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

12 **EDUARDO VILLANO DE JESUS,**
13 **Petitioner,**

14 **v.**

15 **MARKWAYNE MULLIN, Secretary of**
16 **the Department of Homeland Security,**
17 **TODD BLANCHE, Acting Attorney**
18 **General, TODD M. LYONS, Acting**
19 **Director, Immigration and Customs**
20 **Enforcement, JESUS ROCHA, Acting**
21 **Field Office Director, San Diego Field**
22 **Office, CHRISTOPHER LAROSE,**
23 **Warden at Otay Mesa Detention Center,**

24 **Respondents.**

Civil Case No.: 26-cv-2958-LL-MMP

Amended Petition for Writ
of
Habeas Corpus

[Civil Immigration Habeas,
28 U.S.C. § 2241]

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INTRODUCTION

Mr. Villano de Jesus was born in Mexico and entered the United States unlawfully in 2001. For 25 years, he has remained in the U.S. But on November 2, 2025, he was arrested and placed in removal proceedings. In the nearly seven months that he has been detained, Mr. Villano de Jesus has never received a bond hearing. For the following reasons, this Court should grant Mr. Villano de Jesus's petition and order that he receive a bond hearing.

STATEMENT OF FACTS

Mr. Villano de Jesus was born in Mexico and entered the United States without permission in 2001. Exhibit A, Declaration of Eduardo Villano de Jesus, at ¶ 1. Since then, he has lived in New York. *Id.* at ¶ 1. He does not have any criminal convictions and has never been deported. *Id.* at ¶ 1.

On November 2, 2025, ICE arrested Mr. Villano de Jesus while he was walking to work. *Id.* at ¶ 2. Several agents were driving by in an unmarked car, and they stopped him and asked me for identification. *Id.* at ¶ 2. They took him into custody and eventually brought him to Otay Mesa. *Id.* at ¶ 2. ICE placed Mr. Villano de Jesus in removal proceedings. *Id.* at ¶ 3. His next hearing is in June 2026. *Id.* at ¶ 3.

Mr. Villano de Jesus has never had a bond hearing where the immigration judge decided whether he was a danger or a flight risk. *Id.* at ¶ 4.

ARGUMENT

I. Mr. Villano de Jesus is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

A. Courts disagree with the BIA's reasoning in *Yajure Hurtado*, which stripped most noncitizens who enter without inspection of the right to seek bond.

In *Yajure Hurtado*, the BIA concluded that noncitizens who enter without inspection have no right to seek bond from an IJ, regardless of how long they

1 have been residing in the country and irrespective of whether they were
2 apprehended by immigration authorities. 29 I&N Dec. at 228.

3 Since *Yajure Hurtado* was decided, many immigrants who otherwise would
4 have received bond hearings under § 1226(a) have challenged that decision in the
5 federal courts. As mentioned above in the introduction and as the government
6 recognizes in its Return, numerous courts disagree with the BIA's decision. Doc.
7 6 at 12-13. Courts broadly agree that the BIA's novel constructions of
8 § 1225(b)(2)(A) and § 1226(a) are not correct.

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

11 First, § 1225(b)(2)(A)'s statutory context strongly suggests that it applies
12 only to persons apprehended at or near the border. As the Supreme Court
13 recognized in *Jennings*, § 1225(b) is concerned “primarily [with those] seeking
14 entry,” and is generally imposed “at the Nation’s borders and ports of entry,
15 where the Government must determine whether [a noncitizen] seeking to enter the
16 country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281 at 297, 287(2018).
17 Throughout its text, the statute refers to “inspections”—a term not defined in the
18 INA but which typically connotes an examination upon or soon after physical
19 entry. 8 U.S.C. § 1225 (“Inspection by immigration officers; expedited removal of
20 inadmissible arriving [noncitizens]; referral for hearing”); *id.* § 1225(b)(1)–(2)
21 (referring to “inspections” in their titles); *id.* § 1225(d)(1) (authorizing
22 immigration officials to search certain conveyances in order to conduct
23 “inspections” where noncitizens “are being brought into the United States”).
24 Many statutory provisions, various regulations, and BIA precedent discuss
25 “inspection” in the context of admission processes at ports of entry, further
26 supporting the conclusion that § 1225 has a limited temporal and geographic
27 scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a; 8 U.S.C. § 1752a; 8 C.F.R.
28

1 § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Petitioner’s
2 interpretation accords.

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

11 On its face, the phrase “seeking admission” suggests an active attempt to
12 enter the country. Congress’s use of the present and present progressive tenses
13 “necessarily requires some sort of present-tense action,” excluding noncitizens in
14 the interior who are no longer in the process of seeking admission to the U.S.
15 *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL
16 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the
17 statute’s “present-tense active language”). “Realistically speaking,” it is hard to
18 accept that the statute’s plain language could mean anything else: “[I]f Congress’s
19 intention” to detain everyone who entered without inspection “was so clear, why
20 did it take thirty years to notice?” *Romero*, 2025 WL 2403827, at *12.

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

1 mandatory detention and thereby transform immigration detention and sweep
2 millions of noncitizens into § 1225(b).

3 The BIA's contrary reading of the legislative history is not persuasive.
4 True, IIRIRA "altered the typology of immigration *proceedings* to 'place[] on
5 equal footing' 'all immigrants who have not been lawfully admitted.'" *Romero*,
6 2025 WL 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d
7 918, 928 (9th Cir. 2020)). But that "says nothing about *detention* pending the
8 outcome of those proceedings." *Id.* (emphasis added). All these indicators suggest
9 that § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry,
10 not people who have already entered the country.

11 On the other hand, § 1226(a) is best read to apply to some inadmissible
12 persons. It cannot plausibly be the case that all inadmissible persons fall under
13 § 1225(b)(2)(A) and none fall under § 1226(a).

14 *First*, § 1226(a)'s statutory structure makes clear that it reaches some
15 individuals who have not been admitted and have entered without inspection.
16 Section 1226(c) exempts specific categories of noncitizens from the default
17 eligibility to seek release on bond in § 1226(a). "Among the individuals carved
18 out and subject to mandatory detention are certain categories of 'inadmissible'
19 noncitizens." *Rodriguez*, 779 F. Supp. 3d at 1246 (quoting 8 § 1226(c)(1)(A), (D),
20 (E)). The 2025 Laken Riley Act ("LRA") added to that list. "This 'new' category"
21 of persons not eligible for bond "includes those noncitizens who are deemed
22 inadmissible, including for being 'present in the United States without being
23 admitted or paroled,' and who have been arrested, charged with, or convicted of
24 certain crimes." *Rosado*, 2025 WL 2337099, at *9 (citing 8 U.S.C. §
25 1226(c)(1)(E); LRA, Pub. L. No. 119-1). If § 1226(a) did not apply to
26 inadmissible noncitizens, then the longstanding carve outs that refer to
27 inadmissibility and Congress' most recent amendments would all be surplusage.
28 *See Garcia*, 2025 WL 2549431, at *6. The better reading is the Supreme Court's

1 in *Jennings*: that § 1226(a) “applies to aliens already present in the United States.”
2 583 U.S. at 303.

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

12 Thus, the best reading of 8 U.S.C. §§ 1225, 1226 shows that petitioner is
13 eligible for bond. And under the Supreme Court’s recent decision in *Loper Bright*
14 *v. Raimondo*, this Court must independently interpret the meaning and scope of
15 §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S.
16 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025
17 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
18 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA’s decision in *Yajure*
19 *Hurtado* is a deviation from the agency’s long-standing interpretation of §§ 1225,
20 1226; is not guidance issued contemporaneously with enactment of the relevant
21 statutes; and contradicts the statutory interpretations of dozens of federal courts,
22 this Court should give it no weight. If anything, the government’s “decades of
23 practice” providing bond hearings to those who entered without inspection is a
24 more persuasive guide to the proper outcome here. *Martinez*, 2025 WL 2084238,
25 at *4.

B. Detaining Mr. Villano de Jesus without a bond hearing violates 8 U.S.C. § 1226(a), associated regulations, the administrative procedures act, and the Fifth Amendment right to due process.

Both the 8 U.S.C. § 1226(a) and its associated regulations entitle Petitioner to a bond hearing. *See* 8 C.F.R. §§ 326.1(d), 1236.1, 1003.19(a)-(f). Accordingly, the Fifth Amendment’s due process clause requires the government to provide the legally required bond hearing before Petitioner is detained. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021).

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, Mr. Villano de Jesus has not received a bond hearing. That violated the statute, regulations, due process, and the Administrative Procedures Act.

C. 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, 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 subsequently 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 judgement 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.

II. This Court must hold an evidentiary hearing on any disputed facts.

Resolution of a prolonged-detention habeas petition may require an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr. Villano de Jesus hereby requests such a hearing on any material, disputed facts.

III. Prayer for relief

Petitioner respectfully asks that this Court order Respondents to provide him a bond hearing before a neutral immigration judge, as well as any other relief that the Court deems just and proper.

Respectfully submitted,

Dated: May 26, 2026

s/ Kara Hartzler

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