Appointments

Exhibit F: *Maldonado* Class Certification Order

Exhibit G: Proof of Family Ties

- U.S. Naturalization Certificate of Amalia Moreno Diaz (Petitioner's mother)
- U.S. Birth Certificate of Oscar Efarin Moreno (Petitioner's brother)
- U.S. Passport of Elva Griselda Moreno (Petitioner's sister)
- U.S. Passport of Brianda Caren Bello-Moreno (Petitioner's sister)

VERIFICATION

I, Sabrina Damast, declare as follows:

I am an attorney admitted to practice law in the State of California.

Because many of the allegations of this Petition require a legal knowledge not possessed by Petitioner, I am making this verification on their behalf.

In addition, due to the wait time for an attorney-client phone call with Petitioner, and considering Petitioner's urgent medical status, it is impractical to wait until December 17, 2025 to verify the contents of this Petition with him.

I have read the foregoing Petition for Writ of Habeas Corpus and know the contents thereof to be true to my knowledge, information, or belief.

I certify under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 9, 2025.

/s/ Sabrina Damast

Sabrina Damast

Law Office of Sabrina Damast, Inc.

Attorney for Petitioner