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

JUAN CRUZ PEDRAZA,

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.

Case No.: 26-cv-2697-LL-MSB

**Amended Petition
for a
Writ of Habeas Corpus**

¹ Federal Defenders of San Diego, Inc., has met with Mr. Cruz Pedraza and believes appointment of counsel would be beneficial. His financial eligibility for counsel is included in an under-oath statement submitted as an attachment to this amended petition.

INTRODUCTION

Because Respondents have improperly detained Mr. Cruz Pedraza under 8 U.S.C. § 1225, and apparently did not “compl[y] with the express terms of section 1226 when [they] detained” him through the “[i]ssuance of a[n administrative] warrant,” as a matter of the statute and due process, this Court must order his “immediate release.” *JAACP v. Wofford*, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, *8 (E.D. Cal. Oct. 27, 2025); *accord Diaz v. Albarran*, No. 25-cv-9837-JSC, 2025 WL 3214972 (N.D. Cal. Nov. 18, 2025); *R.D. v. Bondi*, No. 26-cv-1904-ECT-EMB, 2026 WL 788263, *2 (D. Minn. Mar. 20, 2026) (collecting cases ordering immediate release in the absence of a warrant in similar cases).

This situation arises from a sudden change in the way that the Board of Immigration Appeals interprets §§ 1225 and 1226. “For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the borders of the United States long after their entry.” *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting Petitioner’s brief and noting that Respondents had not contested that claim). But in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (“BIA”) accepted the government’s new position that inadmissible immigrants are not eligible for bond under § 1226(a), even if they have been living in the United States for years or decades. Instead, the BIA held that all inadmissible immigrants are subject to the mandatory detention provisions in 8 U.S.C. § 1225(b)(2)(A).

Courts do not agree. The government has lost this argument in districts across the United States, *see, e.g., Rodriguez*, 779 F. Supp. 3d at 1260; *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md.

1 Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025);
 2 *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);
 3 *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb.
 4 Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal.
 5 Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept.
 6 3, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025),
 7 including in this one, *Esquivel-Ipina*, 812 F. Supp. 3d 1073 (S.D. Cal. 2025).

8 This Court should reject that argument, too, and order Mr. Cruz Pedraza's
 9 immediate release. At a minimum, it should order that he receive a bond hearing.

10 STATEMENT OF FACTS

11 Juan Cruz Pedraza entered the United States without detection around
 12 1990. Exhibit A at ¶ 2. He has lived in Escondido ever since. *Id.*

13 In December, Mr. Cruz Pedraza's truck was blocked by two unmarked cars
 14 in a gas station parking lot in Poway. *Id.* ¶ 3. "Officers got out of the cars, said
 15 they were ICE, and asked if [he] had documents." *Id.* After Mr. Cruz Pedraza said
 16 he did not want to answer, an "officer pulled out a piece of paper with [his]
 17 picture on it and asked if it was [him]. [He] said yes. Then they arrested [him]." *Id.*
 18 No one from ICE has "ever showed [him] a warrant for [his] arrest." *Id.* ¶ 4.
 19 All he has seen is "a piece of paper with [his] picture on it." *Id.*

20 Since December, Mr. Cruz Pedraza has been detained at the Otay Mesa
 21 Detention Center as he applies for relief from removal. Exhibit B. In the last six
 22 months, Mr. Cruz Pedraza has "never been given a bond hearing where a judge
 23 considers whether [he is] a flight risk or a danger. [He] had a hearing where a
 24 judge said they did not have jurisdiction to consider [him] for bond." *Id.* ¶ 5.

25 Mr. Cruz Pedraza explains,

26 It's been very difficult to be detained for these last six months. My
 27 daughters are 12 and 14 and aren't used to me not being around. I'm
 28 very concerned because I have not been able to work to support my
 wife and family. I haven't been able to be there for them.

1 *Id.* ¶ 7.

2 LEGAL BACKGROUND

3 I. Noncitizens who enter without inspection are entitled to the process 4 outlined in 8 U.S.C. § 1226(a).

5 A. In *Yajure Hurtado*, the BIA stripped most noncitizens who enter 6 without inspection of the right to seek bond.

7 This habeas petition turns on the BIA’s recent decision in *Yajure Hurtado*.
8 The issue in *Yajure Hurtado* revolves around two statutes, 8 U.S.C. § 1226(a) and
9 8 U.S.C. § 1225(b)(2)(A).

10 “Section 1226(a) provides for the arrest and detention of noncitizens
11 ‘pending a decision on whether the alien is to be removed from the United
12 States.’” *Hernandez Nieves*, 2025 WL 2533110, at *3. It instructs that, “[o]n a
13 warrant issued by the Attorney General, an alien may be arrested and detained.”
14 8 U.S.C. § 1226(a). Then, the Attorney General “may continue to detain”
15 arrestees or “may release [them] on bond of at least \$1,500 with security approved
16 by, and containing conditions prescribed by, the Attorney General.” *Id.*
17 (punctuation latered). “Federal regulations” implementing this statute “provide
18 that aliens detained under § 1226(a) receive bond hearings at the outset of
19 detention.” *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R.
20 § 1236.1(d)(1)).

21 Section 1225(b)(2)(A), by contrast, provides that “in the case of an alien
22 who is an applicant for admission, if the examining immigration officer
23 determines that an alien seeking admission is not clearly and beyond a doubt
24 entitled to be admitted, the alien shall be detained for” certain immigration
25 proceedings. 8 U.S.C. § 1225(b)(2)(A). Federal regulations do not prescribe bond
26 hearings for people detained under that section. Instead, “DHS has the sole
27 discretion to temporarily release on parole ‘any alien applying for admission to
28 the United States’ on a ‘case-by-case basis for urgent humanitarian reasons or
significant public benefit.” *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting

1 8 U.S.C. § 1182(d)(5)(A)).

2 By their terms, these statutes apply to different groups of immigrants.
 3 “Section 1226(a) sets out the default rule,” which governs unless some other,
 4 more specific detention provision overrides it. *Rodriguez* 779 F. Supp. 3d at 1246
 5 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an
 6 “applicant for admission” who is also an “alien seeking admission.” 8 U.S.C.
 7 § 1225(b)(2)(A).

8 *Yajure Hurtado* considered which of these provisions—the default rule in
 9 § 1226(a) or the mandatory detention provision in § 1225(b)(2)(A)—applies to
 10 immigrants who enter the United States without inspection but live for years in
 11 the country’s interior. 29 I.&N. Dec. at 216. The BIA concluded that noncitizens
 12 who enter without inspection have no right to seek bond from an IJ, regardless of
 13 how long they have been residing in the country and irrespective of whether they
 14 were apprehended by immigration authorities. *Id.* at 228.

15 **B. Courts disagree with the BIA’s reasoning.**

16 Since *Yajure Hurtado* was decided, many immigrants who otherwise would
 17 have received bond hearings under § 1226(a) have challenged that decision in the
 18 federal courts. Courts broadly agree that the BIA’s novel constructions of
 19 § 1225(b)(2)(A) and § 1226(a) are not correct.

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

22 *First*, § 1225(b)(2)(A)’s statutory context strongly suggests that it applies
 23 only to persons apprehended at or near the border. As the Supreme Court
 24 recognized in *Jennings*, § 1225(b) is concerned “primarily [with those] seeking
 25 entry,” and is generally imposed “at the Nation’s borders and ports of entry,
 26 where the Government must determine whether [a noncitizen] seeking to enter the
 27 country is admissible.” 583 U.S. at 297, 287. Throughout its text, the statute refers
 28 to “inspections”—a term not defined in the INA but which typically connotes an

1 examination upon or soon after physical entry. 8 U.S.C. § 1225 (“Inspection by
 2 immigration officers; expedited removal of inadmissible arriving [noncitizens];
 3 referral for hearing”); *id.* § 1225(b)(1)–(2) (referring to “inspections” in their
 4 titles); *id.* § 1225(d)(1) (authorizing immigration officials to search certain
 5 conveyances in order to conduct “inspections” where noncitizens “are being
 6 brought into the United States”). Many statutory provisions, various regulations,
 7 and BIA precedent discuss “inspection” in the context of admission processes at
 8 ports of entry, further supporting the conclusion that § 1225 has a limited
 9 temporal and geographic scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a;
 10 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA
 11 2010). Petitioner’s interpretation accords with these usages.

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

20 On its face, the phrase “seeking admission” suggests an active attempt to
 21 enter the country. Congress’s use of the present and present progressive tenses
 22 “necessarily requires some sort of present-tense action,” excluding noncitizens in
 23 the interior who are no longer in the process of seeking admission to the U.S.
 24 *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL
 25 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the
 26 statute’s “present-tense active language”). “Realistically speaking,” it is hard to
 27 accept that the statute’s plain language could mean anything else: “[I]f Congress’s
 28 intention” to detain everyone who entered without inspection “was so clear, why

1 did it take thirty years to notice?” *Romero*, 2025 WL 2403827, at *12.

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

12 The BIA’s contrary reading of the legislative history is not persuasive.
 13 True, IIRIRA “altered the typology of immigration *proceedings* to ‘place[] on
 14 equal footing’ ‘all immigrants who have not been lawfully admitted.’” *Romero*,
 15 2025 WL 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d
 16 918, 928 (9th Cir. 2020)). But that “says nothing about *detention* pending the
 17 outcome of those proceedings.” *Id.* (emphasis added). All these indicators suggest
 18 that § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry,
 19 not people who have already entered the country.

20 On the other hand, § 1226(a) is best read to apply to some inadmissible
 21 persons. It cannot plausibly be the case that all inadmissible persons fall under
 22 § 1225(b)(2)(A) and none fall under § 1226(a).

23 *First*, § 1226(a)’s statutory structure makes clear that it reaches some
 24 individuals who entered without inspection. Section 1226(c) exempts specific
 25 categories of noncitizens from the default eligibility to seek release on bond in §
 26 1226(a). “Among the individuals carved out and subject to mandatory detention
 27 are certain categories of ‘inadmissible’ noncitizens.” *Rodriguez*, 779 F. Supp. 3d
 28 at 1246 (quoting 8 § 1226(c)(1)(A), (D), (E)). The 2025 Laken Riley Act (“LRA”)

1 added to that list. “This ‘new’ category” of persons not eligible for bond “includes
2 those noncitizens who are deemed inadmissible, including for being ‘present in
3 the United States without being admitted or paroled,’ and who have been arrested,
4 charged with, or convicted of certain crimes.” *Rosado*, 2025 WL 2337099, at *9
5 (citing 8 U.S.C. § 1226(c)(1)(E); LRA, Pub. L. No. 119-1). If § 1226(a) did not
6 apply to inadmissible noncitizens, then the longstanding carve outs that refer to
7 inadmissibility and Congress’ most recent amendments would all be surplusage.
8 *See Garcia*, 2025 WL 2549431, at *6. The better reading is the Supreme Court’s
9 in *Jennings*: that § 1226(a) “applies to aliens already present in the United States.”
10 583 U.S. at 303.

11 *Second*, § 1226(a)’s legislative history supports Petitioner’s reading. “After
12 passing the IIRIRA, Congress declared the new § 1226(a) ‘restates the current
13 provisions in [the predecessor statute] regarding the authority of the Attorney
14 General to arrest, detain, and release on bond’ a noncitizen ‘who is not lawfully in
15 the United States.’” *Rosado*, 2025 WL 2337099, at *9. Because noncitizens
16 deemed inadmissible “were entitled to discretionary detention under § 1226(a)’s
17 predecessor statute, and Congress declared the statute’s scope unchanged by
18 IIRIRA,” § 1226(a) must “allow for a discretionary release on bond for”
19 inadmissible noncitizens, too. *Id.*

20 Thus, the best reading of 8 U.S.C. §§ 1225 and 1226 shows that Petitioner
21 is not subject to detention under § 1225 and can instead only fall within § 1226.
22 And under the Supreme Court’s recent decision in *Loper Bright v. Raimondo*, this
23 Court must independently interpret the meaning and scope of §§ 1225(b), 1226(a)
24 using the traditional tools of statutory construction. 603 U.S. 369, 385, 401
25 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025 WL 2472136,
26 at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8
27 n.9 (D. Mass. July 7, 2025). Because the BIA’s decision in *Yajure Hurtado* is a
28 deviation from the agency’s long-standing interpretation of §§ 1225 and 1226; is

1 not guidance issued contemporaneously with enactment of the relevant statutes;
 2 and contradicts the statutory interpretations of dozens of federal courts, this Court
 3 should give it no weight. If anything, the government’s “decades of practice”
 4 providing bond hearings to those who entered without inspection is a more
 5 persuasive guide. *Martinez*, 2025 WL 2084238, at *4.

6 **II. The proper remedy in a case without the issuance of an administrative**
 7 **warrant is immediate release and an order that Petitioner cannot be**
 8 **re-detained absent the procedures of § 1226(a).**

9 Mr. Cruz Pedraza may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
 10 But, under section 1226, “[i]ssuance of a warrant is a necessary condition to
 11 justify discretionary detention under section 1226(a).” *Chogullo Chafila v. Scott*,
 12 804 F. Supp. 3d 247, 264 (D. Me. 2025). It provides that, “[o]n a warrant issued
 13 by the Attorney General, an alien may be arrested and detained.” 8 U.S.C.
 14 § 1226(a) (emphasis added). “[I]t follows that absent a warrant a noncitizen may
 15 not be arrested and detained under section 1226(a).” *Chogullo Chafila*, 804 F. Supp.
 16 3d at 264 (emphasis in original).

17 Here, Mr. Cruz Pedraza has never been shown a warrant, and it appears he
 18 was arrested without one. Exhibit A ¶ 4.

19 As a result, many courts have concluded for petitioners in Mr. Cruz
 20 Pedraza’s circumstances, his “arrest and detention are therefore unauthorized, and
 21 the appropriate remedy for detention that lacks a proper statutory basis under
 22 § 1226(a) is release.” *Eslid. B.G. v. Bondi*, No. 26-cv-5020-RAL, 2026 WL
 23 734992, *6 (D.S.D. Mar. 16, 2026) (collecting cases); *see, e.g., JAACP v.*
 24 *Wofford*, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, *8 (E.D. Cal. Oct. 27,
 25 2025) (same).

26 This is particularly the case because the statute and regulations implement
 27 the due process protection that attends any civil detention. *See Rodriguez v.*
 28 *Marin*, 909 F.3d 252, 256 (9th Cir. 2018) (expressing “grave doubts that any
 statute that allows for arbitrary prolonged detention without any process is

1 constitutional or that those who founded our democracy precisely to protect
2 against the government's arbitrary deprivation of liberty would have thought so").
3 The Supreme Court has "repeatedly recognized that civil commitment for any
4 purpose constitutes a significant deprivation of liberty that requires due process
5 protection," including an individualized detention hearing. *Addington v. Texas*,
6 441 U.S. 418, 425 (1979); *see also United States v. Salerno*, 481 U.S. 739, 755
7 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992); *Kansas v. Hendricks*,
8 521 U.S. 346, 357 (1997). Here, Petitioner was apparently arrested without a
9 warrant, and has yet to receive the bond hearing required under § 1226(a), but the
10 government has kept him detained anyway. That violated the statute, regulations,
11 and due process. This Court should therefore grant the petition

12 **III. The Ninth Circuit's stay in *Maldonado Bautista* does not prevent this**
13 **Court from granting relief.**

14 In *Maldonado-Bautista v. DHS*, 25-cv-1873-SSS-BFM (C.D. Cal.), a
15 district judge granted national, class-wide relief to plaintiffs challenging the
16 BIA's interpretation of §§ 1225 and 1226. *Bautista v. Santacruz*, No. 5:25-CV-
17 01873-SSS-BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025), *judgment*
18 *entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM,
19 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). The Ninth Circuit subsequently
20 stayed the order, "insofar as the district court's judgment extends beyond the
21 Central District of California." *Maldonado Bautista v. DHS*, No. 26-1044, Dkt.
22 No. 5.1 (Mar 6, 2026). The Ninth Circuit left the judgement in place in the
23 Central District. *Id.*

24 Because of the stay order, the government is no longer required to follow
25 *Maldonado Bautista* in this district. But the stay order does not indicate any
26 opinion on the stay order's merits or prevent this Court from finding in
27 Petitioner's favor. It means only that this Court must do an independent
28

1 evaluation on the merits. For the reasons given above, that independent evaluation
2 demands relief here.

3 **PRAYER FOR RELIEF**

4 For the above reasons, this Court should order that:

- 5 1. Petitioner is not subject to mandatory detention under 8 U.S.C.
6 § 1225(b)(2), and is instead subject to detention, if at all, pursuant to
7 the discretionary provisions of 8 U.S.C. § 1226.
- 8 2. Respondents shall immediately release Petitioner from custody;
- 9 3. Respondents shall return to Petitioner any personal property; and
- 10 4. If Respondents seek to re-detain Petitioner, they shall hold a pre-
11 deprivation bond hearing before a neutral arbiter pursuant to section
12 1226(a) and its implementing regulations, at which Respondents
13 shall demonstrate the issuance of a warrant and at which petitioner's
14 eligibility for bond must be considered, *see, e.g., JAACP*, 2025 WL
15 3013328 at *8; or, at a minimum,
- 16 5. Respondents provide Petitioner with a hearing and individualized
17 bond determination within fourteen days of its order, and
18 Respondents shall make a complete record of the bond hearing
19 available to Petitioner and his counsel at counsel's request; and
- 20 6. Any other relief that the Court deems just and proper.

21
22 Respectfully submitted,

23
24 Dated: May 13, 2026

s/ Jessie Agatstein

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