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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF AZRIZONA

Warley Batista Silva,

Petitioner,

vs.

ERIC ROKOSKY, Warden, Eloy Detention Center;

TODD LYONS, in his official capacity as Director of U.S. Immigration and Customs Enforcement (ICE);

MARKWAYNE MULLIN, in his official capacity as Secretary of the U.S. Department of Homeland Security;

TODD BLANCHE, in his official capacity as Acting Attorney General of the United States,

Respondents.

Case No.:

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR ADMINISTRATIVE PROCEDURE ACT RELIEF [IMMEDIATE RELEASE OR BOND HEARING REQUESTED]

INTRODUCTION

1. Petitioner Warley Batista Silva (A[redacted]0), born on [redacted], respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge (1) his imminent unlawful removal, (2) his unlawful transfer, and (3)

his prolonged and unconstitutional detention, now exceeding seven months without a bond hearing.

2. Petitioner entered the United States without inspection on or about April 29, 2023, and immediately turned himself in to immigration authorities. A month later, he received a Notice to Appear.

3. On or around September 8, 2025, ICE officers arrested Warley outside his home in [redacted]. Since that date, Petitioner has been detained and eventually transferred to Otay Mesa Detention Center without an individualized bond hearing before a neutral decision-maker, despite having no criminal history, posing no flight risk, and having deep family and community ties.

4. Up to the date of the filing on this Writ of Habeas Corpus, the Petitioner has never missed a hearing before an Immigration Judge or missed an appointment with ICE. Petitioner is effectively languishing in detention without judicial or administrative oversight, with no active removal proceedings reflected in the EOIR system, no opportunity to present his fear of return, and no meaningful access to counsel or the courts.

5. Petitioner has now been detained over eight months, and his detention continues without any foreseeable end date because he has a is requesting a Petition motion to reopen and a motion to stay removal based on ineffective assistance of counsel. These motions remain pending before the immigration courts.

6. Despite these motions, ICE has informed counsel that it intends to deport Petitioner immediately and has already transferred Petitioner from Otay Mesa Detention Center to a Detention Center in Arizona, believed to be Eloy Detention Center, asserting that his voluntary departure order became final when he allegedly failed to depart.

7. This assertion is legally and factually incorrect. Under binding Ninth Circuit precedent, including *Nken v. Holder*, 556 U.S. 418 (2009), *Barrios v. Holder*, 581 F.3d 849 (9th Cir. 2009), and Cardenas v. Garland, 67 F.4th 1041 (9th Cir. 2023), removal is categorically prohibited while a stay motion remains pending. Moreover, the Suspension Clause prohibits the government from removing a detainee while a habeas petition challenging the legality of removal is pending. Respondents' attempt to remove Petitioner in the face of these pending filings violates statutory protections, constitutional guarantees, and long-established principles of judicial review.

8. Respondents have relied on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), to argue that Petitioner is categorically ineligible for a bond hearing under 8 U.S.C. § 1226(a). That reliance is legally and constitutionally flawed: Yajure Hurtado improperly strips Immigration Judges of jurisdiction to review detention, conflicts with Ninth Circuit precedent, and has been rejected by multiple federal courts across several circuits.

9. Petitioner's detention is therefore governed by 8 U.S.C. § 1226(a), which entitles him to a prompt, individualized bond hearing. Respondents' continued detention without due process violates the Fifth Amendment and the Suspension Clause.

10. If Petitioner is transferred again or removed, he will suffer irreparable harm, including the likely loss of meaningful access to her attorney and family, and severe interference with his ability to communicate with his attorney while the motion to reopen his in voluntary departure order is being requested.

11. Petitioner therefore seeks emergency intervention by this Court through a writ of habeas corpus under 28 U.S.C. § 2241 to prevent his transfer while he pursues his rights under the Immigration and Nationality Act and the Constitution. He also seeks injunctive relief compelling Respondents to recognize and afford him all procedural and statutory rights.

12. Petitioner accordingly seeks a writ of habeas corpus under 28 U.S.C. § 2241; to prevent his transfer while he pursues his rights under the Immigration and Nationality Act and the Constitution; and Any other appropriate relief under the Administrative Procedure Act, as the reclassification or denial of jurisdiction constitutes final agency action that is arbitrary, capricious, an abuse of discretion, and contrary to law under 5 U.S.C. § 706(2).

JURISDICTION AND VENUE

13. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101–1538, and its implementing regulations; the Administrative Procedure Act (APA), 5 U.S.C. §§ 500–596, 701–706; and the U.S. Constitution.

14. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

15. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651; Federal Rule of Civil Procedure 65; and the Court's inherent equitable powers.

16. Petitioner does not seek to interfere with, delay, or overturn his removal proceedings. Rather, he seeks only to compel the government to honor the statutory and constitutional limits on detention, both in its imposition of mandatory detention and in the prolonged duration of that detention without meaningful review. Courts have consistently recognized that such challenges fall within the core of the writ of habeas corpus, which exists precisely to test the legality of executive confinement. Courts have consistently permitted such claims under § 2241. *See Demore v. Kim*, 538 U.S. 510, 517 (2003) (entertaining § 2241 habeas petition challenging mandatory detention under § 1226(c)); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006) (reviewing habeas challenge to prolonged detention and

rejecting government's jurisdictional defense); *Tijani v. Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005).

17. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because Respondents are U.S. agencies and officers of the United States acting in their official capacities or because they reside in this district. In addition, a substantial part of the events or omissions giving rise to the claims occurred in this District, Petitioner is detained in this District, and no real property is involved in this action.

REQUIREMENTS OF 28 U.S.C. § 2243

18. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

19. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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) (emphasis added).

PARTIES

20. Petitioner Warley Batista Silva is a native and citizen of Brazil who entered the United States without inspection on or about April 29, 2023, and currently resides in Massachusetts with his family. On or around September 8, 2025, ICE arrested Petitioner outside his home, and he has since been detained at Otay Mesa Detention Center.

21. Respondent Eric Rokosky is the Warden of the Eloy Detention Center, oversees the day-to-day functioning of Eloy Detention Center, and has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens. Mr. Rokosky is sued in his official capacity as the Warden of a federal detention facility.

22. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. As Secretary, he oversees the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens. He is sued in his official capacity.

23. Respondent Todd Blanche is the Attorney General of the United States and head of the U.S. Department of Justice. In that capacity, he oversees EOIR and the immigration court system the agency administers. He is ultimately responsible for the agency's operation. He is sued in his official capacity.

STATEMENT OF FACTS

24. Petitioner Warley Batista Silva (A: [redacted]) entered the United States

without inspection on or October 2019.

25. He was not detained, nor was he granted parole under INA § 212(d)(5).

26. Petitioner has no criminal history, poses no danger to the community, and has not been charged with any offenses.

27. On or around September 8, 2025, ICE officers arrested Petitioner outside his home. He has since been detained at Otay Mesa Detention Center, where he remains in custody.

28. On October 2, 2025, Without Petitioner's knowledge or consent, his prior counsel requested voluntary departure in his immigration proceedings, a request Petitioner never authorized.

29. On or about October 23, 2025, Petitioner was called for a hearing before the immigration court; however, the proceeding was canceled because no Portuguese interpreter was available. Since that date, Petitioner has not received any notice of a new hearing, nor any communication regarding the status of his case.

30. Petitioner had a pending asylum and a well-founded fear of returning to Brazil.

31. Petitioner has strong family and community ties to the United States. He has made his life here, and his continued detention prevents him from participating in their ongoing immigration proceedings and any connection with his counsel.

32. Petitioner is requesting a motion to reopen and a motion to stay removal

based on ineffective assistance of counsel. While these motions stay pending before the immigration courts. Petitioner's removal cannot lawfully occur.

33. However, ICE has informed counsel that it intends to deport Petitioner immediately, asserting that his voluntary departure order became final when he allegedly failed to depart. Respondents have already transferred Petitioner from the Otay Mesa Detention Center to Arizona.

34. Petitioner's detention severely impairs his ability to communicate with counsel and participate in his immigration case, creating a substantial risk of prejudice to his legal rights.

35. Despite being detained for over eight months, and posing no danger or flight risk, and there has been no individualized determination of necessity for his continued detention. Petitioner is effectively being denied any meaningful opportunity to challenge his detention, in violation of the Fifth Amendment's Due Process Clause and the Administrative Procedure Act.

36. Throughout his prolonged confinement, Petitioner has never received a bond hearing or any individualized custody determination to assess whether he poses a flight risk or danger to the community.

37. Instead, Petitioner remains jailed under a regime of mandatory detention that has become prolonged, arbitrary, and punitive, despite the absence of any imminent removal and despite his continued pursuit of lawful appellate review.

38. Because DHS is legally barred from removing Petitioner, his detention has become indefinite, unreasonably prolonged, and constitutionally impermissible under *Zadvydas v. Davis*.

39. Petitioner is effectively languishing in detention without judicial or administrative oversight, with no active removal proceedings reflected in the EOIR system, no opportunity to present his fear of return, and no meaningful access to counsel or the courts.

40. On April 9, 2026, Petitioner was transferred from Otay Mesa Detention Center to Arizona. As of April 10, 2026, Respondents have not indicated exactly where Petitioner is being held, but believed to be in the Eloy Detention Center.

41. Petitioner poses no danger or flight risk, and there has been no individualized determination of necessity for his continued detention. Under the current misapplication of *Matter of Q. Li* and *Matter of Yahure Hurtado,* Petitioner is effectively denied any meaningful opportunity to challenge his detention, in violation of the Fifth Amendment's Due Process Clause and the Administrative Procedure Act.

42. Petitioner remains in ICE custody with no available administrative mechanism to seek release. He seeks relief from this Court through a writ of habeas corpus under 28 U.S.C. § 2241 and declaratory relief under the Administrative Procedure Act, to remedy this ongoing unlawful detention.

LEGAL FRAMEWORK

Detention under 8 U.S.C. § 1226(a) and § 1225(b)(2)

43. The Immigration and Nationality Act ("INA") authorizes the detention of noncitizens in removal proceedings under three primary provisions: INA § 236(a) (8 U.S.C. § 1226(a)), INA § 235(b) (8 U.S.C. § 1225(b)), and 8 U.S.C. § 1231(a)–(b).

44. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are 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).

45. 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).

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

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

48. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part

of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

49. Following enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *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).

50. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see* also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

51. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by

default, such people are afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

52. 8 U.S.C. § 1225(b), by contrast, mandates detention of certain arriving aliens and applicants for admission during the pendency of expedited or full removal proceedings. However, this provision only applies to individuals who are "seeking admission" and who are either subject to expedited removal or placed into § 240 proceedings as applicants for admission.

53. A key distinction in this framework is "parole" under INA § 212(d)(5), which permits the Secretary of Homeland Security, in his discretion, to parole an individual into the United States temporarily for urgent humanitarian reasons or significant public benefit. Parole is an express legal status that must be granted affirmatively and documented by the issuance of Form I-94 or other evidence of parole.

54. The Board of Immigration Appeals' decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), held that individuals who have been formally "paroled" into the United States under § 212(d)(5) are not eligible for a bond hearing under INA § 236(a), because they are considered "arriving aliens" subject to § 235.

55. However, *Q. Li* does not apply to individuals who, like Petitioner, were

never formally granted parole but were instead released on their own recognizance after being processed and issued an NTA. DHS cannot unilaterally designate an individual as "paroled" absent a formal parole determination under § 212(d)(5) and issuance of appropriate documentation.

56. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA extended this reasoning, holding that noncitizens who entered without inspection and were later apprehended in the interior are categorically ineligible for bond hearings under § 236(a), effectively stripping IJs of jurisdiction.

57. These decisions are recent, agency-specific interpretations. They are binding within EOIR but not controlling in federal courts. Following the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, courts now review statutes de novo without deference to agency interpretations.

58. Federal courts have increasingly recognized that reliance on *Q. Li* and *Yajure Hurtado* to deny bond hearings violates statutory and constitutional principles, particularly when the detainee:

- Entered without inspection but was never formally paroled;
- Has strong family or community ties;
- Poses no danger or flight risk; and
- Faces prolonged detention without an individualized custody determination

59. As courts in multiple circuits have found, including *Ponte-Guanare v.*

Archambeault, No. 3:25-cv-02081 (S.D. Cal. Sep. 25, 2025), and *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK (D. Mass. Sept. 9, 2025), administrative exhaustion is futile when detention is based solely on these BIA precedents, making habeas review appropriate and ordering that: *"Respondents SHALL NOT deny Petitioner's bond on the basis that 8 U.S.C. § 1225(b)(2) requires mandatory detention"*.

60. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Prolonged detention without an individualized custody determination by a neutral arbiter violates due process. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 131 (2018).

61. Where DHS has misclassified a person as paroled to avoid judicial review of custody under § 236(a), courts retain habeas jurisdiction to correct such errors and order a bond hearing. *See Padilla v. ICE*, 354 F. Supp. 3d 1218, 1228 (W.D. Wash. 2018); *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *7 (S.D.N.Y. May 23, 2018).

62. The Administrative Procedure Act, 5 U.S.C. §§ 701–706, provides a cause of action for individuals aggrieved by final agency action that is arbitrary, capricious, contrary to law, or in excess of statutory authority. DHS's and the Immigration Judge's reliance on *Q. Li* under the mistaken belief that Petitioner had been "paroled" constitutes final agency action that is contrary to law and subject to

review under the APA.

The BIA's Practice of Delayed Decisions in Bond Proceedings

63. The BIA's appellate process does not offer a meaningful avenue to correct the Otay Mesa Immigration Court's errors.

64. According to the agency's own data, during FY 2024, the agency's average processing time for a bond appeal was 204 days, or nearly seven months.

65. The lengthy delays in bond appeal determinations do not affect only Mrs. Ponte-Guanare and similarly situated individuals subject to the Board of Immigration Appeals' decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) described above. It also affects all noncitizens who are detained, who have a right to a bond hearing, and who have their request for a bond denied or cannot afford the bond they are provided.

66. This average of 204 days tells only part of the story. The data released by EOIR shows that in many cases, the BIA review takes far longer—in some cases, a year or more—to decide a person's bond appeal.

67. These processing times defy the Due Process Clause.

68. The Supreme Court and the Ninth Circuit have explained that appellate review is a critical component of a constitutional civil detention scheme, including in immigration cases. *See*, e.g., *Schall v. Martin*, 467 U.S. 253, 280 (1984); *Singh v. Holder*, 638 F.3d 1196, 1209 (9th Cir. 2011); *Prieto-Romero v. Clark*, 534 F.3d

1053, 1065–66 (9th Cir. 2008).

69. The Supreme Court has also made clear that *timely* appellate review is a key feature of any civil detention scheme. As the Court has explained, "[r]elief [when seeking review of detention] must be speedy if it is to be effective." *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

70. Most notably, the Court upheld the federal pretrial detention under the Bail Reform Act in part because the statute "provide[s] for immediate appellate review of the detention decision." *United States v. Salerno*, 481 U.S. 739, 752 (1987). As the Ninth Circuit later elaborated, "[e]ffective review of pretrial detention orders necessarily entails a speedy review in order to prevent unnecessary and lengthy periods of incarceration on the basis of an incorrect magistrate's decision." *United States v. Fernandez-Alfonso*, 813 F.2d 1571, 1572 (9th Cir. 1987).

71. These principles derive from the federal pretrial context, where, by definition, individuals are subject to federal criminal proceedings. Yet here, where only civil proceedings are at issue, the BIA provides nothing like the speedy review federal district and appellate courts provide of magistrate judge detention decisions.

72. Without timely review, appellate review is meaningless. Indeed, the Supreme Court has explained that the opportunity to obtain "freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction." Stack, 342 U.S. at 4. Additionally,

such detention "may imperil the [detained person's] job, interrupt his source of income, and impair his family relationships." *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).

73. During the many months the BIA takes to review a bond appeal, a detained noncitizen will be forced to defend themselves against their removal on the merits, depriving them of a meaningful chance to assemble evidence outside detention, coordinate with family, or communicate with potential witnesses in other countries.

74. Indeed, their very detention significantly reduces their likelihood of obtaining legal representation. In removal proceedings, noncitizens have the right to be represented by legal counsel but "at no expense to the government." 8 U.S.C. § 1362. Those detained while in removal proceedings face significant challenges to accessing and communicating with counsel or other forms of legal assistance. *See*, e.g., ACLU, No Fighting Chance: ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers 6 (June 9, 2022). [1]

75. The lack of legal representation in turn dramatically reduces the potential for successful outcomes in their underlying removal proceedings. *Id.* at 12.

76. The months a noncitizen waits for appellate review also deprives them of time with their spouses, children, parents, and other family members. These

[1] https://www.aclu.org/ publications/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-centers.

individuals—who are often U.S. citizens or lawful permanent residents—are similarly deprived of the love, care, and financial support that the detained person provides.

77. Time in detention is also difficult in other ways. Detained persons are often incarcerated in jail-like settings, forced to sleep in communal spaces, receive inadequate medical care, and subjected to other degrading treatment.

78. While not all noncitizens succeed in their appeals, some do. The BIA's months-long appellate review means that for those individuals, they have spent months of unnecessary time in detention and suffered the many harms outlined above.

79. Such review processing times violate the Due Process Clause and do not constitute a reasonable time as required by the APA.

Bia's Precedent in *Matter of Q.Li* and *Matter of Hurtato* Should Not Be Applied in This Matter

80. The Board of Immigration Appeals (BIA) decision in *Matter of Q. Li* and *Matter of Hurtado* should be viewed as an agency interpretation of a statute. The Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, which overturned the *Chevron deference*, fundamentally alters how courts should review such agency interpretations.

81. The Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo* (U.S.

June 28, 2024) represents a significant shift in administrative law. The Court expressly abrogated the Chevron framework, which previously instructed courts to defer to an agency's reasonable interpretation of an ambiguous statute. The Court concluded that the Chevron doctrine was a misapplication of judicial power and that it improperly shifted the judicial function of interpreting the law to the executive branch. The judiciary's role is to say, "what the law is," as established in *Marbury v. Madison*. This means that courts must now interpret statutes *de novo*, or as if for the first time, without any special deference to an agency's interpretation.

82. The BIA, as part of the Department of Justice, is an administrative body charged with interpreting and applying the Immigration and Nationality Act (INA). Its decisions, such as *Matter of Q. Li* and *Yajure Hurtado*, are classic examples of agency interpretations of a statute. In this case, the BIA interpreted a specific provision of the INA to determine eligibility for a particular form of relief. Under the old *Chevron* framework, a court would have likely deferred to the BIA's interpretation as long as it was a reasonable construction of an ambiguous statute.

83. With *Loper Bright*, the legal landscape has changed. When a court now reviews BIA's decision in *Matter of Q.* and *Yajure Hurtado*, it cannot simply accept the BIA's interpretation. Instead, the court must undertake its own independent analysis of the statute. The court must use all traditional tools of statutory interpretation, such as the plain language of the statute, legislative history,

and statutory context, to determine the correct meaning of the law. The BIA's interpretation is no longer entitled to deference. It is simply one possible reading of the statute, which the court can consider but is not bound by. This new approach restores the judiciary's power to serve as the ultimate arbiter of statutory meaning, ensuring a more uniform and consistent application of the law.

84. *Matter of Q. Li* (29 I&N Dec. 66 (BIA 2025)) and *Matter of Yajure Hurtado* (29 I&N Dec. 216 (BIA 2025)) contradict the plain language of the statute by expanding the scope of "arriving aliens" beyond the clear meaning of the law. The decision's interpretation effectively erases the distinction between individuals apprehended at the border and those who have already entered the United States, which is a critical distinction in the Immigration and Nationality Act (INA). By doing so, it subjects a broader category of individuals to mandatory detention under § 235(b) of the INA, despite the fact that they would otherwise be eligible for a bond hearing under § 236(a).

85. The legal principle of statutory interpretation, specifically the "plain meaning" rule dictates that if the language of a statute is clear and unambiguous, a court must apply it as written, without looking at outside sources to interpret its meaning.

86. INA § 235(b) governs the processing of "arriving aliens" and those seeking admission to the United States. It mandates the detention of individuals who are

"applicants for admission" and are found to be inadmissible. The plain language of this statute applies to individuals who are physically presenting themselves at a port of entry or are otherwise in the process of seeking admission.

87. INA § 236(a), in contrast, applies to a broader class of non-citizens who are in the United States and have been arrested for a removable offense. It explicitly allows for the release of these individuals on bond while their removal proceedings are pending.

88. The key legal distinction between these two sections is whether a non-citizen is an "arriving alien" or has already "entered" the United States. Traditionally, an individual apprehended miles away from a port of entry has been considered to have already entered and, therefore, is eligible for a bond hearing under § 236(a).

89. The Board of Immigration Appeals (BIA) in *Matter of Q. Li* contradicts this established understanding by reclassifying a person apprehended several miles from the border as an "arriving alien." This classification is a direct expansion of the statutory language. The BIA's decision essentially holds that an individual is an "arriving alien" so long as they were apprehended "while arriving in the United States," regardless of their physical location or distance from a port of entry.

90. The BIA's ruling effectively renders the geographic distinction between "at a port of entry" and "in the United States" meaningless. The statute's structure, with its two separate detention provisions, clearly intended for these to be different

categories.

91. By defining "arriving" so broadly, the BIA's decision expands the scope of mandatory detention under § 235(b) to encompass individuals who would have previously been subject to the bond-eligible detention provisions of § 236(a).

92. The purpose of § 236(a) is to provide a mechanism for releasing certain non-citizens on bond. By moving these individuals into a mandatory detention category, *Matter of Q. Li* and *Yajure Hurtado* bypasses the discretionary authority of immigration judges and thwarts the legislative intent to allow for bond hearings in these cases.

93. Here, the petitioner was apprehended already in the United States, released on his own recognizance, and later re-apprehended even though he was complying with mandatory inspection appointments before the Immigration and Customs Enforcement – ICE and Immigration Court. This fact pattern differs entirely from the Congressional intent at the time § 235(b) was written.

94. Federal district courts across multiple circuits have consistently rejected the government's position that noncitizens who previously entered without inspection and were later apprehended in the interior are subject to mandatory detention under INA § 235(b)(2). These courts instead hold that INA § 236 governs detention for such individuals and preserves access to bond hearings before an Immigration

Judge. The following decisions, grouped by circuit, illustrate the growing consensus against *Matter of Yajure Hurtado*.

A. First Circuit

95. District courts within the First Circuit have been particularly active in issuing habeas relief and rejecting the government's new interpretation of INA § 235(b)(2).

- *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)
- *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025)
- *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025)
- *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025)
- *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025)
- *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025)
- *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025)
- *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025)
- *Orellana Juarez v. Moniz*, 2025 WL 1698600 (D. Mass. June 11, 2025)

96. These cases uniformly hold that individuals arrested in the interior after living in the United States are detained under § 236(a) and are entitled to a bond hearing. In particular, *Sampiao* directly disagreed with the BIA's reasoning in

Yajure Hurtado, finding that INA § 235(b)(2) does not apply in these circumstances.

B. Second Circuit

97. Courts within the Second Circuit have also struck down the government's expansive reading of § 235(b)(2).

- *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025)
- *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025)

C. Fourth Circuit

- *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025)

D. Fifth Circuit

- *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025)

E. Sixth Circuit

- *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)

F. Eighth Circuit

98. The District of Nebraska and District of Minnesota have issued numerous decisions rejecting *Yajure Hurtado*'s interpretation:

- *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025)
- *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025)
- *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025)
- *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025)

- *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025)
- *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025)
- *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025)
- *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025)
- *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025)

G. Ninth Circuit

99. Courts within the Ninth Circuit have not only rejected *Yajure Hurtado* but have also explicitly noted that its issuance makes BIA administrative exhaustion futile.

- *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025)
- *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025)
- *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025)
- *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025)
- *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025)
- *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025)

H. Key Ninth Circuit Trend:

100. In *Zaragoza Mosqueda*, the court expressly held that requiring prudential exhaustion of administrative remedies was **futile** given the binding nature of *Matter of Yajure Hurtado*. This supports our position that habeas review

in district court is appropriate and necessary without first appealing to the BIA or even requesting a bond hearing from the Immigration Judge.

I. Summary

101. Across **seven circuits**, federal district courts have consistently:

- Rejected DHS's interpretation of INA § 235(b)(2) as applying to noncitizens apprehended in the interior after an unlawful entry.
- Affirmed that § 236(a) provides the statutory framework for discretionary detention and bond hearings.
- Found that *Matter of Yajure Hurtado* improperly strips immigration judges of jurisdiction and is contrary to the statutory scheme, Supreme Court precedent (*Jennings v. Rodriguez*), and decades of practice.

102. These decisions create a strong foundation for arguing that petitioner's detention is unlawful and that immediate habeas relief is warranted without exhausting BIA administrative remedies.

CAUSES OF ACTION

Count I: Violation of 8 U.S.C. § 1231(a)

105. Petitioner re-alleges and incorporates the foregoing paragraphs.

106. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention "beyond the removal period" only for the purpose of effectuating

removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute."). Because Petitioner's removal is not reasonably foreseeable, his detention does not effectuate the purpose of the statute and is accordingly not authorized by § 1231(a).

107. Petitioner has been detained far more than six months. He has shown good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future because he is requesting a motion to reopen and a motion to stay removal. As a result, there is no definite or reasonably foreseeable date on which Petitioner could be removed, rendering his detention effectively indefinite and unnecessary.

108. Respondents have not demonstrated that removal is significantly likely in the reasonably foreseeable future. Under *Zadvydas*, continued detention is unlawful, and Petitioner must be released under appropriate supervision.

Count II: Violation of the Fifth Amendment's Due Process Clause – Prolonged Civil Immigration Detention Without Neutral Review

109. Petitioner's ongoing civil detention violates the Fifth Amendment's Due Process Clause, which prohibits arbitrary and punitive confinement without adequate procedural safeguards. Due process requires that any civil detention be reasonably related to its purpose and accompanied by procedures sufficient to guard

against erroneous deprivation of liberty. The Supreme Court's due process framework, articulated in *Mathews v. Eldridge*, requires balancing the (1) liberty interest at stake, (2) risk of erroneous deprivation under existing procedures, and (3) governmental interests.

110. Under this framework, Petitioner's detention is unlawful because (a) his liberty interest in avoiding prolonged confinement is substantial; (b) DHS has afforded no opportunity to contest detention, creating a serious risk of erroneous deprivation; and (c) the Government's asserted interests can be addressed through less restrictive means, including supervised release.

111. Multiple courts have applied *Mathews* to civil immigration detention and have held that prolonged detention without a bond hearing violates due process. The Ninth Circuit has expressly held that civil immigration detainees facing extended detention must be provided a neutral bond hearing at which the Government bears the burden of proof. See *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011) (requiring government to prove danger or flight risk by *clear and convincing evidence* and mandating contemporaneous recordkeeping to ensure meaningful review).

112. Petitioner has received no fair hearing, and DHS has provided no individualized findings to justify his detention. Their confinement therefore violates fundamental due process protections.

113. As in *Van Ngo v. Noem* (S.D. Cal. 2025), where the district court granted habeas relief and ordered immediate release after concluding that DHS failed to provide constitutionally adequate process during prolonged detention, Petitioners' confinement lacks any individualized determination and therefore violates their constitutional right to due process. In *Van Ngo*, the court ordered release where DHS's detention had become arbitrary and unsupported by procedural review. The same constitutional defects are present here:

- No bond hearing;
- No individualized findings;
- No showing of danger or flight risk;
- No evidence that removal is reasonably foreseeable

114. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they originally entered the United States without inspection. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

115. The BIA's holdings in *Matter of Q. Li* and *Matter of Hurtado* are agency actions that reinterpret the INA to eliminate jurisdiction for Immigration Judges to hold bond hearings in cases governed by § 236(a).

116. These decisions are contrary to the plain text, structure, and legislative history of the INA and thus not in accordance with law.

117. Moreover, under *Loper Bright Enterprises v. Raimondo*, courts may not defer to such interpretations. Instead, the judiciary must independently construe the INA's statutory scheme. Upon such review, *Matter of Q. Li* and *Matter of Hurtado* constitute unlawful, ultra vires agency actions.

118. Moreover, The Due Process Clause applies to all persons in the United States, including non-citizens, and prohibits government action that strips them of liberty without fair process.

119. Prolonged civil detention, particularly in penal-like conditions and without a neutral, individualized determination that detention is necessary to serve a compelling government interest, violates due process. Respondents have detained Petitioner for more than six months without any bond hearing before a neutral decisionmaker and without clear and convincing evidence that he poses a flight risk or danger that cannot be mitigated by conditions of supervision. Continued detention violates the Due Process Clause.

120. Substantive due process prohibits civil detention that is punitive in its purpose or effect, including detention that is unreasonably prolonged. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("*due process requires that the nature and*

duration of commitment bear some reasonable relation to the purpose for which the individual is committed").

121. In *Demore v. Kim*, 538 U.S. 510, 527-28 (2003), the Supreme Court held that "*detention during deportation proceedings is a constitutionally valid aspect of the deportation process*", and "*that detaining "deportable criminal aliens pending their removal proceedings* [...] *necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.*"

Count III: Unlawful Prolonged Detention Under *Zadvydas*

122. Petitioner's continued detention also violates the substantive limits the Supreme Court imposed in *Zadvydas v. Davis*, which held that 8 U.S.C. § 1231(a)(6) contains an implicit temporal limitation on detention and does *not* authorize indefinite or prolonged confinement.

123. A fundamental point supporting Petitioners' claim is that the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), imposed a strict constitutional limit on detention under 8 U.S.C. § 1231(a)(6) — the post-final-order detention statute —holding that even individuals already ordered removed, and therefore in a more adverse legal position than § 1225(b) arriving aliens, may not be detained

indefinitely. The Court interpreted § 1231(a)(6) to contain an implicit "reasonable time" limitation and ruled that detention beyond six months becomes unconstitutional unless the Government proves removal is significantly likely in the reasonably foreseeable future. If due process forbids indefinite post-order detention of noncitizens who have already exhausted their rights and stand in the least favorable procedural posture, it follows a fortiori that arriving aliens detained under § 1225(b)—whose cases remain pending and who retain full statutory and constitutional protections—cannot be subjected to prolonged detention without meaningful review.

124. DHS sometimes attempts to classify long-term residents as "arriving aliens" to justify mandatory detention under § 1225(b). That classification is legally incorrect here. Petitioner is not an applicant for admission, was not apprehended at a port of entry, and has lived in the United States for decades.

125. Because Petitioner was arrested inside the United States, has long-standing residence, and is not seeking admission, he is properly detained under 8 U.S.C. § 1226(a)—the general civil detention statute—not § 1225(b). Section 1226(a) authorizes discretionary detention and expressly permits release on bond or conditional parole. It does not mandate detention, nor does it authorize prolonged or indefinite confinement.

126. In *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), the Supreme Court held that § 1225(b) mandates detention of arriving aliens during the pendency of their proceedings and does not provide a statutory right to periodic bond hearings. But Jennings addressed only statutory interpretation, not constitutional limits. And critically, Jennings applies only to individuals detained under § 1225(b), a category that does not include Petitioner.

127. The constitutional concerns identified in *Zadvydas*, that civil detention must be reasonably related to its purpose, must not be punitive, and cannot continue indefinitely, apply equally here. Although 'detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process,' *Demore v. Kim*, 538 U.S. 510, 523, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003), such detention must still comport with due process." (citations omitted)).

128. Although the Ninth Circuit and Supreme Court have thus far been silent about non-citizens' entitlement to bond hearings after prolonged detention, "the majority of courts across the country . . . [have] conclud[ed] that an unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process." *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772-73 (S.D. Cal. 2020) (citing *Yagao v. Figueroa*, 2019 U.S. Dist. LEXIS 54566, 2019 WL 1429582, at *2 (S.D. Cal. Mar. 29, 2019) ("[T]he [c]ourt agrees with the many district courts finding that prolonged detention without a bond

hearing likely violates due process.") See *Arechiga v. Archambeault*, No. 2:23-cv-00600-CDS-VCF, 2023 U.S. Dist. LEXIS 140947 (D. Nev. Aug. 11, 2023).

Count IV: Relief Under the All Writs Act

129. Under 28 U.S.C. § 1651 (the All Writs Act), this Court may issue "*all writs necessary or appropriate in aid of its respective jurisdiction and agreeable to the usages and principles of law.*"

130. Because Petitioner faces imminent transfer out of this District, which would place him outside the Court's jurisdiction or make it extremely difficult to enforce any relief this Court might order, such a transfer would seriously undermine the ability of this Court to grant habeas relief. Without being in the District (or effectively within its reach), the Court may be powerless to ensure his appearance, to receive evidence, to provide access to counsel, or to enforce any ordered release or protections.

131. Precedent supports this application of the All Writs Act where the preservation of jurisdiction and the ability to render meaningful relief are at risk. "*[W]hen the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release.*" Rumsfeld v. Padilla, 542 U.S. 426, 441 (2004).

132. Here, Petitioner has no adequate alternative remedy. If Respondents were

permitted to transfer his before this Court issues final habeas relief, the remedy could be rendered meaningless, Petitioner may be beyond reach, separated from counsel, or held under conditions that make legal access all but impossible. Under these circumstances, the All Writs Act authorizes this Court to issue injunctive or other relief to prevent the transfer and thereby preserve the jurisdiction necessary for meaningful habeas review.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

1) Assume jurisdiction and proper venue over this matter;

2) Issue an immediate Temporary Restraining Order prohibiting Respondents from transferring Petitioner once again or return him to Otay Mesa Detention Center and prevent the relief granted from being rendered meaningless.

3) Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Respondents to immediately release Petitioner from immigration detention or, in the alternative, order the immigration court to schedule a custody determination hearing without considering *Matter of Q.Li* and *Matter of Hurtado* within 10 days or any time this court deems reasonable.

4) Declare that Respondents' denial of bond under *Matter of Q–Li* and *Matter of Hurtado* was or would have been unlawful under 8 U.S.C. § 1226(a), the

Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment;

5) Grant declaratory relief holding that any transfer of Petitioner would violate his constitutional and statutory rights;

6) Enjoin Respondents from further detaining Petitioner without providing a lawful and individualized custody determination;

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

8) Grant such other and further relief as this Court deems just and proper.

/s/ Marcelo Gondim

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Warley Batista Silva, 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.

April 10, 2026.

/s/ Marcelo Gondim

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