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7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA (LAS VEGAS)**

9 VICTOR HUGO BAUTISTA-
10 COLORADO,
11 

12
13 Petitioner-Plaintiff,

Case No. 2:26-cv-00379

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

18 v.

19 Michael V. Bernacke, Field Office

20 Director, U.S. Immigration and Customs

21 Enforcement;

22 John Mattos, Warden, Nevada Southern

23 Detention Center;

24 Kristi Noem, Secretary, U.S. Department

25 of Homeland Security;

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

Rodney S. Scott, Commissioner, U.S.
Customs and Border Protection; and
Pam Bondi, Attorney General of the
United States,
Respondents–Defendants.

INTRODUCTION

1. Petitioner VICTOR HUGO BAUTISTA-COLORADO (“Petitioner”) petitions for a writ of habeas corpus under 28 U.S.C. § 2241 and seeks declaratory and injunctive relief to remedy ongoing immigration detention without any meaningful custody redetermination. Petitioner is detained by U.S. Immigration and Customs Enforcement (“ICE”) at the Nevada Southern Detention Center (“NSDC”) in Pahrump, Nevada. The Immigration Court denied Petitioner’s request for custody redetermination (“bond”), concluding it lacked jurisdiction under Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), based on an agency position that immigration courts cannot set bond for individuals who “have not been admitted to the United States.”
2. Petitioner’s removal case is pending in the Las Vegas Immigration Court, and a master calendar hearing is scheduled. Petitioner seeks prompt judicial relief because the agency’s categorical “no jurisdiction” position leaves him detained with no forum empowered to consider individualized custody factors under INA § 236(a), 8 U.S.C. § 1226(a), and because detention without a constitutionally adequate process violates the Fifth Amendment.

JURISDICTION AND VENUE

1 3. This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and the
2 Constitution. Petitioner challenges the legality of detention and the denial of any
3 constitutionally adequate custody hearing.

4 4. Venue is proper in the District of Nevada because Petitioner is detained within this District
5 at NSDC and his immediate custodian exercises custody here.
6

7 **PARTIES**

8 5. Petitioner VICTOR HUGO BAUTISTA-COLORADO is a citizen of Mexico and is in
9 ICE custody at NSDC, 2190 E. Mesquite Ave., Pahrump, Nevada 89060.
10

11 6. Respondent Michael V. Bernacke is the Field Office Director for ICE with custody
12 authority over Petitioner.

13 7. Respondent John Mattos is the Warden of NSDC, where Petitioner is confined.

14 8. Respondents Kristi Noem, Rodney S. Scott, and Pamela J. Bondi are named to ensure
15 complete injunctive relief.
16

17 **EXHAUSTION AND PRUDENTIAL CONSIDERATIONS**

18 9. Petitioner requested custody redetermination. The Immigration Judge issued a written
19 custody order denying bond based on lack of jurisdiction under Matter of Yajure Hurtado
20 and related agency policy.
21

22 10. Further administrative efforts are futile because the Immigration Judge's ruling reflects
23 binding agency precedent and EOIR's stated position that the district court judgment in
24 Maldonado Bautista v. Santacruz does not vacate Matter of Yajure Hurtado in bond
25 proceedings
26

27 **FACTUAL ALLEGATIONS**

28 **A. Arrest and Detention**

1 11. According to DHS records, Petitioner was arrested by local law enforcement in Las
2 Vegas, Nevada, and ICE lodged an immigration detainer. ICE transported Petitioner for
3 processing on January 7, 2026, issued/served a Notice to Appear, and has held Petitioner
4 in ICE custody pending removal proceedings. Petitioner has been living in the United
5 States since 2001 and has never left the United States. He has been regularly filing his
6 taxes.
7

8 **B. Family Ties and Humanitarian Equities**
9

10 12. DHS charged Petitioner as an applicant for admission who is present without admission or
11 parole and as an immigrant without a valid immigrant visa. The Immigration Court denied
12 bond jurisdiction on January 30, 2026, reasoning that (i) Matter of Yajure Hurtado
13 stripped IJs of authority to issue bond for any individual “who has not been admitted,” and
14 (ii) EOIR views Maldonado Bautista as declaratory relief that does not vacate Yajure
15 Hurtado.
16

17 **C. Bond Proceedings**
18

19 13. In support of custody redetermination, Petitioner presented equities including: close family
20 ties in the United States; evidence of tax filings; service in the Mexican military; and
21 medical ailments that make continued detention particularly difficult. Petitioner also
22 asserted plausible protection claims and other relief from removal, including asylum,
23 withholding of removal, and Convention Against Torture protection.
24
25

26 **LEGAL BACKGROUND**
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28

- 1 14. The INA prescribes three principal detention tracks for noncitizens in removal
2 proceedings. First, **8 U.S.C. § 1226** governs detention for individuals in **standard**
3 **removal proceedings before an Immigration Judge** under **§ 1229a**. See **8 C.F.R. §§**
4 **1003.19(a), 1236.1(d)** (authorizing IJ custody redeterminations for those detained under §
5 1226(a)); by contrast, certain noncitizens with specified criminal or security grounds are
6 subject to **mandatory detention under § 1226(c)**.
7
8
9 15. Second, **8 U.S.C. § 1225(b)** provides for **mandatory detention** in two narrow
10 “admissions” contexts: (i) expedited removal under **§ 1225(b)(1)** and (ii) certain **recent**
11 **arrivals “seeking admission”** processed under **§ 1225(b)(2)**.
12
13 16. Third, **8 U.S.C. § 1231** governs detention **after a final removal order**, including during
14 withholding-only proceedings. See **§ 1231(a)–(b)**.
15
16 17. This case concerns the **pre-final-order** detention provisions at **§§ 1226(a)** and
17 **1225(b)(2)**.
18
19 18. Congress enacted §§ 1226 and 1225 in **IIRIRA (1996)**, reorganizing detention authority
20 but preserving the basic division between **interior custody under § 1226** and
21 **admissions/border processing under § 1225**. See Pub. L. No. 104–208, Div. C, §§ 302–
22 03. Congress **recently amended § 1226(a)** in the **Laken Riley Act (2025)**, to address
23 criminal convictions warranting mandatory detention, an issue absent in this case, without
24 altering the longstanding role of **IJ bond authority for § 1226(a) detainees**.
25
26
27 19. Following IIRIRA, **EOIR and DHS** issued federal regulations as guidance which provide
28 that, **as a general matter, individuals who have entered this country without**

1 inspection (EWI) and are placed in § 1229a proceedings are detained under § 1226,
2 not § 1225. See **Inspection and Expedited Removal of Aliens; Detention and**
3 **Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures**, 62 Fed.
4 **Reg. 10312, 10323** (Mar. 6, 1997) (recognizing § 1226(a) detention with IJ bond
5 review).
6

7 20. For decades thereafter, **noncitizens who were not treated as “arriving”** and were placed
8 in **ordinary § 1229a proceedings** received **bond hearings under § 1226(a)**, unless §
9 **1226(c)** applied. That practice accords with pre-IIRIRA law (**former § 1252(a)**) and
10 contemporaneous legislative history noting § **1226(a)** “restates” the detention authority
11 previously found in § 1252(a).
12

13 21. On **July 8, 2025**, ICE—“in coordination with” DOJ—issued an **Interim Guidance**
14 purporting to reclassify **all EWI noncitizens** as § **1225(b)(2)** detainees, regardless of
15 **when** or **where** they were apprehended, and irrespective of **years of residence** in the
16 United States.
17

18 22. The **Interim Guidance** (titled “**Interim Guidance Regarding Detention Authority for**
19 **Applicants for Admission**”) asserts that **all EWIs** are now “**applicants for admission**”
20 who must be detained **under § 1225(b)(2)(A)**, thereby **foreclosing IJ bond hearings**.
21 The policy applies nationwide and retroactively to long-settled residents.
22

23 23. On **September 5, 2025**, the **BIA** issued **Matter of Yajure-Hurtado**, 29 I&N Dec. 216
24 (**BIA 2025**), adopting the same position: **all noncitizens present without admission or**
25 **parole** are subject to § **1225(b)(2)(A)** and thus **ineligible for IJ bond**.
26
27
28

1 24. In the months since, **dozens of federal district courts**—including multiple courts within
2 the Ninth Circuit—have **rejected** DHS/EOIR’s categorical **§ 1225(b)(2)** theory and
3 **declined to follow Yajure**, holding that **§ 1226(a)** governs detention of long-resident
4 EWIs in **§ 1229a** proceedings and ordering **prompt § 1226(a) bond hearings (or**
5 **release)** with appropriate procedural safeguards.
6

7 25. The earliest wave of decisions arose after **Tacoma IJs** ceased providing bond hearings to
8 EWIs with long residence. The **Western District of Washington** held that reading of the
9 INA **likely unlawful**, concluding **§ 1226(a)**, not **§ 1225(b)**, governs persons **not**
10 **apprehended upon arrival** to the United States. **Rodriguez-Vazquez v. Bostock**, 779 F.
11 Supp. 3d 1239 (W.D. Wash. 2025).
12

13 26. Since then, **courts across the country** have adopted the same reading of the INA’s
14 **detention authorities**, granting **TRO/PI** relief and mandating **seven-day bond-hearing-**
15 **or-release** remedies with **DHS’s clear-and-convincing burden**, **ability-to-pay** and **ATD**
16 considerations, and **written findings**—and expressly **rejecting** the blanket reliance on **§**
17 **1225(b)(2)/Yajure** in interior cases.
18

19 27. The reason courts have **uniformly rejected** the 2025 policy and **Yajure** is textual and
20 structural: it **defies the INA**. The statutory scheme shows that **§ 1226(a)** is the **default**
21 detention authority for **§ 1229a** removal proceedings, while **§ 1225(b)** is a **specialized**
22 **border-inspection regime**.
23

24 28. **Section 1226(a)** by its terms governs detention “**pending a decision on whether the**
25 **[noncitizen] is to be removed from the United States.**” Those merits determinations
26
27
28

1 occur in § 1229a proceedings to decide **inadmissibility or deportability**—the very
2 posture here.

3
4 29. Congress also wrote § 1226(c) to encompass certain **inadmissibility** categories (e.g., §
5 **1182** grounds), confirming that § 1226 reaches **noncitizens charged as inadmissible**—
6 including some who entered without inspection. Under the familiar negative-implication
7 canon, when **Congress creates specific exceptions (mandatory detention under §**
8 **1226(c))**, it **confirms that the statute otherwise applies**—i.e., § 1226(a) supplies **bond-**
9 **eligible** authority for everyone **not** covered by those exceptions. See, e.g., **Shady Grove**
10 **Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010)**.

11
12
13 30. Accordingly, § 1226 applies to individuals charged as **inadmissible** and placed in § 1229a
14 **proceedings**—which is this case—unless a specific § 1226(c) exception applies. **Nothing**
15 in § 1226 excludes EWIs arrested in the **interior** from its scope.

16
17 31. By contrast, § 1225(b) is tailored to **border/port-of-entry inspections** of persons
18 **“seeking admission.”** Its mandatory detention scheme is rooted in **the government’s**
19 **admissions authority at the border**. See **Jennings v. Rodriguez, 583 U.S. 281, 287**
20 **(2018)** (describing § 1225(b)’s operation **“at the Nation’s borders and ports of entry”**).
21 Extending § 1225(b)(2) to **long-resident EWIs arrested in the interior** collapses the
22 statute’s core distinction and **nullifies § 1226(a)**.
23

24
25 32. **Conclusion.** Because Petitioner **was not apprehended at the border** and is litigating
26 removability in § 1229a proceedings, § 1226(a) governs his detention, entitling him to an
27 **individualized IJ bond hearing**. The categorical reliance on § 1225(b)(2)/Yajure to
28

foreclose IJ bond jurisdiction is contrary to the statute's text, structure, history, and decades of practice, and should be enjoined.

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

¹ **Maldonado Vázquez v. Feeley**, No. 2:25-cv-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025) (granting PI; holds § 1226(a) governs and enjoins reliance on § 1225(b)(2) to deny bond); **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)); **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 & Sanchez Roman**; rejects § 1225(b)(2) theory and the EOIR automatic-stay practice) (order at ECF 21).

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)

34. **Likelihood of success.** Jesus is an **interior arrestee** with long residence and possible immigration relief. 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.

35. **Irreparable harm.** Every day of unlawful detention is irreparable. Here, hardship falls on **Detainee/Petitioner** who suffers from diabetes and on his aging parents that rely on him and ongoing emotional/educational impacts from the loss of his support.

36. **Balance of equities & public interest.** The equities and public interest favor **individualized, lawful custody determinations**. The record shows **strong community ties, stable employment and family involvement**, all undercutting flight risk and danger. Tailored relief protects both liberty and safety by ensuring consideration of **non-financial conditions** and **ATDs**.

37. **Requested TRO/PI terms (consistent with recent Nevada orders).** Order the government to:

- Provide a § 1226(a) bond hearing within 7 days before an IJ;

- Place the **burden on DHS** to prove **danger or flight risk by clear and convincing evidence**;
- Require **contemporaneous written findings**;
- Require consideration of **ability to pay** and **alternatives to detention**; and
- If the hearing does **not** occur by the deadline, **release** Jesus forthwith on appropriate conditions.

REQUESTED RELIEF

Petitioner respectfully asks the Court to:

- A. Issue a writ of habeas corpus and declare that Petitioner's detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), and that Respondents' reliance on INA § 235(b)(2)(A)/Matter of Yajure Hurtado to deny bond jurisdiction is unlawful as applied here;
- B. Enjoin Respondents from withholding a bond hearing on that basis;
- C. Order Respondents to provide an individualized § 1226(a) bond hearing within seven (7) days, with (i) DHS bearing the burden by clear and convincing evidence to prove danger or flight risk, (ii) contemporaneous written findings, and (iii) consideration of ability to pay and alternatives to detention; and if no hearing occurs by the deadline, order Petitioner's immediate release on appropriate conditions; and
- D. Grant such other and further relief as the Court deems just and proper.

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

1 **I, Jon Eric Garde**, counsel for Petitioner, declare under penalty of perjury that the factual
2 allegations in this Petition are true and correct to the best of my knowledge, information, and
3 belief, based on my review of Petitioner's records, court filings, agency records, and the attached
4 exhibits, and on communications with Petitioner, who is presently detained at NSDC. Because
5 Petitioner is detained and time is of the essence given the scheduled Master hearing on March 10,
6 2026, I am executing this verification on his behalf pursuant to 28 U.S.C. § 2242.
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8
9 Dated: 02/13/2026 at Las Vegas

/s/ Jon Eric Garde, Esq.

10 Jon Eric Garde, Esq. Counsel for Petitioner
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