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

ANTONIO DE JESUS MENDEZ,

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, JEREMY CASEY, Warden at
Imperial Regional Detention Center,

Respondents.

Case No.: 26-cv-2963-BAS-AHG

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

¹ Federal Defenders of San Diego, Inc., has met with Mr. Mendez and believes appointment of counsel would be appropriate in his case. His financial eligibility for counsel is included in an under-oath statement submitted as an attachment to this amended petition. In the interest of efficiency, counsel submits this amended petition and status update in response to this Court's order at ECF No. 2.

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I. Introduction

Respondents have improperly detained Mr. Mendez under 8 U.S.C. § 1225 since July 4, 2025, when masked agents arrested him and others on the street in Santa Monica on suspicion that they were undocumented. As someone who has lived in the United States for the last 36 years, Mr. Mendez can be detained only under 8 U.S.C. § 1226. And because respondents have apparently not “complied with the express terms of section 1226 when [they] detained” Mr. Mendez, through the “[i]ssuance of a[n administrative] warrant,” this Court should 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 issued under 8 U.S.C. § 1226(a) in similar cases). “The language of § 1226(a)’s warrant requirement is unequivocal and does not afford the Government forgiveness simply by providing a bond hearing after the fact.” *Jesus Emery M.F. v. Warden*, No. 26-cv-1374-TLN-CKD, 2026 WL 849762, *2 (E.D. Cal. Mar. 27, 2026).

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; *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), including in this one, *Esquivel-Ipina*, 812 F. Supp. 3d 1073 (S.D. Cal. 2025).

This Court should reject the government's argument, too, and order Mr. Mendez's immediate release. At a minimum, it should order that he receive a bond hearing.

II. Statement of Facts

Antonio de Jesus Mendez entered the United States from El Salvador without detection 36 years ago. Exhibit A, Declaration of Mr. Mendez, ¶ 1. He has lived in the United States ever since. *Id.*

On July 4, 2025, Mr. Mendez was walking home from work in Santa Monica when he and several others were arrested "by officers who were dressed in green with covered faces." *Id.* ¶ 2. The officers did not appear to have a warrant. *Id.* Instead, Mr. Mendez explains, "[t]hey put several of us on the street in a car, drove us a few miles, and then told us we were arrested because we did not have papers." *Id.*

An immigration case against Mr. Mendez was docketed on July 14, 2025. Exhibit B. In early September 2025, he was ordered removed. He filed a timely appeal to the Board of Immigration Appeals (BIA), which still remains pending.

1 Exhibit B; Exhibit A ¶ 5.

2 Around November 2025, Mr. Mendez’s immigration attorney asked for a
3 bond hearing. Exhibit A ¶ 4. But, as Mr. Mendez understands it, “they were not
4 holding bond hearings for people in my situation back then. My attorney
5 submitted documents but I don’t think they even looked at them.” *Id.*

6 The next month, Mr. Mendez was transferred to the Imperial Regional
7 Detention Center, where he has been detained since. *Id.* ¶ 3.

8 **III. Legal argument**

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

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

13 This habeas petition turns on the BIA’s recent decision in *Yajure Hurtado*.
14 The issue in *Yajure Hurtado* revolves around two statutes, 8 U.S.C. § 1226(a) and
15 8 U.S.C. § 1225(b)(2)(A).

16 “Section 1226(a) provides for the arrest and detention of noncitizens
17 ‘pending a decision on whether the alien is to be removed from the United
18 States.’” *Hernandez Nieves*, 2025 WL 2533110, at *3. It instructs that, “[o]n a
19 warrant issued by the Attorney General, an alien may be arrested and detained.”
20 8 U.S.C. § 1226(a). Then, the Attorney General “may continue to detain”
21 arrestees or “may release [them] on bond of at least \$1,500 with security approved
22 by, and containing conditions prescribed by, the Attorney General.” *Id.*
23 (punctuation latered). “Federal regulations” implementing this statute “provide
24 that aliens detained under § 1226(a) receive bond hearings at the outset of
25 detention.” *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R.
26 § 1236.1(d)(1)).

27 Section 1225(b)(2)(A), by contrast, provides that “in the case of an alien
28 who is an applicant for admission, if the examining immigration officer
determines that an alien seeking admission is not clearly and beyond a doubt

1 entitled to be admitted, the alien shall be detained for” certain immigration
2 proceedings. 8 U.S.C. § 1225(b)(2)(A). Federal regulations do not prescribe bond
3 hearings for people detained under that section. Instead, “DHS has the sole
4 discretion to temporarily release on parole ‘any alien applying for admission to
5 the United States’ on a ‘case-by-case basis for urgent humanitarian reasons or
6 significant public benefit.’” *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting
7 8 U.S.C. § 1182(d)(5)(A)).

8 By their terms, these statutes apply to different groups of immigrants.
9 “Section 1226(a) sets out the default rule,” which governs unless some other,
10 more specific detention provision overrides it. *Rodriguez* 779 F. Supp. 3d at 1246
11 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an
12 “applicant for admission” who is also an “alien seeking admission.” 8 U.S.C.
13 § 1225(b)(2)(A).

14 *Yajure Hurtado* considered which of these provisions—the default rule in
15 § 1226(a) or the mandatory detention provision in § 1225(b)(2)(A)—applies to
16 immigrants who enter the United States without inspection but live for years in
17 the country’s interior. 29 I.&N. Dec. at 216. The BIA concluded that noncitizens
18 who enter without inspection have no right to seek bond from an IJ, regardless of
19 how long they have been residing in the country and irrespective of whether they
20 were apprehended by immigration authorities. *Id.* at 228.

21 **2. Courts disagree with the BIA’s reasoning.**

22 Since *Yajure Hurtado* was decided, many immigrants who otherwise would
23 have received bond hearings under § 1226(a) have challenged that decision in the
24 federal courts. Courts broadly agree that the BIA’s novel constructions of
25 § 1225(b)(2)(A) and § 1226(a) are not correct.

26 On the one hand, § 1225(b)(2)(A) is best read to apply to immigrants who
27 are at or near the border or other ports of entry, for at least three reasons.
28

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 in order 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

1 “necessarily requires some sort of present-tense action,” excluding noncitizens in
2 the interior who are no longer in the process of seeking admission to the U.S.
3 *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL
4 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the
5 statute’s “present-tense active language”). “Realistically speaking,” it is hard to
6 accept that the statute’s plain language could mean anything else: “[I]f Congress’s
7 intention” to detain everyone who entered without inspection “was so clear, why
8 did it take thirty years to notice?” *Romero*, 2025 WL 2403827, at *12.

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

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

1 On the other hand, § 1226(a) is best read to apply to some inadmissible
2 persons. It cannot plausibly be the case that all inadmissible persons fall under
3 § 1225(b)(2)(A) and none fall under § 1226(a).

4 *First*, § 1226(a)'s statutory structure makes clear that it reaches some
5 individuals who entered without inspection. Section 1226(c) exempts specific
6 categories of noncitizens from the default eligibility to seek release on bond in
7 § 1226(a). "Among the individuals carved out and subject to mandatory detention
8 are certain categories of 'inadmissible' noncitizens." *Rodriguez*, 779 F. Supp. 3d
9 at 1246 (quoting 8 § 1226(c)(1)(A), (D), (E)). The 2025 Laken Riley Act ("LRA")
10 added to that list. "This 'new' category" of persons not eligible for bond "includes
11 those noncitizens who are deemed inadmissible, including for being 'present in
12 the United States without being admitted or paroled,' and who have been arrested,
13 charged with, or convicted of certain crimes." *Rosado*, 2025 WL 2337099, at *9
14 (citing 8 U.S.C. § 1226(c)(1)(E); LRA, Pub. L. No. 119-1). If § 1226(a) did not
15 apply to inadmissible noncitizens, then the longstanding carve outs that refer to
16 inadmissibility and Congress' most recent amendments would all be surplusage.
17 *See Garcia*, 2025 WL 2549431, at *6. The better reading is the Supreme Court's
18 in *Jennings*: that § 1226(a) "applies to aliens already present in the United States."
19 583 U.S. at 303.

20 *Second*, § 1226(a)'s legislative history supports Petitioner's reading. "After
21 passing the IIRIRA, Congress declared the new § 1226(a) 'restates the current
22 provisions in [the predecessor statute] regarding the authority of the Attorney
23 General to arrest, detain, and release on bond' a noncitizen 'who is not lawfully in
24 the United States.'" *Rosado*, 2025 WL 2337099, at *9. Because noncitizens
25 deemed inadmissible "were entitled to discretionary detention under § 1226(a)'s
26 predecessor statute, and Congress declared the statute's scope unchanged by
27 IIRIRA," § 1226(a) must "allow for a discretionary release on bond for"
28 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.

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

Mr. Mendez may be detained, if at all, pursuant to 8 U.S.C. § 1226(a). Under section 1226, “[i]ssuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a).” *Chogllo Chafila v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me. 2025). The statute 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 Chafila*, 804 F. Supp. 3d at 264 (emphasis in original).

Here, Mr. Mendez has never been shown a warrant, and it appears he was arrested without one. Exhibit A ¶ 2.

As a result, as courts have concluded for petitioners in Mr. Mendez’s circumstances, his “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 ordering release absent an administrative warrant under § 1226(a)); *see, e.g., JAACP v. Wofford*, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, *8 (E.D. Cal. Oct. 27, 2025) (same); *Juan R. v. Bondi*, No. 26-cv-252-SRN-DTS, 2026 WL 125255 (D. Minn. Jan. 16, 2025) (same). “The language of § 1226(a)’s warrant requirement is unequivocal and does not afford the Government forgiveness simply by providing a bond hearing after the fact.” *Jesus Emery M.F. v. Warden*, No. 26-cv-1374-TLN-CKD, 2026 WL 849762, *2 (E.D. Cal. Mar. 27, 2026).

This is particularly the case because the statute and regulations implement the due process protection that attends any civil detention. *See Rodriguez v. 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 constitutional or that those who founded our democracy precisely to protect against the government’s arbitrary deprivation of liberty would have thought so”).

The Supreme Court has “repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including 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, Petitioner was apparently arrested without a warrant—and has yet to receive the bond hearing required under § 1226(a) for the last ten months—but the government has kept him detained anyway. That violated the statute, regulations, and due process. This Court should therefore grant the petition and order his

1 release.

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

4 In *Maldonado-Bautista v. DHS*, 25-cv-1873-SSS-BFM (C.D. Cal.), a
5 district judge granted national, class-wide relief to plaintiffs challenging the
6 BIA’s interpretation of §§ 1225 and 1226. *Bautista v. Santacruz*, No. 5:25-CV-
7 01873-SSS-BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025), *judgment*
8 *entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM,
9 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). The Ninth Circuit subsequently
10 stayed the order, “insofar as the district court’s judgment extends beyond the
11 Central District of California.” *Maldonado Bautista v. DHS*, No. 26-1044, Dkt.
12 No. 5.1 (Mar 6, 2026). The Ninth Circuit left the judgement in place in the
13 Central District. *Id.*

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

20 **IV. Prayer for Relief**

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

- 22 1. Petitioner is not subject to mandatory detention under 8 U.S.C.
23 § 1225(b)(2), and is instead subject to detention, if at all, pursuant to
24 the discretionary provisions of 8 U.S.C. § 1226;
- 25 2. Respondents shall immediately release Petitioner from custody;
- 26 3. Respondents shall return to Petitioner any personal property; and
- 27 4. If Respondents seek to re-detain Petitioner, they shall hold a pre-
28 deprivation bond hearing before a neutral arbiter pursuant to section

1 1226(a) and its implementing regulations, at which Respondents
2 shall demonstrate the issuance of a warrant and at which petitioner's
3 eligibility for bond must be considered, *see, e.g., JAACP*, 2025 WL
4 3013328 at *8; or, at a minimum,

- 5 5. Respondents provide Petitioner with a hearing and individualized
6 bond determination within fourteen days of its order, and
7 Respondents shall make a complete record of the bond hearing
8 available to Petitioner and his counsel at counsel's request; and
9 6. Any other relief that the Court deems just and proper.

10
11 Respectfully submitted,

12
13 Dated: May 21, 2026

s/ Jessie Agatstein

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