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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA (LAS VEGAS)

JESUS GARCIA-HERNANDEZ,

Case No. 2:26-cv-00355



Petitioner-Plaintiff,

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28 U.S.C.
§ 2241 AND COMPLAINT FOR
DECLARATORY/INJUNCTIVE
RELIEF**

v.

Michael V. Bernacke, Field Office

Director, U.S. Immigration and Customs

Enforcement;

John Mattos, Warden, Nevada Southern

Detention Center;

Kristi Noem, Secretary, U.S. Department

of Homeland Security;

**AND EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER & PRELIMINARY
INJUNCTION**

1 Rodney S. Scott, Commissioner, U.S.
2 Customs and Border Protection; and
3 Pam Bondi, Attorney General of the
4 United States,
5
6 Respondents–Defendants.

7
8 **INTRODUCTION**

- 9
10 1. Petitioner JESUS GARCIA HERNANDEZ (“Petitioner”), by and through counsel,
11 petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 and seeks
12 declaratory and injunctive relief to remedy his ongoing immigration detention. Petitioner
13 is detained by U.S. Immigration and Customs Enforcement (“ICE”) at the Nevada
14 Southern Detention Center (“NSDC”) in Pahrump, Nevada. The Immigration Court
15 refused to conduct any custody redetermination (“bond”) hearing, concluding it lacked
16 jurisdiction under Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025) and treating
17 Petitioner as subject to mandatory detention under INA § 235(b)(2)(A), 8 U.S.C. §
18 1225(b)(2)(A).
19
20 2. Petitioner is a long-term Nevada resident and the father of five U.S.-citizen children,
21 including a young child with serious medical needs (partial physical paralysis). Petitioner
22 is pursuing cancellation of removal under INA § 240A(b), 8 U.S.C. § 1229b(b), and has
23 an individual merits hearing scheduled in Immigration Court. Because Petitioner’s
24 detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), and because continued
25 detention without an individualized and constitutionally adequate hearing violates due
26 process, Petitioner requests that the Court order Respondents to provide a prompt bond
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28

1 hearing under § 1226(a), or alternatively, release Petitioner immediately under reasonable
2 conditions.

3 **JURISDICTION AND VENUE**

- 4 3. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas), 28 U.S.C. § 1331 (federal
5 question), and the Suspension Clause to satisfy Petitioner's prayer for release. Petitioner
6 challenges the legality of detention, not a discretionary bond amount.
7
8 4. Venue is proper in the District of Nevada because Petitioner is detained within this
9 District, and the immediate custodian and Field Office Director exercises its duty here,
10 and therefore custody is here. Habeas jurisdiction is in personam and runs to the
11 custodian.
12

13 **PARTIES**

- 14 5. Petitioner JESUS GARCIA HERNANDEZ is a citizen of Mexico, born December 24,
15 1986. He is currently detained by ICE at NSDC, 2190 E. Mesquite Ave., Pahrump,
16 Nevada 89060.
17
18 6. Respondent Michael V. Bernacke is the Field Office Director for ICE with custody
19 authority over Petitioner.
20
21 7. Respondent John Mattos is the Warden of NSDC, where Petitioner is confined.
22
23 8. Respondents Kristi Noem, Rodney S. Scott, and Pamela J. Bondi are named to ensure
24 complete injunctive relief.

25 **EXHAUSTION AND PRUDENTIAL CONSIDERATIONS**

- 26 9. Petitioner has exhausted all available administrative remedies, or exhaustion is excused.
27 Petitioner requested a custody redetermination hearing. On February 5, 2026, the
28 Immigration Judge issued a written custody order denying jurisdiction for a bond hearing

1 pursuant to Matter of Yajure Hurtado, while also issuing an alternative finding that, if
2 jurisdiction existed, Petitioner would be eligible for release on \$1,500 bond with
3 Alternative-to-Detention (“ATD”) conditions including GPS monitoring.

4 10. Further administrative efforts are futile because the Immigration Judge’s ruling reflects
5 binding agency precedent and EOIR’s stated position that the district court judgment in
6 Maldonado Bautista v. Santacruz does not vacate Matter of Yajure Hurtado in bond
7 proceedings
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11 **FACTUAL ALLEGATIONS**

12 **A. Arrest and Detention**

13
14 11. On January 16, 2026, ICE officers stopped Petitioner in North Las Vegas near Perimeter
15 Road and Rancho Drive. He was cooperative, presented identification, and was taken into
16 custody without incident. (Exhibit A: I-213).

17
18 12. DHS issued a Notice to Appear charging inadmissibility under INA §§ 212(a)(6)(A)(i)
19 and 212(a)(7)(A)(i)(I). Petitioner has been continuously detained since that date at NSDC
20 in Pahrump, Nevada.
21

22 **B. Family Ties and Humanitarian Equities**

23
24 13. Petitioner resides in North Las Vegas at  where he lived with his
25 partner and five U.S.-citizen children. He has worked steadily as a pool maintenance
26 technician for over a decade and is the primary financial and emotional support for his
27 household.
28

1 14. One child suffers from partial physical paralysis, requires regular medical treatment at
2 UMC, and depends on Petitioner for transportation, daily care, and therapy attendance.
3 The family has submitted medical records detailing these needs. (Exhibit E).

4
5 15. Petitioner's detention has caused acute hardship: the family risks eviction, loss of income,
6 interruption of medical care, and emotional trauma to the children. These equities weigh
7 heavily in favor of release.
8

9 **C. Bond Proceedings**

10 16. On February 5, 2026, the Immigration Court denied bond jurisdiction under Matter of
11 Yajure Hurtado, but expressly found that, if it had jurisdiction, Petitioner was not a
12 danger and posed minimal flight risk, warranting release on \$1,500 bond with ATD/GPS.
13 (Exhibit B).
14
15

16 **LEGAL BACKGROUND**

17 17. The INA prescribes three principal detention tracks for noncitizens in removal
18 proceedings. First, **8 U.S.C. § 1226** governs detention for individuals in **standard**
19 **removal proceedings before an Immigration Judge** under **§ 1229a**. See **8 C.F.R. §§**
20 **1003.19(a), 1236.1(d)** (authorizing IJ custody redeterminations for those detained under §
21 1226(a)); by contrast, certain noncitizens with specified criminal or security grounds are
22 subject to **mandatory detention under § 1226(c)**.
23
24

25 18. Second, **8 U.S.C. § 1225(b)** provides for **mandatory detention** in two narrow
26 “admissions” contexts: (i) expedited removal under **§ 1225(b)(1)** and (ii) certain **recent**
27 **arrivals “seeking admission”** processed under **§ 1225(b)(2)**.
28

1 19. Third, **8 U.S.C. § 1231** governs detention **after a final removal order**, including during
2 withholding-only proceedings. See **§ 1231(a)–(b)**.

3
4 20. This case concerns the **pre-final-order** detention provisions at **§§ 1226(a)** and
5 **1225(b)(2)**.

6
7 21. Congress enacted §§ 1226 and 1225 in **IIRIRA (1996)**, reorganizing detention authority
8 but preserving the basic division between **interior custody under § 1226** and
9 **admissions/border processing under § 1225**. See Pub. L. No. 104–208, Div. C, §§ 302–
10 03. Congress **recently amended § 1226(a)** in the **Laken Riley Act (2025)**, to address
11 criminal convictions warranting mandatory detention, an issue absent in this case, without
12 altering the longstanding role of **IJ bond authority for § 1226(a) detainees**.

13
14 22. Following IIRIRA, **EOIR and DHS** issued federal regulations as guidance which provide
15 that, **as a general matter, individuals who have entered this country without**
16 **inspection (EWI) and are placed in § 1229a proceedings are detained under § 1226,**
17 **not § 1225. See Inspection and Expedited Removal of Aliens; Detention and**
18 **Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed.**
19 **Reg. 10312, 10323 (Mar. 6, 1997)** (recognizing § 1226(a) detention with IJ bond
20 review).

21
22
23 23. For decades thereafter, **noncitizens who were not treated as “arriving”** and were placed
24 **in ordinary § 1229a proceedings received bond hearings under § 1226(a), unless §**
25 **1226(c) applied.** That practice accords with pre-IIRIRA law (**former § 1252(a)**) and
26
27
28

contemporaneous legislative history noting § 1226(a) “restates” the detention authority previously found in § 1252(a).

24. On **July 8, 2025**, ICE—“in coordination with” DOJ—issued an **Interim Guidance** purporting to reclassify **all EWI noncitizens** as § 1225(b)(2) detainees, regardless of **when** or **where** they were apprehended, and irrespective of **years of residence** in the United States.

25. The **Interim Guidance** (titled “**Interim Guidance Regarding Detention Authority for Applicants for Admission**”) asserts that **all EWIs are now “applicants for admission”** who must be detained **under § 1225(b)(2)(A)**, thereby **foreclosing IJ bond hearings**. The policy applies nationwide and retroactively to long-settled residents.

26. On **September 5, 2025**, the **BIA** issued **Matter of Yajure-Hurtado**, 29 I&N Dec. 216 (BIA 2025), adopting the same position: **all noncitizens present without admission or parole are subject to § 1225(b)(2)(A)** and thus **ineligible for IJ bond**.

27. In the months since, **dozens of federal district courts**—including multiple courts within the Ninth Circuit—have **rejected** DHS/EOIR’s categorical § 1225(b)(2) theory and **declined to follow Yajure**, holding that § 1226(a) governs detention of long-resident EWIs in § 1229a proceedings and ordering **prompt § 1226(a) bond hearings (or release)** with appropriate procedural safeguards.

28. The earliest wave of decisions arose after **Tacoma IJs** ceased providing bond hearings to EWIs with long residence. The **Western District of Washington** held that reading of the INA **likely unlawful**, concluding § 1226(a), not § 1225(b), governs persons not

1 **apprehended upon arrival** to the United States. **Rodriguez-Vazquez v. Bostock**, 779 F.
2 Supp. 3d 1239 (W.D. Wash. 2025).

3
4 29. Since then, **courts across the country** have adopted the same reading of the **INA’s**
5 **detention authorities**, granting **TRO/PI** relief and mandating **seven-day bond-hearing-**
6 **or-release** remedies with **DHS’s clear-and-convincing burden, ability-to-pay** and
7 **ATD** considerations, and **written findings**—and expressly **rejecting** the blanket reliance
8 on **§ 1225(b)(2)/Yajure** in interior cases.
9

10 30. The reason courts have **uniformly rejected** the 2025 policy and **Yajure** is textual and
11 structural: it **defies the INA**. The statutory scheme shows that **§ 1226(a)** is the **default**
12 detention authority for **§ 1229a** removal proceedings, while **§ 1225(b)** is a **specialized**
13 **border-inspection regime**.
14

15
16 31. **Section 1226(a)** by its terms governs detention “**pending a decision on whether the**
17 **[noncitizen] is to be removed from the United States.**” Those merits determinations
18 occur in **§ 1229a** proceedings to decide **inadmissibility or deportability**—the very
19 posture here.
20

21 32. Congress also wrote **§ 1226(c)** to encompass certain **inadmissibility** categories (e.g., **§**
22 **1182** grounds), confirming that **§ 1226** reaches **noncitizens charged as inadmissible**—
23 including some who entered without inspection. Under the familiar negative-implication
24 canon, when **Congress creates specific exceptions (mandatory detention under §**
25 **1226(c))**, it **confirms that the statute otherwise applies**—i.e., **§ 1226(a)** supplies **bond-**
26
27
28

1 eligible authority for everyone **not** covered by those exceptions. See, e.g., **Shady Grove**
 2 **Orthopedic Assocs., P.A. v. Allstate Ins. Co.**, 559 U.S. 393, 400 (2010).

3 33. Accordingly, § 1226 applies to individuals charged as **inadmissible** and placed in §
 4 **1229a proceedings**—which is this case—unless a specific § 1226(c) exception applies.
 5 **Nothing** in § 1226 excludes EWIs arrested in the **interior** from its scope.
 6

7 34. By contrast, § 1225(b) is tailored to **border/port-of-entry inspections** of persons
 8 **“seeking admission.”** Its mandatory detention scheme is rooted in **the government’s**
 9 **admissions authority** at the **border**. See **Jennings v. Rodriguez**, 583 U.S. 281, 287
 10 **(2018)** (describing § 1225(b)’s operation **“at the Nation’s borders and ports of entry”**).
 11 Extending § 1225(b)(2) to **long-resident EWIs arrested in the interior** collapses the
 12 statute’s core distinction and **nullifies § 1226(a)**.
 13

14 35. **Conclusion.** Because Petitioner **was not apprehended at the border** and is litigating
 15 removability in § 1229a proceedings, § 1226(a) governs his detention, entitling him to
 16 an **individualized IJ bond hearing**. The categorical reliance on § 1225(b)(2)/Yajure to
 17 **foreclose IJ bond jurisdiction** is **contrary to the statute’s text, structure, history, and**
 18 **decades of practice**, and should be enjoined.
 19

20 36. **Recent Nevada District Court practice (Las Vegas)**¹. In 2025, Las Vegas judges
 21 granted **TRO/PI** relief in materially similar cases—**holding § 1226(a) governs** and
 22

23
 24
 25 ¹ **Maldonado Vázquez v. Feeley**, No. 2:25-cv-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17,
 26 2025) (granting PI; holds § 1226(a) governs and enjoins reliance on § 1225(b)(2) to deny bond

27 **Sanchez Roman v. Noem**, No. 2:25-cv-01684-RFB-EJY, 2025 WL 2710211 (D. Nev. Sept. 23, 2025)
 (orders § 1226(a) bond hearing within 7 days or release; enjoins use of § 1225(b)(2))

28 **E.C. v. Noem**, No. 2:25-cv-01789-RFB-BNW (D. Nev. Oct. 14, 2025) (granting PI; incorporates
Maldonado; orders 7-day § 1226(a) bond hearing or release) (order on docket ECF 19)

Carlos v. Noem, No. 2:25-cv-01900-RFB-BNW (D. Nev. Oct. 10, 2025) (granting TRO; cites **Maldonado &**

enjoining reliance on § 1225(b)(2)/Yajure to foreclose bond jurisdiction—then ordering a bond hearing within seven (7) days or release, with DHS bearing a clear-and-convincing burden, and with ability-to-pay, ATD, and written findings requirements.

CLAIMS FOR RELIEF

COUNT I – Detention Contrary to Statute (INA § 236(a); 28 U.S.C. § 2241). Respondents’ categorical reliance on § 1225(b)(2) and Yajure-Hurtado to deny bond jurisdiction is contrary to § 1226(a), which governs interior custody during removal proceedings.

COUNT II – Fifth Amendment Due Process. Prolonged civil detention without an individualized bond hearing violates due process. The Court should order a prompt, procedurally adequate bond hearing or release.

COUNT III – Habeas (Suspension Clause). The writ lies to test the legality of executive detention, and the Court should order a § 1226(a) bond hearing with adequate procedures, or release.

Emergency Motion for TRO and Preliminary Injunction (Winter factors)

40. **Likelihood of success.** Jesus is an interior arrestee with long residence and pending relief (42B). The government’s position **categorically forecloses** bond based on § 1225(b)(2)/Yajure rather than conducting the **individualized § 1226(a)** analysis Congress prescribed. **Nevada district rulings** confronting this policy have already determined that § 1226(a) governs and have enjoined the government from using § 1225(b)(2)/Yajure to block bond.

Sanchez Roman; rejects § 1225(b)(2) theory and the EOIR automatic-stay practice) (order at ECF 21)

1 41. **Irreparable harm.** Every day of unlawful detention is irreparable. Here, hardship falls on
 2 **USC children** who rely on Mr. Jesus's **daily care and stability**—including **prior**
 3 **medical vulnerability** and ongoing emotional/educational impacts from the loss of his
 4 support.

5
 6 42. **Balance of equities & public interest.** The equities and public interest favor
 7 **individualized, lawful custody determinations.** The record shows **strong community**
 8 **ties, stable employment, church and family involvement, and daily parenting**—all
 9 undercutting flight risk and danger. Tailored relief protects both liberty and safety by
 10 ensuring consideration of **non-financial conditions** and **ATDs.**

11
 12 43. **Requested TRO/PI terms (consistent with recent Nevada orders).** Order the
 13 government to:

- 14 • Provide a § 1226(a) bond hearing within 7 days before an IJ;
- 15
- 16 • Place the **burden on DHS** to prove **danger or flight risk by clear and convincing**
 17 **evidence;**
- 18
- 19 • Require **contemporaneous written findings;**
- 20
- 21 • Require consideration of **ability to pay** and **alternatives to detention;** and
- 22
- 23 • If the hearing does **not** occur by the deadline, **release** Jesus forthwith on appropriate
 24 conditions.
- 25

26
 27 **REQUESTED RELIEF**

Petitioner respectfully asks the Court to:

A. Declare that 8 U.S.C. § 1226(a) governs Petitioner's detention and that reliance on § 1225(b)(2)/Yajure-Hurtado to deny bond jurisdiction is unlawful.

B. Enjoin Respondents from withholding a bond hearing on that basis.

C. Order a bond hearing within seven (7) days before an Immigration Judge under § 1226(a), at which DHS bears the burden by clear and convincing evidence to prove danger or flight risk, with consideration of ability to pay and alternatives to detention and with contemporaneous written findings; if no hearing occurs by the deadline, order immediate release on appropriate conditions. Alternatively, order immediate release on \$1,500 bond with ATD/GPS

D. Grant any further just relief.

Attorney Verification (28 U.S.C. §§ 2242, 1746)

I, Jon Eric Garde, counsel for Petitioner, declare under penalty of perjury that the factual allegations in this Petition are true and correct to the best of my knowledge, information, and belief, based on my review of Petitioner's records, court filings, agency records, and the attached exhibits, and on communications with Petitioner, who is presently detained at NSDC. Because Petitioner is detained and time is of the essence given the scheduled individual hearing on March 23, 2026, I am executing this verification on his behalf pursuant to 28 U.S.C. § 2242.

Dated: 02/11/2026 at Las Vegas

/s/ Jon Eric Garde, Esq.

Jon Eric Garde, Esq. Counsel for Petitioner