Paul A. Barr
Cal. Bar No. 247951
Flowers Keller LLP
1601 Connecticut Ave. NW
Washington, D.C. 20009
Telephone: 202.521.8742
pbarr@flowerskeller.com

Attorneys for Mr. Trejo Blanco

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Kevin Trejo Blanco,

Petitioner,

v.

Christopher J. LaRose, *Warden, Otay Mesa Detention Center, et al.*,

Respondents.

Case No.: 26-cv-2862-AGS-AHG

Amended Petition for a Writ of Habeas Corpus

INTRODUCTION

Because Respondents have improperly detained Mr. Trejo Blanco 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," 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 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). At least one judge in this district recently concluded the same. *See Cruz Pedraza v. Larose,* 26-cv-2697-LL-MSB, ECF 12 at 4 (S.D. Cal. May 27, 2026) (finding that because petitioner was "arrested by ICE without a warrant," immediate release is the "appropriate remedy").

This situation arises from a sudden change in the way that the Board of Immigration Appeals ("BIA") 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). But in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the 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.[1] This Court should reject that argument, too, and order Mr. Trejo Blanco's immediate release, or at least a bond hearing.

STATEMENT OF FACTS

Mr. Trejo Blanco is a 25-year-old citizen of El Salvador who entered the United States without permission in 2013. Dkt. No. 5-1, at 11, 13. At the time of his detention in this case, Mr. Trejo Blanco was living in Florida. *Id.* at 14. He has a single criminal conviction: a misdemeanor DUI from 2024. Dkt. No. 1 at 16. Mr. Trejo Blanco has a five-year-old son who was born in the United States and two younger siblings who were also born here. Dkt. No. 5-1, at 14.

In October 2025, Mr. Trejo Blanco's probation officer in Florida ordered him to report to the probation office, ostensibly for a urine test. Dkt. No. 5-1, at 14. When he arrived, Mr. Trejo Blanco was detained by ICE agents. *Id.* They took him into custody and eventually brought him to Otay Mesa. *Id.* ICE placed Mr. Trejo Blanco in removal proceedings. *Id.*

[1] *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. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025).

LEGAL BACKGROUND

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

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

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

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

Section 1225(b)(2)(A), by contrast, provides that "in the case of an alien who is an applicant for admission, if the 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" certain immigration proceedings. 8 U.S.C. § 1225(b)(2)(A). Federal regulations do not prescribe bond hearings for people detained under that section. Instead, "DHS has the sole discretion to temporarily release on parole 'any alien applying for admission to 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 8 U.S.C. § 1182(d)(5)(A)).

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

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

B. Courts disagree with the BIA's reasoning.

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

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

First, § 1225(b)(2)(A)'s statutory context strongly suggests that it applies only to persons apprehended at or near the border. As the

Supreme Court recognized in *Jennings*, § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." 583 U.S. at 297, 287. Throughout its text, the statute refers to "inspections"—a term not defined in the INA but which typically connotes an examination upon or soon after physical entry. 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing"); *id.* § 1225(b)(1)–(2) (referring to "inspections" in their titles); *id.* § 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 BIA precedent discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 1225 has a limited temporal and geographic scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Petitioner's interpretation accords with these usages.

Second, consistent with the statute's overall focus on the moment of physical entry, § 1225(b)(2)'s plain language limits the statute's reach to persons actively attempting to enter the United States. The statute applies only to those who are *both* "applicants for admission" *and* in the process of "seeking admission." 8 U.S.C. § 1225(b)(2)(A). Because the statute's first clause already limits the provision to "applicants for admission," the phrase "seeking admission" must have a different meaning. Any other reading would constitute "an obvious

violation of the rule against surplusage." *Romero*, 2025 WL 2403827, at *10.

On its face, the phrase "seeking admission" suggests an active attempt to enter the country. Congress's use of the present and present progressive tenses "necessarily requires some sort of present-tense action," excluding noncitizens in the interior who are no longer in the process of seeking admission to the U.S. *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the statute's "present-tense active language"). "Realistically speaking," it is hard to accept that the statute's plain language could mean anything else: "[I]f Congress's intention" to detain everyone who entered without inspection "was so clear, why did it take thirty years to notice?" *Romero*, 2025 WL 2403827, at *12.

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

The BIA's contrary reading of the legislative history is not persuasive. True, IIRIRA "altered the typology of immigration

proceedings to 'place[ ] on equal footing' 'all immigrants who have not been lawfully admitted.'" *Romero*, 2025 WL 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). But that "says nothing about *detention* pending the outcome of those proceedings." *Id.* (emphasis added). All these indicators suggest that § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry, not people who have already entered the country.

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

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

already present in the United States." 583 U.S. at 303.

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

Thus, the best reading of 8 U.S.C. §§ 1225 and 1226 shows that Petitioner is not subject to detention under § 1225 and can instead only fall within § 1226. And under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court must independently interpret the meaning and scope of §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S. 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA's decision in *Yajure Hurtado* is a deviation from the agency's long-standing interpretation of §§ 1225 and 1226; is not guidance issued contemporaneously with enactment of the relevant statutes; and contradicts the statutory interpretations of dozens of federal courts, this Court should give it no weight. If anything, the government's "decades of practice" providing bond hearings to those who entered without inspection is a more persuasive guide. *Martinez*, 2025 WL 2084238, at *4.

II. The proper remedy for such a warrantless arrest is immediate release and an order that Petitioner cannot be re-detained absent the procedures of § 1226(a).

Mr. Trejo Blanco may be detained, if at all, pursuant to 8 U.S.C. § 1226(a). But, under section 1226, "[i]ssuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)." *Chogllo Chafla v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me. 2025). It provides that "*[o]n a warrant issued by the Attorney General*, an alien may be arrested and detained." 8 U.S.C. § 1226(a) (emphasis added). "[I]t follows that absent a warrant a noncitizen may *not* be arrested and detained under section 1226(a)." *Chogllo Chafla*, 804 F. Supp. 3d at 264 (emphasis in original).

That is precisely what a judge in this district recently held. In *Cruz Pedraza v. Larose,* the petitioner was parked at a gas station when two unmarked cars blocked his truck. 26-cv-2697-LL-MSB, ECF 12 at 1 (S.D. Cal. May 27, 2026). Several ICE officers got out of their vehicles, asked the petitioner for proof of status, and then arrested him without a warrant. *Id.* at 1–2. The court found *Matter of Yajure Hurtado* "unpersuasive" and determined that the petitioner was detained pursuant to § 1226(a), rather than § 1225(b). *Id.* at 4.

Importantly, the court then noted that the statutory language of § 1226(a) provides that "a noncitizen may only be arrested and detained pending a decision on removal '[o]n a warrant issued by the Attorney General.'" *Id.* (quoting 8 U.S.C. § 1226(a)). And "[w]hen the government does not comply with the plain language of section 1226(a), a petitioner's immediate release is justified." *Id.* (quotations and alterations omitted). Because Respondents did not dispute that they lacked the necessary warrant to arrest the petitioner, the court held that "Petitioner's arrest and detention are unauthorized" and

immediate release was the "appropriate remedy." *Id.*

Other courts have similarly held that when ICE makes a warrantless arrest contrary to the plain language of § 1226(a), the "arrest and detention are therefore unauthorized, and the appropriate remedy for detention that lacks a proper statutory basis under § 1226(a) is release." *Eslid. B.G. v. Bondi*, No. 26-cv-5020-RAL, 2026 WL 734992, *6 (D.S.D. Mar. 16, 2026) (collecting cases); *see also JAACP v. Wofford*, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, *8 (E.D. Cal. Oct. 27, 2025); *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).

Here, Mr. Trejo Blanco was detained when reporting, as ordered, to his probation officer. Dkt. No. 5-1, at 14. He has never been shown a warrant, and it appears he was arrested without one. Because this arrest violated the plain language of § 1226(a), his "arrest and detention are unauthorized," and immediate release is the "appropriate remedy." *Cruz Pedraza,* 26-cv-2697-LL-MSB, ECF 12 at 4.

III. 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 and 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 then 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 judgment 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.

PRAYER FOR RELIEF

For the above reasons, this Court should order that:

1. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and is instead subject to detention, if at all, pursuant to the discretionary provisions of 8 U.S.C. § 1226.
2. Respondents shall immediately release Petitioner from custody;
3. Respondents shall return to Petitioner any personal property; and
4. If Respondents seek to re-detain Petitioner, they shall hold a pre-deprivation bond hearing before a neutral arbiter pursuant to section 1226(a) and its implementing regulations, at which Respondents shall demonstrate the issuance of a warrant and at which petitioner's eligibility for bond must be considered, *see, e.g.*, *JAACP*, 2025 WL 3013328 at *8; or, at a minimum,
5. Respondents provide Petitioner with a hearing and individualized bond determination within fourteen days of

its order, and Respondents shall make a complete record of the bond hearing available to Petitioner and his counsel at counsel's request; and

6. Any other relief that the Court deems just and proper.

Respectfully submitted,

Dated: June 29, 2026

s/ Paul A. Barr

Paul A. Barr
Flowers Keller LLP
Attorneys for Mr. Trejo Blanco
Email: pbarr@flowerskeller.com