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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Fernando Zarate-Vasquez,

Petitioner,

v.

Eric Rokosky, Warden, Eloy Detention Center;

Christopher McGregor, Field Office Director of Phoenix Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

Todd M. Lyons, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Markwayne Mullin, in his Official Capacity, Secretary, U.S. Department of Homeland Security; and

Todd Blanche, in his Official Capacity, Attorney General of the United States;

Respondents.

Case No.

A-[redacted]

**PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Challenge to Unlawful Detention Under 28 U.S.C. § 2241

## INTRODUCTION

1. Petitioner Fernando Zarate-Vasquez is a Mexican national who lived in the United States for approximately fifteen years without any encounters with immigration authorities. Petitioner last entered the United States in or about the year 2011 and thereafter

established deep and longstanding ties to this country. For fifteen years, he lived openly in the interior of the United States and was never encountered, detained, or processed by U.S. immigration officials.

2. On March 21, 2026, Petitioner was first encountered by Immigration and Customs Enforcement ("ICE") as part of a civil immigration enforcement action, not as a result of any criminal arrest, conviction, or alleged criminal conduct. He was encountered in the interior of the United States, long after his entry, and was placed into removal proceedings based solely on alleged civil immigration violations.

3. Despite these undisputed facts, Respondents have detained Petitioner without affording him a bond hearing, asserting that he is subject to mandatory detention pursuant to *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). That position as well as the holding in *Yajure Hurtado* is contrary to the Immigration and Nationality Act and decades of settled law. Individuals like Petitioner—who entered the United States years ago, are encountered in the interior, and are not arriving at or near the border—are governed by 8 U.S.C. § 1226(a), which authorizes discretionary detention and entitles them to an individualized bond hearing before an immigration judge.

4. By detaining Petitioner without such a hearing, Respondents have exceeded their statutory authority and violated fundamental principles of due process. This Petition seeks a writ of habeas corpus ordering Respondents to release Petitioner from custody, or alternatively, provide him with a prompt bond hearing under § 1226(a).

**JURISDICTION & VENUE**

5. This Court has jurisdiction under 28 U.S.C. §§ 2241 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Fifth Amendment to the United States Constitution.

6. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See Zadvydas v. Davis,* 533 U.S. 677 (2001).

7. Federal courts also have federal question jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702.

8. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district at the Eloy Detention Center. Furthermore, a substantial part of the events or omissions giving rise to this action occurred and continue to occur at ICE's Phoenix Field Office in Phoenix, Arizona, within this division.

**PARTIES**

9. Petitioner Fernando Zarate-Vasquez is a native and citizen of Mexico. He is currently detained at the Eloy Detention Center.

10. Respondent Eric Rokosky is, upon information and belief, the Warden of the Eloy Detention Center, where Petitioner is being detained. He is Petitioner's immediate legal custodian and thus a proper respondent in this matter. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).

11. Respondent Christopher McGregor is the Field Office Director of the ICE Enforcement and Removal Operations (ERO) Phoenix Field Office and is the federal agent charged with overseeing all ICE detention centers in Arizona, including the Eloy Detention

Center. Mr. McGregor is responsible for Petitioner's detention, and thus a legal custodian of Petitioner.

12. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE) and is the federal agent charged with overseeing all ICE operations. He is sued in his official capacity.

13. Respondents Todd Blanche and Markwayne Mullin are, respectively, the Attorney General of the United States and the Secretary of Homeland Security. As such, they are responsible for maintaining the immigration detention system. They are thus the ultimate legal custodians of Petitioner.

**STATEMENT OF FACTS**

14. Petitioner last entered the United States in or about the year 2011. He was not encountered by immigration authorities upon entry and remained in the United States without any immigration-related incident until he was encountered by ICE in March 2026.

15. Petitioner was taken into immigration custody on or about March 21, 2026, as a result of a civil immigration enforcement, not any criminal arrest or allegation. He is currently detained at the Eloy Detention Center.

16. Pursuant to *Yajure Hurtado*, Respondents take the position that Petitioner is subject to mandatory detention and that an immigration judge lacks jurisdiction to conduct a discretionary bond hearing in his case.

17. Recently, the United States District Court for the Central District of California certified a Rule 23(b)(2) class in *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). The class consists of:

> "[a]ll noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time

the Department of Homeland Security makes an initial custody determination." *Id.* at 9.

18. On December 18, 2025, the *Bautista* court entered judgment declaring that "Bond Eligible Class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2)," and vacating "the Department of Homeland Security policy described in the July 8, 2025, 'Interim Guidance Regarding Detention Authority for Applicants for Admission'" as unlawful under the Administrative Procedure Act. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485, at *1 (C.D. Cal. Dec. 18, 2025).

19. On February 18, 2026, the *Bautista* court further vacated *Yajure Hurtado*. The vacatur was expressly predicated on the agency's noncompliance with the Administrative Procedure Act and the court's prior orders. Thus, while the December 18, 2025, judgment did not expressly vacate *Yajure Hurtado*, the February 18, 2026, order confirms that the agency action at issue—including its reliance on *Yajure Hurtado*—is procedurally defective and unlawfully implemented.

20. Petitioner remains detained by ICE without having received an individualized custody determination, and without any opportunity to demonstrate that he does not pose a danger to the community or a flight risk sufficient to justify detention under INA § 236(a).

## ARGUMENT AND GROUNDS FOR RELIEF

### I. PETITIONER'S DETENTION IS GOVERNED BY INA § 236(a), NOT INA § 235(b)

21. Petitioner is detained without a final order of removal. Accordingly, DHS's detention authority, if any, must arise under INA § 236(a), 8 U.S.C. § 1226(a), which governs the arrest and detention of noncitizens already present in the United States pending removal proceedings.

22. Respondents contend that Petitioner is subject to mandatory detention under INA § 235(b)(2) on the theory that he is an "applicant for admission." That position is foreclosed by the statutory framework and by recent district court decisions, including the thorough and persuasive analysis in *Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (D. Ariz. Oct. 3, 2025).[1]

23. As *Echevarria* explains, INA § 1226(a) is the default detention statute for noncitizens who have already entered and are present in the United States, while § 1225(b) applies to noncitizens seeking admission at or near the time of entry. *Echevarria*, slip op. at 6–7 (*citing Jennings v. Rodriguez,* 583 U.S. 281, 288–89 (2018); *Nielsen v. Preap*, 586 U.S. 392, 395–97 (2019)).

24. Petitioner entered the United States approximately fifteen years ago, was not encountered upon entry, and lived continuously in the interior of the country until ICE first encountered him on or about March 21, 2026. At the time of that encounter, Petitioner was not arriving at the border, not seeking admission, and not undergoing inspection for entry.

25. Although § 1225(a)(1) provides that certain noncitizens "shall be deemed" applicants for admission, *Echevarria* makes clear that this deeming provision does not automatically trigger § 1225(b)(2) detention. Rather, § 1225(b)(2) applies only where an

[1] Petitioner is aware of the Fifth Circuit's holding in *Buenrostro-Mendez v. Bondi*, --- F.4th ----, 2026 WL 323330 (5th Cir. Feb. 6, 2026) concluding that certain unadmitted applicants apprehended within the United States remain subject to detention under 8 U.S.C. § 1225(b)(2)(A). Shortly thereafter, one court in this District found that reasoning persuasive. See *Chavez v. Noem*, No. 26-cv-00323-PHX-MTL (D. Ariz. Feb. 9, 2026). However, *Buenrostro-Mendez* is not binding on this Court. Prior to that decision, courts within the District of Arizona consistently held that § 1226(a) governs detention of noncitizens encountered within the interior after entry, rejecting the same statutory interpretation later adopted by the Fifth Circuit. Even following *Buenrostro-Mendez*, other judges in this District have continued to apply § 1226(a) and have not adopted the Fifth Circuit's reasoning. *See, e.g., Fernando v. Rokowsky*, No. 2:26-cv-00959-JCH (D. Ariz. Feb. 12, 2026); *Hernandez v. Rokowsky*, No. 2:26-cv-00845-KML (D. Ariz. Feb. 13, 2026); *Jimenez v. Rokowsky*, No. 2:26-cv-01000-JCH (D. Ariz. Feb. 13, 2026); *Marquez v. Rokowsky*, No. 2:26-cv-00996-DWL (D. Ariz. Feb. 19, 2026). Accordingly, while Petitioner acknowledges the existence of *Buenrostro-Mendez*, the prevailing interpretation within this District remains that detention in circumstances such as those presented here is governed by § 1226(a), not § 1225.

examining immigration officer determines that an applicant for admission who is "seeking admission" is not clearly entitled to enter. *Echevarria*, slip op. at 8–13.

26. As the court emphasized in *Echevarria*, the phrase "seeking admission" has an active, temporal meaning and cannot be stretched to cover a person who has already been living in the United States for decades. *Id.* at 10–13. To hold otherwise would "push the statutory text beyond its breaking point." *Id.* (*quoting Torres v. Barr*, 976 F.3d 918, 926 (9th Cir. 2020) (en banc)).

27. Petitioner is plainly "already in the country pending the outcome of removal proceedings," and therefore his detention is governed by INA § 236(a). *Jennings*, 583 U.S. at 297; *Echevarria*, slip op. at 7.

28. Under § 236(a), detention is discretionary, and the statute expressly authorizes release on bond or conditional parole. 8 U.S.C. § 1226(a). Noncitizens detained under this provision are entitled to an individualized bond hearing before an immigration judge.

29. Because Petitioner is not subject to expedited removal, has no final order of removal, and was encountered in the interior long after entry, any detention predicated on INA § 235(b)(2) is ultra vires and unlawful.

30. For this reason alone, Petitioner's continued detention without a bond hearing violates the Immigration and Nationality Act and must be remedied.

31. Where a noncitizen is unlawfully denied a bond hearing under INA § 236(a), the appropriate remedy under 28 U.S.C. § 2241 is an order requiring DHS to provide a prompt bond redetermination hearing before an immigration judge, or release the petitioner from custody. *Echevarria*, slip op. at 19–20.

32. Petitioner therefore requests that this Court grant the writ and order his immediate release from custody. In the alternative, should the Court determine that immediate release is

not warranted, Petitioner requests that the Court require Respondents to provide a prompt bond period within a specified period, at which the government bears the burden of justifying continued detention under INA § 236(a).

**PRAYER FOR RELIEF**

33. Petitioner is being unlawfully detained in violation of the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. WHEREFORE, Petitioner respectfully requests that this Court:

a. Order Respondents to answer the petition on an expedited basis due to Petitioner's detained status;

b. Declare that Petitioner's arrest and re-detention violate the Due Process Clause of the Fifth Amendment, the INA, and implementing regulations;

c. Grant a writ of habeas corpus directing Respondents to immediately release Petitioner from custody without restraints on his liberty beyond those that existed prior to his detention;

d. Order that Respondents cannot re-detain Petitioner without notice and a pre-deprivation hearing before this Court where the government bears the burden of justifying re-detention by clear and convincing evidence;

e. In the alternative, order Respondents to provide Petitioner with a prompt bond hearing pursuant to INA § 236(a) in which the government bears the burden of justifying Petitioner's continued detention by clear and convincing evidence and the Court considers Petitioner's ability to pay and alternatives to detention;

f. Order that Respondents return Petitioner's property; and

g. Grant further relief as the Court deems just and proper.

Dated: April 22, 2026

Respectfully submitted,

*/s/ Spencer C. Lee*
Spencer C. Lee
Attorney for Petitioner

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

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this April 22, 2026, in Phoenix, AZ.

*/s/ Spencer C. Lee*
Spencer C. Lee
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

This is to certify that on April 22, 2026, the foregoing PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF was served by certified mail, on:

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