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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Cesar Estuardo Diego-Garcia,

Petitioner,

v.

John Cantu, Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement;

Markwayne Mullin, Secretary, U.S. Department of Homeland Security;

Todd Blanche, Acting U.S. Attorney General;

Eric Rokosky, Warden, Eloy Detention Center;

Todd Lyons, Acting Director, Immigration and Customs Enforcement and Removal Operations.

Respondents.

Case No.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

INTRODUCTION

1. Since at least the passage of the Immigration and Nationality Act (INA) of 1952, noncitizens who entered the country illegally could generally be released on bond while their removal proceedings were pending. Yet last year, U.S. Immigration and Customs Enforcement (ICE) "revisited" its position and determined that all noncitizens who are present without admission are subject to mandatory detention while in removal proceedings. The Board of Immigration Appeals (BIA) recently reached the same conclusion in a precedential decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding for the first time that all noncitizens who entered the country without admission are categorically ineligible for bond regardless of how long they have lived in the United States.

2. Federal judges have issued hundreds of decisions finding the government's novel interpretation incompatible with the INA. *See infra* nn. i, ii. The provision on which the government relies states that noncitizens who are "seeking admission" are subject to mandatory detention while in removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Congress defined "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Thus, by its plain terms, the provision only applies to noncitizens who present themselves at a port of entry. And in addition to disregarding the plain text of § 1225(b)(2)(A), the government's contrary interpretation renders superfluous other provisions of the INA that require the mandatory detention of noncitizens who have engaged in criminal activity—including a provision, § 1226(c)(1)(E), enacted last year in the Laken Riley Act.

3. The government's argument also flouts the Justice Department's own regulations. Since 1997, the Justice Department has precluded immigration judges from granting bond to so-called "arriving aliens"—*i.e.*, those who seek admission at a port of entry—but not to those who entered the country without inspection. This distinction was the result of a deliberate choice made by the Attorney General following the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, Div. C, 110 Stat. 3009-546. And under bedrock principles of administrative law, agencies cannot "overrule" by adjudication regulations that were promulgated after notice and comment. *Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980).

4. As a result of the government's new interpretation, every noncitizen who entered the country without being admitted is subject to mandatory detention for the duration of their removal proceedings. One of those noncitizens is Cesar Estuardo Diego-Garcia, a 36-year old Guatemalan man who has resided in the United States about nineteen years. Petitioner is currently detained at a federal detention center in Arizona. Absent this Court's intervention, he will remain detained for the duration of his removal proceedings.

JURISDICTION

5. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Eloy Detention Center in Eloy, Arizona.

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).

7. 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.

8. The "zipper clause" at 8 U.S.C. § 1252(b)(9), which channels "[j]udicial review of all questions of law . . . including interpretation and application of constitutional and statutory provisions, arising from any action taken . . . to remove an alien from the United States" to the appropriate federal court of appeals, does not apply because that section applies only to review of removal orders, and Petitioner does not seek review of orders of removal but of custody. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 171364, at *9-10 (C.D. Cal. July 28, 2025).

9. The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to hear "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." The Supreme Court previously characterized § 1252(g) as a narrow provision, applying "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). In doing so, the Supreme Court found it "implausible that the mention of *three discrete events* along the road to deportation was a shorthand way to referring to *all claims arising from* deportation proceedings." *Id.* (emphasis added). Petitioner's challenge to his detention does not fall within these discrete actions. *Maldonado Bautista*, 2025 U.S. Dist. LEXIS 171364 at *11.

10. Subsection 2 of 8 U.S.C. § 1252(a), titled "Judicial Review of Orders of Removal," contains four subsections, which outline categories of claims that are not subject to judicial review. § 1252(a)(2)(A)–(D). None of these subsections precluding judicial review apply to this matter, as the specified statutory provisions do not cite § 1225(b)(2)(A) or § 1226(a), which are the two provisions Petitioner challenges. Thus, no part of § 1252 deprives this Court of jurisdiction. *Maldonado Bautista*, 2025 U.S. Dist. LEXIS 171364 at *12. As such, the Court has jurisdiction over Petitioner's challenge to his detention.

VENUE

11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for Arizona, the judicial district in which Petitioner currently is detained.

12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Arizona.

REQUIREMENTS OF 28 U.S.C. § 2243

13. 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, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

14. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

15. Petitioner Cesar Estuardo Diego-Garcia is a 36-year-old resident of San Pedro, California. He entered the United States on approximately April 1, 2007. Exhibit A. ICE charged Petitioner with removability under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien in the United States without being admitted or paroled and under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document. *Id.* He is presently detained at the Eloy Detention Center in Eloy, Arizona.

16. Respondent John Cantu is the Director of the Phoenix Field Office of ICE's Enforcement and Removal Operations division, which oversees operations at the Eloy Detention Center. As such, Mr. Cantu is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

17. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA,

and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

18. Respondent Todd Blanche is the Acting United States Attorney General. He is responsible for the Executive Office for Immigration Review (EOIR), which is the component of the U.S. Department of Justice that is responsible for implementing and enforcing the INA in removal proceedings, including for custody redetermination in bond hearings.

19. Respondent Eric Rokosky is the warden of the Eloy Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

20. Respondent Todd Lyons is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner.

LEGAL FRAMEWORK

Immigration and Nationality Act and Federal Regulations

21. The INA prescribes three basic forms of detention for the vast majority of noncitizens who are alleged or found to be removable from the United States.

22. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally 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 engaged in specified criminal and terrorist activity are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

23. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other noncitizens seeking admission under § 1225(b)(2).

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

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

26. 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 1225(b)(2)(A) states that if an "examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for [removal proceedings]." The IIRIRA also defined "admission" in 8 U.S.C. § 1101(a)(13)(A) as the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." § 301, 110 Stat. 3009-575.

27. Consistent with these statutory provisions, federal regulations preclude immigration judges from granting bond to "arriving aliens," 8 C.F.R. § 1003.19(h)(1)(B)(ii), a phrase defined in relevant part as "applicant[s] for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. §

1001.1(q). The decision to preclude immigration judges from granting bond to arriving aliens—as distinct from all noncitizens who entered without admission—was the product of notice and comment rulemaking in early 1997 following the enactment of the IIRIRA.

28. As the regulations were initially proposed, all "[i]nadmissible aliens in removal proceedings" would have been ineligible for bond. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal*, 62 Fed. Reg. 444, 483 (Jan. 3, 1997). After receiving comments, however, the Attorney General deleted the proposed provision and replaced it with one that would apply only to "[a]rriving aliens."[1] *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10361 (March 6, 1997). As the Attorney General explained, "[t]he effect of this change [was] that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not." *Id.* at 10323. In other words, "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." *Id.*

29. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice in which noncitizens who were not deemed "arriving" were

[1] This provision was originally promulgated as 8 C.F.R. § 236.1(c)(5)(i) and was later transferred to 8 C.F.R. § 1003.19(h)(2)(i)(B).

entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); 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)).

30. Section 1226 was most recently amended last year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Congress provided that noncitizens who entered the country without being admitted are subject to mandatory detention if they were thereafter charged with, arrested for, convicted of, or admitted committing various offenses. § 1226(c)(1)(E). As may be apparent, this provision would be superfluous if all noncitizens who were present without admission were already subject to mandatory detention under § 1225(b)(2)(A).

Exhaustion and Futility

31. Exhaustion of administrative remedies is required "[w]here Congress specifically mandates." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). But where, as here "Congress has not clearly required exhaustion, sound judicial discretion governs." *Id.* (citations omitted). Under these principles, prudential exhaustion is not required where a request for relief before the agency would be futile because the agency has "predetermined the issue before it." *Id.* at 148. Further, "a court may waive the prudential exhaustion requirement if 'administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.'" *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

32. The BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, renders prudential exhaustion futile in bond cases involving individuals who entered the United States without inspection. *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025). Although Petitioner has just received a denial of his bond request by an immigration judge, *Matter of Yajure Hurtado* "predetermine[s]" the outcome of that appeal. *McCarthy*, 503 U.S. at 148. Prudential exhaustion is therefore unnecessary, and the Court should take jurisdiction over Petitioner's case.

33. A motion to reconsider has been filed in *Matter of Yajure Hurtado*. The motion challenges the Board's statutory analysis and asks it to withdraw its decision because (a) the underlying removal proceedings had concluded by the time the Board issued its decision, making the case moot, and (b) the decision conflicts with longstanding regulations issued by the Attorney General.[2]

Federal Court Decisions Regarding Detention of Individuals Who Are Present Without Admission

34. Federal judges have issued over 300 decisions finding the government's novel interpretation incompatible with the INA. *See infra* nn. i & ii. These judges have not been unsparing in their criticism of the government's newfound position. One called it a "nonstarter." *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 at *10 (D. Mass. Sept. 5, 2025). Another called it "willfully blind." *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 at *25 (D. Md. Aug. 24, 2025). Another called it "a policy argument,

[2] The Board's Decision in *Matter of Yajure Hurtado* is also not entitled to deference because it contravenes the statutory language and legislative history, and it deviates from longstanding agency practice and regulations.

projected onto Congress." *Romero v. Hyde*, No. 25-11631, __ F. Supp. 3d __, 2025 WL 2403827 at *28 (D. Mass. Aug. 19, 2025). And another noted that the government "could not identify any federal court that has adopted their novel reading of § 1225(b)(2)(A)." *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 at *20 (E.D. Mich Sept. 9, 2025).

35. The district court in *Maldonado Bautista v. Santacruz*, 5:25-cv-01873 (C.D. Cal. Nov. 20, 2025) (Sykes, J.), granted nationwide class certification and summary judgment on this issue, though its decision is currently stayed outside the Central District of California. *Maldonado Bautista v. DHS*, No 26-1044, Docket 5.1 (9th Cir. Mar. 6, 2026) (order granting emergency stay) Specifically, the court declared illegal ICE's policy, and the BIA's decision in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), requiring detention without bond of all persons who entered without inspection or admission. *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 231977, at *26 (C.D. Cal. Nov. 25, 2025) The Ninth Circuit has stayed its implementation pending the outcome of another class action brought in Washington, in which the district court had similarly struck *Yajure*: *Rodriguez Vazquez v. Bostock,* No. 25-6842 (9th Cir.) (appealing *Rodriguez Vazquez v. Bostock,* 779 F. Supp. 3d 1239 (W.D. Wash. 2025)).

36. It is not difficult to understand why federal district courts have rejected the government's novel interpretation, as the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

37. By its terms, § 1225(b)(2)(A) only applies to noncitizens who are "seeking admission," and Congress defined "admission" as the "lawful entry of the alien into the

United States after inspection and authorization by an immigration officer." § 1101(a)(13)(A). Accordingly, "[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the country would read the word 'entry' out of the definitions of 'admitted' and 'admission.'" *Chafla v. Scott*, No. 2:25-cv-00437-SDN, 2025 U.S. Dist. LEXIS 184909, at *19 (D. Me. Sep. 21, 2025).

38. Accordingly, § 1225(b) applies to people arriving at U.S. ports of entry. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States, and individuals who entered without inspection and have never affirmatively applied for admission or parole do not fit within that category. 8 U.S.C. § 1225(b)(2)(A); *see Reyes v. Raycraft*, No. 25-cv-12546, 2025 U.S. Dist. LEXIS 175767, at *19 (E.D. Mich. Sep. 9, 2025) (specifically rejecting the Board's analysis of the statute in *Matter of Yajure Hurtado* and concluding that it is "difficult to square a noncitizen's continued presence with "seeking admission" when that noncitizen never attempted to obtain lawful status"); *Vasquez-Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 U.S. Dist. LEXIS 171714, at *18 (S.D. Cal. Sep. 3, 2025) (rejecting DHS' contention that an individual who entered the United States without inspection "is automatically understood to be 'seeking admission' within the meaning of § 1225(b)(2)(A), without need[ing] to affirmatively apply for admission or parole"); *see also Arrazola Gonzalez v. Noem*, No. 5:25-cv-01789, 2025 U.S. Dist. LEXIS 158808, at *6-7 (C.D. Cal. Aug. 15, 2025) (concluding that habeas petitioner showed likelihood of success on the merits of argument that "[t]o ignore the 'seeking admission' language [in 8 U.S.C. §

1225(b)(2)(A) . . . would render the language purposeless and violate a key rule of statutory construction").

39. Throughout its text, 8 U.S.C. § 1225 defines its scope by reference to "inspections"—a term not defined in the INA but which typically connotes an examination upon or soon after physical entry. *See* 8 U.S.C. § 1225 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing"); §§ 1225(b)(1)–(2) (referring to "inspections" in their titles); § 1225(d)(1) (authorizing immigration officials to search certain conveyances to conduct "inspections" where noncitizens "are being brought into the United States"). Many statutory provisions, various regulations and agency precedent discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 1225(b) has a limited temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§ 1187(h)(2)(B)(i), 1225A; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010)).

40. Indeed, the Supreme Court has explained that this mandatory detention scheme applies to noncitizens who are "arriving in the United States," *Clark v. Martinez*, 543 U.S. 371, 373 (2005), "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

41. As importantly, § 1226(c) subjects numerous categories of inadmissible noncitizens to mandatory detention. If "the [BIA was] correct that § 1225(b)'s mandatory detention provisions apply to all persons who have not been admitted into the United States, that would render superfluous those provisions of § 1226 that apply to certain categories

of inadmissible aliens, such as § 1226(c)(1)(A), (D), and (E)." *Hasan v. Crawford*, __ F. Supp. 3d __, 2025 WL 268225 at *22 (E.D. Va. Sept. 19, 2025) (Brinkema, J.). Indeed, the BIA's interpretation would "render the Laken Riley Act a meaningless amendment, since it would have prescribed mandatory detention for noncitizens already subject to it." *Aceros v. Kaiser*, 2025 WL 2637503 at *28 (N.D. Cal. Sept. 12, 2025).

42. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

FACTS

43. Petitioner Cesar Estuardo Diego-Garcia is a 36-year-old resident of San Pedro, California. He entered the United States on approximately April 1, 2007. Exhibit A. On information and belief, he is the mother of three U.S. citizen children ranging from two to fourteen years old. To wit, Petitioner and his partner were detained during targeted immigration enforcement while driving on vacation near Lake Havasu on April 12, 2026.

44. Petitioner was transferred to Eloy and issued a Notice to Appear on April 12, 2026 charging removability under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien in the United States without being admitted or paroled and under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document. Exhibit A.

45. Based on Petitioner's nineteen years of United States residency and three minor U.S. Citizen children, he is eligible to apply in Immigration Court for 8 U.S.C. §

1229b(b). Petitioner's next master calendar hearing will take place in the Eloy Immigration Court on May 6, 2026. Exhibit B. Petitioner is still detained at a federal detention center in Arizona. Absent this Court's intervention, he will remain detained for the duration of his removal proceedings.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

46. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

47. The mandatory detention provision at 8 U.S.C. § 1225(b)(2)(A) does not apply to all noncitizens residing in the United States who entered the country without being admitted. By its terms, § 1225(b)(2)(A) only applies to noncitizens who are "seeking admission." The term "admission" is defined to require a "lawful entry" following "inspection and authorization by an immigration officer." § 1101(a)(13)(A). Accordingly, § 1225(b)(2)(A) does not apply to noncitizens like Petitioner who were not inspected or admitted and are later apprehended outside a port of entry. Such noncitizens are instead detained under § 1226 while in removal proceedings, and are thus eligible for release on bond under § 1226(a) unless they are subject to mandatory detention under § 1226(c).

48. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued detention without a bond hearing and violates the INA.

COUNT II
Violation of Federal Regulations

49. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

50. Under 8 C.F.R. § 1236.1(d)(1), immigration judges may grant bond to any noncitizen in removal proceedings who is not subject to a final order or to any of the exceptions in 8 C.F.R. § 1003.19. None of the exceptions in § 1003.19 preclude immigration judges from granting bond to noncitizens simply for being present without admission.

51. As relevant here, the regulations only preclude immigration judges from granting bond to noncitizens who qualify as "arriving aliens," § 1003.19(h)(1)(B)(ii), *i.e.*, those who presented themselves for inspection at a port of entry. When these regulations were initially promulgated, the Justice Department explained that "inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge." 62 Fed. Reg. 10312, 10323 (March 6, 1997). The Justice Department thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before Immigration Judges (IJs) under 8 U.S.C. 1226 and its implementing regulations.

52. Notwithstanding these regulations, the BIA held in *Matter of Yajure Hurtado* that all noncitizens who are present without admission are ineligible to receive a bond from IJs. Application of this decision to Petitioner unlawfully mandates his continued detention without a bond hearing in violation of §§ 1236.1 and 1003.19

COUNT III
Violation of Due Process

53. Petitioner repeats, re-alleges, and incorporates by reference every allegation in the preceding paragraphs as if fully set forth herein.

54. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

55. Petitioner has a fundamental interest in liberty and being free from official restraint.

56. The government's detention of Petitioner and its issuance of a precedential decision precluding his release violates her right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Set this matter for expedited consideration;

c. Declare that no statute or regulation prohibits an immigration judge from holding a custody redetermination hearing for Petitioner, and that Petitioner is properly detained, if at all, under 8 U.S.C. 1226(a);

d. Issue a Writ of Habeas Corpus and conduct a bond hearing within 7 days, or order Petitioner's release within 7 days unless Respondents provide him with a bond hearing before an immigration judge;

e. Prohibit DHS from limiting bond relief by either invoking a stay to prevent bond payment or placing electronic monitoring on the Petitioner;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Grant any other and further relief that this Court deems just and proper.

DATED this 24th day of April, 2026.

s/Gregory P. Fay
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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 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 24th day of April, 2026 in Phoenix, Arizona.

s/Gregory P. Fay

Gregory P. Fay
Attorney for Petitioner