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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

EDERSON DE MELO DAMASIO,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, CHRISTOPHER LAROSE,
Warden at Otay Mesa Detention Center,

Respondents.

Civil Case No.: 26-cv-2404-JO-BLM

**Amended Petition for Writ
of
Habeas Corpus**

**[Civil Immigration Habeas,
28 U.S.C. § 2241]**

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I. Introduction¹

Ederson De Melo Damasio was born in Brazil and entered the U.S. unlawfully in 2002. He lived in Massachusetts for the next 24 years and has never been deported. But when he was placed in removal proceedings, an IJ held that he was ineligible for bond under the Laken Riley Act due to an alleged arrest for assault and battery. Months later, the IJ corrected this error and found that Mr. Damasio had *not* been arrested for assault and battery but nevertheless remained ineligible for bond under *Matter of Yahure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). Because *Matter of Yahure-Hurtado* misinterprets the statute and violates due process, and given the length of Mr. Damasio's detention, this Court should order him released or at least grant him a bond hearing with safeguards.

STATEMENT OF FACTS

Mr. Damasio was born in Brazil and entered the United States unlawfully on September 9, 2002. Exhibit A, Declaration of Ederson De Melo Damasio, at ¶ 1. For nearly 24 years, he lived in Massachusetts. *Id.* at ¶ 1. He has never been deported. *Id.* at ¶ 1.

On September 8, 2025, Mr. Damasio was arrested in Massachusetts while he was driving to work. *Id.* at ¶ 2. ICE stopped him and surrounded his car. *Id.* at ¶ 2. They told Mr. Damasio he was being arrested because he had a felony, even though he has never been convicted of a felony. *Id.* at ¶ 2.

Mr. Damasio was sent to San Diego and placed in removal proceedings. *Id.* at ¶ 3. In his first bond hearing on December 23, 2025, the immigration judge said that he was not eligible for bond because he had been arrested for assault and

¹ As this Court noted in its Minute Order on April 20, 2026, at Docket 5, the text and content of the original pro se habeas petition filed at Docket 1 relates to a different individual named Erick Esau Osorio Nova, who has a petition pending before Judge Cheeks in 26-cv-2401-BJC-VET. Undersigned counsel has personally spoken to both Mr. Osorio Nova and Mr. Damasio and can confirm that they are two separate individuals. It appears that the filing of Mr. Osorio Nova's petition at Docket 1 in this case was a clerical error.

1 battery and thus could not get a bond under the Laken Riley Act. *Id.* at ¶ 3. But
 2 Mr. Damasio had no such arrest. *Id.* at ¶ 3.

3 On April 22, 2026, the immigration judge issued a new bond order. Exhibit
 4 B, Order of the Immigration Judge. In this order, the IJ agreed that Mr. Damasio
 5 did not have an arrest for assault and battery. *Id.* But the judge nevertheless
 6 denied Mr. Damasio bond, stating that because he “entered the country without
 7 admission or parole,” he was “still subject to mandatory detention under section
 8 235(b)(2). *Matter of Yahure-Hurtado*, 29 I&N 216 (BIA 2025).” *Id.*

9 ARGUMENT

10 I. Mr. Damasio is not subject to mandatory detention under 8 U.S.C. 11 § 1225(b)(2)(A).

12 A. Courts disagree with the BIA’s reasoning in *Yajure Hurtado*, 13 that stripped most noncitizens who enter without inspection of the right to seek bond.

14 In *Yajure Hurtado*, the BIA concluded that noncitizens who enter without
 15 inspection have no right to seek bond from an IJ, regardless of how long they
 16 have been residing in the country and irrespective of whether they were
 17 apprehended by immigration authorities. 29 I&N Dec. at 228.

18 Since *Yajure Hurtado* was decided, many immigrants who otherwise would
 19 have received bond hearings under § 1226(a) have challenged that decision in the
 20 federal courts. As mentioned above in the introduction and as the government
 21 recognizes in its Return, numerous courts disagree with the BIA’s decision. Doc.
 22 6 at 12-13. Courts broadly agree that the BIA’s novel constructions of
 23 § 1225(b)(2)(A) and § 1226(a) are not correct.

24 On the one hand, § 1225(b)(2)(A) is best read to apply to immigrants who
 25 are at or near the border or other ports of entry, for at least three reasons.

26 *First*, § 1225(b)(2)(A)’s statutory context strongly suggests that it applies
 27 only to persons apprehended at or near the border. As the Supreme Court
 28 recognized in *Jennings*, § 1225(b) is concerned “primarily [with those] seeking

1 entry,” and is generally imposed “at the Nation’s borders and ports of entry,
2 where the Government must determine whether [a noncitizen] seeking to enter the
3 country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281 at 297, 287(2018).
4 Throughout its text, the statute refers to “inspections”—a term not defined in the
5 INA but which typically connotes an examination upon or soon after physical
6 entry. 8 U.S.C. § 1225 (“Inspection by immigration officers; expedited removal of
7 inadmissible arriving [noncitizens]; referral for hearing”); *id.* § 1225(b)(1)–(2)
8 (referring to “inspections” in their titles); *id.* § 1225(d)(1) (authorizing
9 immigration officials to search certain conveyances in order to conduct
10 “inspections” where noncitizens “are being brought into the United States”).
11 Many statutory provisions, various regulations, and BIA precedent discuss
12 “inspection” in the context of admission processes at ports of entry, further
13 supporting the conclusion that § 1225 has a limited temporal and geographic
14 scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a; 8 U.S.C. § 1752a; 8 C.F.R.
15 § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Petitioner’s
16 interpretation accords.

17 *Second*, consistent with the statute’s overall focus on the moment of
18 physical entry, § 1225(b)(2)’s plain language limits the statute’s reach to persons
19 actively attempting to enter the United States. The statute applies only to those
20 who are *both* “applicants for admission” *and* in the process of “seeking
21 admission.” 8 U.S.C. § 1225(b)(2)(A). Because the statute’s first clause already
22 limits the provision to “applicants for admission,” the phrase “seeking admission”
23 must have a different meaning. Any other reading would constitute “an obvious
24 violation of the rule against surplusage.” *Romero*, 2025 WL 2403827, at *10.

25 On its face, the phrase “seeking admission” suggests an active attempt to
26 enter the country. Congress’s use of the present and present progressive tenses
27 “necessarily requires some sort of present-tense action,” excluding noncitizens in
28 the interior who are no longer in the process of seeking admission to the U.S.

1 *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL
 2 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the
 3 statute’s “present-tense active language”). “Realistically speaking,” it is hard to
 4 accept that the statute’s plain language could mean anything else: “[I]f Congress’s
 5 intention” to detain everyone who entered without inspection “was so clear, why
 6 did it take thirty years to notice?” *Romero*, 2025 WL 2403827, at *12.

7 *Third*, the statutory history supports a limited reading of § 1225(b)’s reach.
 8 When Congress amended § 1225(b)’s predecessor statute—which authorized
 9 detention only of arriving noncitizens—to include individuals who had not been
 10 admitted, legislators expressed concerns about recent arrivals to the United States
 11 who lacked the documents to remain in the country. H.R. Rep. No. 104-469, pt. 1,
 12 at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.).
 13 There was no suggestion in the legislative history that Congress intended to
 14 subject all people present in the United States after an unlawful entry to
 15 mandatory detention and thereby transform immigration detention and sweep
 16 millions of noncitizens into § 1225(b).

17 The BIA’s contrary reading of the legislative history is not persuasive.
 18 True, IIRIRA “altered the typology of immigration *proceedings* to ‘place[] on
 19 equal footing’ ‘all immigrants who have not been lawfully admitted.’” *Romero*,
 20 2025 WL 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d
 21 918, 928 (9th Cir. 2020)). But that “says nothing about *detention* pending the
 22 outcome of those proceedings.” *Id.* (emphasis added). All these indicators suggest
 23 that § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry,
 24 not people who have already entered the country.

25 On the other hand, § 1226(a) is best read to apply to some inadmissible
 26 persons. It cannot plausibly be the case that all inadmissible persons fall under
 27 § 1225(b)(2)(A) and none fall under § 1226(a).
 28

1 First, § 1226(a)'s statutory structure makes clear that it reaches some
 2 individuals who have not been admitted and have entered without inspection.
 3 Section 1226(c) exempts specific categories of noncitizens from the default
 4 eligibility to seek release on bond in § 1226(a). "Among the individuals carved
 5 out and subject to mandatory detention are certain categories of 'inadmissible'
 6 noncitizens." *Rodriguez*, 779 F. Supp. 3d at 1246 (quoting 8 § 1226(c)(1)(A), (D),
 7 (E)). The 2025 Laken Riley Act ("LRA") added to that list. "This 'new' category"
 8 of persons not eligible for bond "includes those noncitizens who are deemed
 9 inadmissible, including for being 'present in the United States without being
 10 admitted or paroled,' and who have been arrested, charged with, or convicted of
 11 certain crimes." *Rosado*, 2025 WL 2337099, at *9 (citing 8 U.S.C. §
 12 1226(c)(1)(E); LRA, Pub. L. No. 119-1). If § 1226(a) did not apply to
 13 inadmissible noncitizens, then the longstanding carve outs that refer to
 14 inadmissibility and Congress' most recent amendments would all be surplusage.
 15 See *Garcia*, 2025 WL 2549431, at *6. The better reading is the Supreme Court's
 16 in *Jennings*: that § 1226(a) "applies to aliens already present in the United States."
 17 583 U.S. at 303.

18 Second, § 1226(a)'s legislative history supports Petitioner's reading. "After
 19 passing the IIRIRA, Congress declared the new § 1226(a) 'restates the current
 20 provisions in [the predecessor statute] regarding the authority of the Attorney
 21 General to arrest, detain, and release on bond' a noncitizen 'who is not lawfully in
 22 the United States.'" *Rosado*, 2025 WL 2337099, at *9. Because noncitizens
 23 deemed inadmissible "were entitled to discretionary detention under § 1226(a)'s
 24 predecessor statute, and Congress declared the statute's scope unchanged by
 25 IIRIRA," § 1226(a) must "allow for a discretionary release on bond for"
 26 inadmissible noncitizens, too. *Id.*

27 Thus, the best reading of 8 U.S.C. §§ 1225, 1226 shows that petitioner is
 28 eligible for bond. And under the Supreme Court's recent decision in *Loper Bright*

1 v. *Raimondo*, this Court must independently interpret the meaning and scope of
 2 §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S.
 3 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025
 4 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
 5 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA’s decision in *Yajure*
 6 *Hurtado* is a deviation from the agency’s long-standing interpretation of §§ 1225,
 7 1226; is not guidance issued contemporaneously with enactment of the relevant
 8 statutes; and contradicts the statutory interpretations of dozens of federal courts,
 9 this Court should give it no weight. If anything, the government’s “decades of
 10 practice” providing bond hearings to those who entered without inspection is a
 11 more persuasive guide to the proper outcome here. *Martinez*, 2025 WL 2084238,
 12 at *4.

13 **B. Detaining Mr. Damasio without a bond hearing violates 8 U.S.C.**
 14 **§ 1226(a), associated regulations, the administrative procedures**
act, and the Fifth Amendment right to due process.

15 Both the 8 U.S.C. § 1226(a) and its associated regulations entitle Petitioner
 16 to a bond hearing. *See* 8 C.F.R. §§ 326.1(d), 1236.1, 1003.19(a)-(f). Accordingly,
 17 the Fifth Amendment’s due process clause requires the government to provide the
 18 legally required bond hearing before Petitioner is detained. *See Hernandez-Lara*
 19 *v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021).

20 The statute and regulations implement the due process protection that
 21 attends any civil detention. *See Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir.
 22 2018) (expressing “grave doubts that any statute that allows for arbitrary
 23 prolonged detention without any process is constitutional or that those who
 24 founded our democracy precisely to protect against the government’s arbitrary
 25 deprivation of liberty would have thought so”). The Supreme Court has
 26 “repeatedly recognized that civil commitment for any purpose constitutes a
 27 significant deprivation of liberty that requires due process protection,” including
 28 an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425

(1979); *see also* *United States v. Salerno*, 481 U.S. 739, 755 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997).

Here, Mr. Damasio has not received a bond hearing. That violated the statute, regulations, due process, and the Administrative Procedures Act.

C. The Ninth Circuit’s stay in *Maldonado Bautista* does not prevent this Court from granting relief.

In *Maldonado-Bautista v. DHS*, 25-cv-1873-SSS-BFM (C.D. Cal.), a district judge granted national, class-wide relief to plaintiffs challenging the BIA’s interpretation of §§ 1225, 1226. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025), *judgment entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). The Ninth Circuit subsequently stayed the order, “insofar as the district court’s judgment extends beyond the Central District of California.” *Maldonado Bautista v. DHS*, No. 26-1044, Dkt. No. 5.1 (Mar 6, 2026). The Ninth Circuit left the judgement in place in the Central District. *Id.*

Because of the stay order, the government is no longer required to follow *Maldonado Bautista* in this district. But the stay order does not indicate any opinion on the stay order’s merits or prevent this Court from finding in Petitioner’s favor. It means only that this Court must do an independent evaluation on the merits. For the reasons given above, that independent evaluation demands relief here.

D. Given the length of Mr. Damasio’s detention, the appropriate remedy is release or at least a bond hearing with safeguards.

Mr. Damasio has been detained in ICE custody since September 8, 2025—nearly eight months. Exh. A at ¶ 2. Given the prolonged nature of his detention, which is largely attributable to the IJ’s error regarding his arrest history, the remedy for this due process violation is release, rather than a bond hearing.

1 The remedy of release is also supported by serious concerns about the
2 neutrality of the immigration courts. A report from The New York Times
3 documents not just how Respondents have purged IJs seen as insufficiently
4 supportive of the President but also discourage those IJs who remain from
5 granting bond. For example, the chief immigration judge now “receive[s] daily
6 reports about bond rulings.” Nicholas Nehamas et al., *Immigration Judges Are*
7 *Purged as Trump Speeds Deportations*, N.Y. Times, April 12, 2026, at A1.² “Her
8 office has sometimes emailed judges asking for an explanation about their
9 decisions to grant bond,” while there is no indication that she seeks explanation
10 for the denial of bond. *Id.*

11 The message is clear. As one IJ told the Times, “the “pressure to deny bond
12 is overt.” *Id.* That IJ explained that “there was a requirement to inform a
13 supervisor every time bond was granted, underscoring how closely the
14 administration was monitoring decisions.” *Id.* Thus, this Court should consider
15 granting release, rather than subjecting Mr. Damasio to a biased bond hearing and
16 likely due process violations.

17 But if Court opts to grant a bond hearing, it should at least impose certain
18 procedural safeguards, including that: 1) the government bear the burden of
19 establishing by clear and convincing evidence that Petitioner poses a danger or
20 flight risk; 2) the IJ shall consider alternative conditions of release and
21 Petitioner’s ability to pay bond; and 3) Respondents shall make a complete record
22 of the bond hearing available to Petitioner and his counsel.

23 **II. This Court must hold an evidentiary hearing on any disputed facts.**

24 Resolution of a prolonged-detention habeas petition may require an
25 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).
26 Mr. Damasio hereby requests such a hearing on any material, disputed facts.

27 _____
28 ² See <https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html>

III. Prayer for relief

Petitioner respectfully asks that this Court order Respondents to immediately release him, or in the alternative, order a bond hearing at which 1) the government bears the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk; 2) the IJ shall consider alternative conditions of release and Petitioner's ability to pay bond; and 3) Respondents shall make a complete record of the bond hearing available to Petitioner and his counsel.

Respectfully submitted,

Dated: April 29, 2026

s/ Kara Hartzler

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