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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Edwar Anderson Gomez Blanco, **Petitioner,** v. **Kristi Noem**, Secretary of the United States Department of Homeland Security, in her official capacity; **Sirce Owen**, Acting Director of Executive Office for Immigration Review, in her official capacity; **Luis Rosa, Jr.,** Warden of the Florence Correctional Center, in his official capacity, **Respondents.**	**Case No.** **Agency No.** [redacted] **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2241**

INTRODUCTION

The Respondents are unlawfully detaining Petitioner Edwar Anderson Gomez Blanco, at the Florence Correctional Center, due to the Department of Homeland Security (DHS) recently changed its long-standing position with regard to the status of mandatory detention. *See*, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission filed herewith as Exhibit 1. The Board of Immigration Appeals (BIA) issued a precedential decision on September 5, 2025, holding that all

noncitizens present in the United States without admission – no matter how long they have resided here – are still "applicants for admission" under 8 U.S.C. § 1225(a) and not entitled to bond hearings because they are subject to mandatory detention under § 1225(b)(2)(A). *See, Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) filed herewith as Exhibit 2.

But this interpretation of the Immigration and Naturalization Act (INA) violates both procedural and substantive Fifth Amendment protections, ignores the plain statutory language of both § 1225 and § 1226, and is contrary to numerous recent Federal Court decisions in this District that have rejected these exact arguments. *See e.g* 10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.,* CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025), filed herewith as Exhibit 3.

Here, Respondents' reliance on *Yajure-Hurtado* to justify Petitioner's continued detention without a bond hearing is legally and factually misplaced. Petitioner has lived in the United States continuously since June 21, 2022 and is not a recent entrant or arriving alien. *See* Notice to Appear, filed herewith as Exhibit 5.

Further, when Respondents initiated removal proceedings, the Notice to Appear classified Petitioner as an "alien present in the United States," rather than as an "arriving alien," notwithstanding that option being available on the form. *Id.* This designation is consistent with the government's own treatment of Petitioner as a non-arriving noncitizen subject to detention under § 1226, not mandatory detention under § 1225.

In addition to BIA decisions not being binding precedent upon this Court, the Supreme Court decision last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024), made clear that federal courts must independently interpret statutes and no longer defer under so-called "Chevron deference." This Court is therefore in the best position to determine whether the Respondents are misinterpreting the relevant federal statutes and improperly denying alien detainees bond hearings on the grounds that they are all subject to mandatory detention under § 1225(b)(2)(A). The petition for writ of habeas corpus should be granted.

JURISDICTION & CUSTODY

1. Petitioner Edwar Anderson Gomez Blanco, is in the physical custody of Respondents and Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security.

2. Petitioner is currently detained at Florence Correctional Center and is under the direct control of Respondents and their agents.

3. This action arises under the Constitution of the United States and 8 U.S.C. § 1101 et seq.

4. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, and the common law. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

5. Congress has preserved judicial review of challenges to immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 122, 130-131 (2018) (holding that 8 U.S.C. §§ 1226(e) and 1252(b)(9) do not bar review of challenges to prolonged immigration detention).

6. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the 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.*

7. The Court has inherent power to release the petitioner pending review of his petition. *See Martin v. Solem*, 801 F.2d 324, 329 (8th Cir. 1986).

VENUE

8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in this Court, the federal judicial district in which Petitioner is currently is in custody.

9. Venue is also properly in this Court pursuant to 18 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States.

PARTIES

10. Petitioner Edwar Anderson Gomez Blanco was born on [redacted] in Lima, Peru. Petitioner is currently detained by ICE at Florence Correctional Center. *See*, ICE Online Detainee Locator, filed herewith as Exhibit 6.

11. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, Respondent Noem is a legal custodian of Petitioner. Respondent Noem is sued in her official capacity.

12. Respondent DHS is a federal executive agency responsible for, among other things, enforcing federal immigration laws and overseeing lawful immigration to the United States. Respondent DHS is a legal custodian of Petitioner.

13. Respondent Luis Rosa, Jr. is the Warden of the Florence Correctional Center. Respondent Rosa, Jr. is a legal custodian of Petitioner. Respondent Rosa, Jr. is sued in his official capacity.

14. Respondent Sirce Owen is the Acting Director of the Executive Office for Immigration Review (EOIR), a federal agency within the U.S. Department of Justice. Respondent EOIR is responsible for the administration of immigration courts, and acceptance of forms and petitions related to adjudication of immigration claims, as well as motions for bond. Respondent Sirce Owen is sued in her official capacity.

STATEMENT OF FACTS

15. Petitioner Edwar Anderson Gomez Blanco was born on [redacted] in Lima, Peru.

16. Petitioner entered the United States near Otay Mesa, California, on or about June 21, 2022, without being inspected by an immigration officer. *See* Notice to Appear, filed herewith as Exhibit 5.

17. Upon apprehension by Border Patrol, he admitted to illegal entry. Due to detention capacity issues in the San Diego sector, he was issued an I-94 and paroled into the U.S. under an Alternative to Detention (ATD) program. *See* Form I-213, Record of Deportable/Inadmissible Alien, filed herewith as Exhibit 7.

18. Respondents arrested Petitioner and issued a notice to appear on July 11, 2022. *Id.* DHS charged Petitioner with being subject to removal under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act. *See* Notice to Appear, filed herewith as Exhibit 5. This placed him in full removal proceedings under section 240 of the Act.

19. The Notice to Appear identified him as an "alien present in the United States" even though "arriving alien" was an alternate option. *Id.*

20. On December 16, 2022, Edwar filed a Form I-589 seeking asylum, withholding of removal, and protection under the Convention Against Torture (CAT). *See* Cover: Form I-589, Application for Asylum and Withholding of Removal and Protection Under CAT, filed herewith as Exhibit 8.

21. On December 10, 2025, Petitioner was arrested by ICE officers at an ISAP (Intensive Supervision Appearance Program) office in Baltimore, Maryland. This arrest was triggered by ATD violations, specifically missing multiple scheduled biometric check-ins and an in-person office visit in 2024. *See* Form I-213, Record of Deportable/Inadmissible Alien, filed herewith as Exhibit 7. Following his arrest, he was transferred to the Florence Staging Facility in Arizona. *Id.*

22. On December 18, 2025, DHS moved to pretermit (dismiss without a full hearing) his asylum application. They argued he was barred from seeking protection in the U.S. under Asylum Cooperation Agreements (ACA), which require individuals to seek protection in "safe third countries" such as Ecuador, Honduras, or Uganda. *See* Order of the Immigration Judge, filed herewith as Exhibit 9.

23. On January 20, 2026, Immigration Judge Bruce Taylor granted the DHS motion, effectively denying Petitioner's application for asylum and withholding of removal. *Id.*

24. Petitioner filed a Notice of Appeal to the Board of Immigration Appeals (BIA) on February 19, 2026, which remains pending before the BIA. *See* Filing Receipt for Appeal, filed herewith as Exhibit 10.

25. Petitioner is detained at the Florence Correctional Center where he remains in custody. *See* ICE Online Detainee Locator Printout, filed herewith as Exhibit 6.

26. Petitioner has no criminal history. *See*, Declaration of Counsel in Support of Petition for Writ of Habeas Corpus, filed herewith as Exhibit 11.

27. Petitioner has not been afforded an individualized bond hearing at which he could demonstrate that he is neither a flight risk nor a danger to the community.

LEGAL FRAMEWORK

28. The length of time that a petitioner has been living in the United States is a constitutionally relevant consideration, because "once an alien enters the country,

the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It is therefore reasonable to read these statutes "against [that] backdrop." *See Hewitt v. United States*, 145 S. Ct. 2165, 2173 (2025).

29. Due process thus requires "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

30. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.; Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

31. Congress has granted the Attorney General discretion to decide whether to detain or release certain noncitizens pending a removal decision. *See* 8 U.S.C. § 1226(a). The Attorney General has delegated that authority to IJs. 8 C.F.R. §§ 1003.19, 1236.1.

32. On July 8, 2025, DHS adopted a new policy on mandatory detention for noncitizens who have been residing in the United States. *See*, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission filed herewith as Exhibit 1.

33. On September 5, 2025, the BIA entered the precedential decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed herewith as Exhibit 2, which holds that all noncitizens who enter without inspection are "applicants for admission" under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under § 1225(b)(2), without regard for the length of time they have lived in the United States.

34. The Ninth Circuit has held that § 1226(a) is the "default" detention statute for aliens in removal proceedings "[8 U.S.C. §1226(a) ("Subsection A")] is the default detention statute for noncitizens in removal proceedings and applies to noncitizens "[e]xcept as provided in [Subsection C]." 8 U.S.C. § 1226(a)." *Avilez v. Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

35. In 1997, after Congress amended the INA through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (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 Aliens," the agencies explained that:

> 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. at 10323 (emphasis added). 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.

36. 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 are therefore required to receive a bond hearing upon request—even if they initially entered the country without permission. *See Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at *4 n.9 (D. Mass. July 24, 2025) (citing the United States Solicitor General's representation to the Supreme Court at oral argument that "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended").

37. This Court and numerous district courts have rejected that interpretation, holding that § 1226(a) governs detention of long-present noncitizens apprehended within the United States and requires access to bond hearings. *See Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (ESW) (D. Ariz. Oct. 3, 2025) (collecting cases). While a minority of courts have adopted Respondents' position, those decisions are not binding and conflict with the statutory text, legislative history, and overwhelming district court authority.

38. In *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026), the district court vacated *Matter of Yajure-Hurtado* under the

Administrative Procedure Act as resting on an identical, incorrect interpretation of law. *See*, *Maldonado Bautista*, filed herewith as Exhibit 4. The court held that EOIR and DHS may not "privilege an executive agency's legal interpretation over a federal district court's legal interpretation," reaffirming that "[i]t is the province and duty of the judicial department to say what the law is." The court further rejected the government's reliance on rhetoric about detaining the "worst of the worst," where the record showed detainees with no criminal history and strong community ties.

39. Accordingly, the court restored Immigration Judges' jurisdiction to conduct bond hearings under 8 U.S.C. § 1226(a) for individuals previously denied custody redeterminations based solely on entry without inspection and ordered classwide notice to ensure detainees are informed of their right to seek release on bond or conditional parole.

40. Although the Fifth Circuit recently adopted a contrary interpretation in *Buenrostro-Mendez v. Bondi*, No. 25-20496, slip op. at 9 (5th Cir. Feb. 6, 2026), concluding that noncitizens who entered without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) based on an equivalence between the terms "applicant for admission" and "seeking admission," that decision is not binding on this Court and represents a minority view. Courts within this Circuit, including the court in *Maldonado Bautista*, have rejected that interpretation as inconsistent with the INA's structure distinguishing border inspection under § 1225 from interior detention under § 1226.

41. Respondents continue to misclassify long-present noncitizens under § 1225(b)(2) and deny access to bond hearings in violation of statutory authority, binding precedent, and due process. Petitioner's continued detention without a custody redetermination hearing is therefore unlawful and warrants habeas relief.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
Violation of Fifth Amendment – Substantive Due Process

42. Petitioner realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.

43. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law," including noncitizens. U.S. Const. amend. V.

44. Substantive due process asks whether a person's life, liberty, or property is deprived without sufficient purpose. There is no question that Petitioner has been deprived of his liberty in this case.

45. The government's continued detention of Petitioner is not supported by any special interest or compelling justification that outweighs his liberty interest.

46. Petitioner's ongoing detention when so many federal courts have held that he is entitled to be considered for release upon posting an appropriate bond under § 1226 constitutes prolonged detention and violates his substantive due process rights.

SECOND CLAIM FOR RELIEF
Violation of Fifth Amendment Right - Procedural Due Process

47. Petitioner realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.

48. The Due Process Clause of the Fifth Amendment guarantees Petitioner the right to procedural due process in seeking a bond redetermination and the government may not unreasonably restrict this right.

49. The government's knowing misclassification of Petitioner as an "applicant for admission" under § 1225 in order to justify its argument for mandatory detention is not supported by any special interest or compelling justification that outweighs Petitioner's liberty interest.

50. The continued detention of Petitioner is not supported by any special interest or compelling justification that outweighs his liberty interest.

PRAYER FOR RELIEF

WHEREFORE Petitioner Edwar Anderson Gomez Blanco respectfully requests that the Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order Respondents not to transfer Petitioner out of this District during the pendency of these proceedings, to preserve jurisdiction;
3. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to immediately release Petitioner from custody or, in the alternative, order Respondents to provide Petitioner a bond hearing under 8 U.S.C. § 1226, and without regard to the holding of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), within three (3) business days;
4. Order Respondents to return all personal property, legal documents, identification documents, and other belongings confiscated at the time of

detention;

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

6. Grant any further relief the Court deems just and proper.

Dated this 15th day of March, 2026.

By: */s/ Erica Sanchez*
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner Edwar Anderson Gomez Blanco and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 15th day of March, 2026.

By: */s/ Erica Sanchez*
Erica Sanchez, Esq.