**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF NEW YORK**

Peralta Acuapan, Alejandro

*Petitioner,*

v.

PAMELA BONDI, in her official capacity as U.S. Attorney General; KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security;; RAUL MALDONADO, in his official capacity as Warden of the Brooklyn Metropolitan Detention Center; TODD LYONS, in his official capacity as Acting ICE Field Office Director; JUDITH ALMODOVAR, in her official capacity as Acting Field Office Director of the New York Office of U.S. Immigration and Customs Enforcement

*Respondents.*

Civil Action No. _____

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, the All Writs Act, 28 U.S.C. § 1651, and Article I, Section 9, of the Constitution of the United States. Petitioner alleges in support of his petition:

## PRELIMINARY STATEMENT

1. Petitioner. Alejandro Peralta Acuapan, is in the physical custody of Respondents at the Metropolitan Detention Center, in Brooklyn, NY. He now faces unlawful detention because the Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have concluded he is subject to mandatory detention.
2. Petitioner is charged with having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i); INA § 212(a)(6)(A)(i).

3. 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 inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
4. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
5. On November 25, 2025, the U.S. District Court for the Central District of California issued an order in *Maldonado Bautista v. Santacruz*, certifying a nationwide class of noncitizens who are in immigration detention and being denied access to a bond hearing based on the government's allegation that they entered the United States without admission or inspection. The Court granted declaratory relief to the entire class, holding that the government is unlawfully subjecting them to mandatory (meaning no-bond) detention and that class members are eligible for release on bond under the immigration laws. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

6. Counsel for Petitioner submitted a bond motion subsequent to the *Maldonado Bautista v. Santacruz* decision. A bond hearing took place on December 30, 2025, where the Immigration Judge ("IJ") determined that Petitioner did not pose a flight risk or danger and set a $7,000 bond.
7. Petitioner paid the bond but remains in custody today because DHS appealed the bond determination, arguing that Petitioner is properly detained pursuant to section 235(b)(2)(A) of the Immigration and Nationality Act ("INA") such that the IJ lacked authority to redetermine the respondent's custody. A Discretionary Stay of the custody determination was granted by the BIA on December 31, 2025.
8. On January 13, 2026, Chief Immigration Judge Teresa L. Riley issued nationwide guidance instructing all immigration judges that: "*Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay or enjoin *Yajure Hurtado.*" Immigration judges are instructed to follow the BIA's decision in *Matter of Yajure Hurtado* as binding precedent. The guidance from EOIR states that a "declaratory judgment" is not binding and does not have the authority to compel specific action. American Immigration Lawyers Association, *Practice Alert: EOIR Issues Nationwide Guidance on Maldonado Bautista* (AILA Jan. 16, 2026), AILA Doc. No. 26011404.
9. Petitioner's detention violates the plain language of the Immigration and Nationality Act. 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond, and requires an individualized determination upon arrest.

That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

10. Petitioner's confinement is unlawful—as confirmed by a cascade of decisions, including within this District, that have rejected Respondents' interpretation of Section 1225(b)(2). Accordingly, he brings this petition seeking immediate and unconditional release. He also asks this Court to enjoin his transfer outside this District. *Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)). Alternatively, Petitioner respectfully asks the Court to issue an order to show cause and hold a hearing pursuant to 28 U.S.C. § 2243 on the expedited basis set forth in the statute, during which the Court should (1) find that Petitioner's detention violates federal law and (2) order his release.

## PARTIES

11. Petitioner, Alejando Peralta Acuapan, is alleged to be a citizen of Mexico who has been in immigration detention since November 19, 2025.
12. Respondent JUDITH ALMODOVAR, is named in her official capacity as the Acting Field Office Director for ICE's New York Field Office. He is responsible for the administration of immigration laws and the execution of detention warrants and removal orders.
13. Respondent RAUL MALDONADO is named in his official capacity as the Warden/Director of the Metropolitan Detention Center in Brooklyn, NY.

14. Respondent PAMELA BONDI is named in her official capacity as the Attorney General of the United States. She is responsible for the policies and operations of the DOJ.

15. Respondent KRISTI NOEM is named in her official capacity as the Secretary of DHS. She directs each of the component agencies within DHS, including ICE.

16. Respondent TODD M. LYONS is named in his official capacity as Acting Director of ICE. He directs ICE operations and is responsible for the administration of the immigration laws.

## JURISDICTION AND VENUE

17. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause); and 28 U.S.C. § 1651 (All Writs Act).

18. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenge the lawfulness of their detention by DHS. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

19. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue is proper in this District under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Petitioner is incarcerated at Metropolitan Detention Center, within this District; the ICE office that controls the location of his detention is based in New York City; and a substantial part of the events giving rise to the claims and relevant facts occurred in this District.

## EXHAUSTION

20. Petitioner is not required to exhaust administrative remedies because doing so would be futile.

21. Exhaustion of administrative remedies in immigration detention cases is considered a prudential concern, rather than a statutory requirement. *Quintanilla v. Decker*, No. 21 Civ. 417 (GBD), 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021) (citing *Joseph v. Decker*, No. 18 Civ. 2640 (RA), 2018 WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018)).

22. Such exhaustion may be excused when any of the following apply: "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003).

23. Petitioner's case meets every requirement. Not only will he face irreparable injury if his detention continues, and not only does his petition raise substantial constitutional questions, but intervening events have rendered administrative appeal futile and unable to provide a genuine opportunity for adequate relief.

24. Petitioner is unable to obtain review of his custody pursuant to the nationwide guidance issued by Chief Immigration Judge Teresa L. Riley on January 13, 2026, instructing immigration judges to follow the BIA's decision in *Matter of Yajure Hurtado* as binding precedent. Thus, the BIA will be bound to find that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and deny him release. This is true although despite the overwhelming majority of district courts in the country that have heard a challenge to this reading of the statute has rejected it out of hand.

## STATEMENT OF FACTS

25. Petitioner has resided in the United States since 1999 and lives in Brooklyn, NY.

26. On November 19, 2025, Petitioner was arrested leaving his home because he allegedly matched the description of another person that was the subject of a targeted enforcement action by a New York Fugitive Operations Team. Petitioner was not the target of this enforcement action, and it is unclear what physical attributes would have caused the agents to believe Petitioner was the target of their operation.
27. Petitioner is now detained at the Metropolitan Detention Center.
28. DHS placed Petitioner in removal proceedings before the New York Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.
29. Petitioner is neither a flight risk nor a danger to the community. Petitioner has no convictions. Instead, he is the primary provider in his household and has been a dedicated and devoted spouse to his spouse and a loving father to his 4 U.S. citizen children, [redacted] [redacted] 21, and 24. Petitioner is a hardworking individual and has been employed as a day laborer in construction for various companies for over 20 years.
30. Petitioner filed a motion for bond redetermination, and the IJ found that Petitioner did not pose a flight risk or danger, and granted Petitioner be released from custody under a bond of $7000. The IJ found the Court had jurisdiction to conduct a custody determination hearing on December 30, 2025, and had jurisdiction to do so following the issuance of final declaratory judgement in *Maldonado Bautista v. Santacruz*.
31. DHS filed an appeal with the BIA, once again claiming Petitioner is subject to the mandatory bar, that the IJ did not have jurisdiction to determine custody, and that Petitioner is a flight risk (even though DHS never raised this claim during the bond hearing itself). The BIA granted a Discretionary Stay on December 31, 2025. As a result, Petitioner remains in

detention, even after paying his bond. Without relief from this court, he faces continued detention, separated from his family and community.

## LEGAL BACKGROUND

32. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

33. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1226(a). Individuals in § 1226(a) detention are generally 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).

34. 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).

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

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

37. Detention under Section 1226(a) is discretionary, not mandatory; the government "may release the [noncitizen] on—(A) a bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole[.]" 8 U.S.C.§ 1226(a)(2)(A)–(B).20.

38. Under Section 1226 and its implementing regulations, ICE officials must make an individualized custody determination, considering whether the non-citizen poses a danger

to property or persons and whether the non-citizen is likely to appear for future proceedings." *See Hyppolite v. Noem,* No. 25-cv-4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025)

39. In contrast with Section 1226, which applies to "certain [noncitizens] already in the country," *Jennings*, 583 U.S. at 289 (emphasis added), Section 1225(b) governs detention of noncitizens seeking entry into the United States (i.e., "applicants for admission"). In other words, Section 1225(b) mandates detention for those noncitizens subject to it, and they are not eligible to be considered for release.

40. Section 1225(b)(2)(A) applies to a narrower subset of applicants for admission. It provides that, "if the examining officer determines that a[] [noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall be detained* for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

41. For decades after the enactment of detention provisions at § 1226(a) and § 1225(b)(2), people who entered the country without inspection but who were already in the United States at the time of an ICE arrest were detained under § 1226(a) rather than § 1225(b)(2). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). As the Supreme Court has made clear, "Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" Jennings, 583 U.S. at 287-89.

42. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. The policy claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A), regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

43. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

44. Since Respondents adopted their new policy, a multitude of courts determined this expansive reading of Section 1225 as inconsistent with the plain text and overall structure of the INA. *See, e.g., Yao v. Almodovar*, No. 25-cv-9982, 2025 WL 3653433, at *6 (S.D.N.Y. Dec. 17, 2025) (rejecting Respondents' interpretation of Section 1225 based on the plain language of Sections 1225 and 1226, as well as the fact that "[Sections] 1225 and 1226 are directed to different stages in a noncitizen's interactions with immigration authorities"); *O.F.B. v. Maldonado*, No. 25-cv-6336, 2025 WL 3277677, at *4 (E.D.N.Y. Nov. 25, 2025) (rejecting Respondents' statutory interpretation and reasoning that it "only makes sense if you read Section 1225 in a vacuum"); *Sarmiento Guerrero v. Noem*, No. 25-cv-5881, 2025 WL 3214787, at *3–5 (E.D.N.Y. Nov. 18, 2025) (concluding that Congress meant "applicant for admission" and "alien seeking admission" to have distinct meanings, and noting that other provisions of Section 1225, as well as that provision's title and position within the INA, all indicate that Section 1225 deals with individuals

arriving at the nation's borders); *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025) (applying canons of statutory interpretation to find that "'seeking admission' is meant to refer to those who are presenting themselves at the border, or who were recently apprehended just after entering"); *Artiga v. Genalo*, No. 25-cv-5208, 2025 WL 2829434, at *7–8 (E.D.N.Y. Oct. 5, 2025) (similar); *J.U. v. Maldonado*, No. 25-cv-04836, 2025 WL 2772765, at *7–8 (E.D.N.Y. Sept. 29, 2025) (similar); *Demirel v. Fed. Detention Ctr.*, No. 25- cv-5488, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025) (collecting cases from around the country); *Centeno Ibarra v. Warden of the Fed. Det. Ctr. Philadelphia*, No. 25-cv-6312, 2025 WL 3294726, at *7 (E.D. Pa. Nov. 25, 2025) ("The canon of constitutional avoidance favors the statutory interpretation which applies § 1226 detention to noncitizens like [the Petitioner] because it avoids the potential constitutional due process concerns that the government's interpretation would raise.").

45. The government's interpretation that all inadmissible individuals are "seeking admission" within the meaning of § 1225(b) renders the meaning of the term identical to the statutorily defined term "applicant for admission." Such an interpretation violates rule of surplusage and negates the plain meaning of text.

46. The legislative history further shows that § 1226(a) was intended to "restate[] the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). Indeed, shortly after the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), the former

Immigration and Naturalization Service and the Executive Office for Immigration Review ("EOIR," which houses the Immigration Courts and BIA) issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

47. Thus, for almost 30 years, all participants in the immigration system have understood that people arrested inside the United States generally fall within § 1226 for detention purposes and therefore, unless subject to bars not applicable here, are required to receive a bond hearing upon request—even if they initially entered the country without permission. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue).

48. The most recent amendments to § 1226 in 2025, § 119, 139 Stat. 3, also confirmed widespread understanding that individuals not admitted or paroled were still detained pursuant to § 1226(a) if they were detained while already in the United States. Congress expressly included inadmissible individuals who have been convicted of certain crimes as subject to mandatory detention under § 1226(c)(1)(E). Again, if every noncitizen who was present without being admitted was already subject to mandatory detention under § 1225(b)(2), Congress would have had no reason to pass an entirely new provision in

order to make those individual subject to mandatory detention under § 1226(c)(1)(E) if they committed one of the listed crimes.

49. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended. His detention is governed by § 1226(a), and his continued detention under § 1225(b)(2) is in excess of statutory authority and *ultra vires.*

50. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *Reno v. Flores*, 507 U.S. 292, 306 (1993). As clearly enunciated by the Supreme Court, the protection of the Due Process Clause applies to noncitizens in the United States "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001) (citations omitted).

51. In the context of immigration detention due process claims, the Second Circuit has applied the three-factor balancing test set forth in *Mathews v. Eldridge* to determine what due process requires. These factors are: (i) "the private interest that will be affected by the official action"; (ii) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (iii) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020).

52. Recent decisions by federal courts in various jurisdictions confirm that due process requires the government to make individualized determinations to detain noncitizens and give them notice and a meaningful opportunity to be heard when challenging their detention. Further, if a noncitizen does not receive individualized consideration pre-

deprivation, his due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation. Release from detention is the "typical remedy" for "unlawful executive detention," Munaf v. Green, 553 U.S. 674, 693 (2008).'

53. This is particularly clear where the government has already made determination that Petitioner is not a flight risk or a danger, and no change of circumstance justifies re-detention. Here, immediate release is appropriate because Respondents have not—and cannot—show that Petitioner is subject to mandatory detention.

54. Respondents may also not raise for the first time on appeal a claim that Petitioner is a flight risk, where it did not assert or present evidence of such a risk before the Immigration Judge as parties are generally precluded from raising arguments on appeal that were not preserved or litigated at the agency level.

## CLAIMS FOR RELIEF

### FIRST CAUSE OF ACTION:

### VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a) AND IMPLEMENTING REGULATIONS

55. Petitioner realleges and incorporates by reference each and every allegation contained above.

56. Because Petitioner is not "seeking admission," he is not lawfully detained under 8 U.S.C. § 1225(b)(2) and his detention pursuant to that statute is *ultra vires* and not lawful.

57. Rather, the proper statutory interpretation of the INA, consistent with decades of practice, is that an individual in Petitioner's circumstances who is placed into removal proceedings is detained under 8 U.S.C. § 1226(a)

58. At the time of his arrest, Petitioner was already residing in the United States for approximately 26 years. Section 1226 governs the detention of individuals residing

within the United States, like Petitioner, and implements a discretionary detention regime with the opportunity for release.

**SECOND CAUSE OF ACTION:**

**ICE'S FAILURE TO EXERCISE ITS DISCRETION VIOLATES DUE PROCESS AND THE IMMIGRATION AND NATIONALITY ACT**
**U.S. CONST. AMEND. V; 8 U.S.C. § 1226(a)**

59. Petitioner realleges and incorporates by reference each and every allegation contained above.
60. Because Petitioner was detained by ICE under a discretionary statute, 8 U.S.C. § 1226(a), the agency was required to exercise its discretion in deciding whether or not to detain him. However, because ICE arrested and detained Petitioner under 8 U.S.C. § 1225(b)(2), the agency necessarily failed to exercise its discretion.
61. By refusing to exercise any discretion at all in his case, ICE denied Petitioner the process that he was due under the discretionary detention statute, violating both the statute itself and the Due Process Clause of the Constitution.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court or removing him from the United States pending the resolution of this case, pursuant to the All Writs Act;

3. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from custody without any additional restraints on his liberty, and enjoining any re-detention;
4. Grant such further relief as the Court deems just and proper.

Respectfully Submitted,

Dated: 01/21/2026
Yonkers, NY

Signature

*Counsel for Petitioner*

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242.**

I, Maria Ouzlian, am submitting this verification on behalf of the Petitioner as an attorney for Petitioner. I, or my co-counsel, have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: 01/21/2026
Yonkers, NY

Signature