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

11 **ELDIZAR AGUILAR-MARTIN,**
12
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
25 **Respondents.**

Civil Case No.: 26-cv-3130-RBM-DDL

**Amended Petition for Writ
of
Habeas Corpus**

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

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INTRODUCTION

Mr. Aguilar-Martin was born in Mexico and entered the United States unlawfully in 2001. For 25 years, he has remained in the U.S. But on April 22, 2026, he was arrested and placed in removal proceedings. In the nearly seven months that he has been detained, Mr. Aguilar-Martin has never received a bond hearing. For the following reasons, this Court should grant Mr. Aguilar-Martin's petition and order that he receive a bond hearing.

STATEMENT OF FACTS

Mr. Aguilar-Martin was born in Guatemala and entered the United States without permission in 2001. Exhibit A, Declaration of Eldizar Aguilar-Martin, at ¶ 1. Since then, he has lived in Riverside, California. *Id.* at ¶ 1. Mr. Aguilar-Martin has never been deported. *Id.* at ¶ 1. He has one domestic violence conviction from 2018. *Id.* at ¶ 1.

On April 22, 2026, ICE arrested Mr. Aguilar-Martin while he was going to his house. *Id.* at ¶ 2. They took him into custody and brought him to Otay Mesa. *Id.* at ¶ 2. ICE placed him in removal proceedings, and his next hearing is on June 4, 2026. *Id.* at ¶ 3. Mr. Aguilar-Martin 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. Aguilar-Martin 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 have been residing in the country and irrespective of whether they were apprehended by immigration authorities. 29 I&N Dec. at 228.

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

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

9 First, § 1225(b)(2)(A)'s statutory context strongly suggests that it applies
10 only to persons apprehended at or near the border. As the Supreme Court
11 recognized in *Jennings*, § 1225(b) is concerned "primarily [with those] seeking
12 entry," and is generally imposed "at the Nation's borders and ports of entry,
13 where the Government must determine whether [a noncitizen] seeking to enter the
14 country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281 at 297, 287(2018).
15 Throughout its text, the statute refers to "inspections"—a term not defined in the
16 INA but which typically connotes an examination upon or soon after physical
17 entry. 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of
18 inadmissible arriving [noncitizens]; referral for hearing"); *id.* § 1225(b)(1)–(2)
19 (referring to "inspections" in their titles); *id.* § 1225(d)(1) (authorizing
20 immigration officials to search certain conveyances in order to conduct
21 "inspections" where noncitizens "are being brought into the United States").
22 Many statutory provisions, various regulations, and BIA precedent discuss
23 "inspection" in the context of admission processes at ports of entry, further
24 supporting the conclusion that § 1225 has a limited temporal and geographic
25 scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a; 8 U.S.C. § 1752a; 8 C.F.R.
26 § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Petitioner's
27 interpretation accords.

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

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

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

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

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

12 *First*, § 1226(a)'s statutory structure makes clear that it reaches some
 13 individuals who have not been admitted and have entered without inspection.
 14 Section 1226(c) exempts specific categories of noncitizens from the default
 15 eligibility to seek release on bond in § 1226(a). "Among the individuals carved
 16 out and subject to mandatory detention are certain categories of 'inadmissible'
 17 noncitizens." *Rodriguez*, 779 F. Supp. 3d at 1246 (quoting 8 § 1226(c)(1)(A), (D),
 18 (E)). The 2025 Laken Riley Act ("LRA") added to that list. "This 'new' category"
 19 of persons not eligible for bond "includes those noncitizens who are deemed
 20 inadmissible, including for being 'present in the United States without being
 21 admitted or paroled,' and who have been arrested, charged with, or convicted of
 22 certain crimes." *Rosado*, 2025 WL 2337099, at *9 (citing 8 U.S.C. §
 23 1226(c)(1)(E); LRA, Pub. L. No. 119-1). If § 1226(a) did not apply to
 24 inadmissible noncitizens, then the longstanding carve outs that refer to
 25 inadmissibility and Congress' most recent amendments would all be surplusage.
 26 *See Garcia*, 2025 WL 2549431, at *6. The better reading is the Supreme Court's
 27 in *Jennings*: that § 1226(a) "applies to aliens already present in the United States."
 28 583 U.S. at 303.

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

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

24 **B. Detaining Mr. Aguilar-Martin without a bond hearing violates 8**
 25 **U.S.C. § 1226(a), associated regulations, the administrative**
 26 **procedures act, and the Fifth Amendment right to due process.**

27 Both the 8 U.S.C. § 1226(a) and its associated regulations entitle Petitioner
 28 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

1 legally required bond hearing before Petitioner is detained. *See Hernandez-Lara*
 2 *v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021).

3 The statute and regulations implement the due process protection that
 4 attends any civil detention. *See Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir.
 5 2018) (expressing “grave doubts that any statute that allows for arbitrary
 6 prolonged detention without any process is constitutional or that those who
 7 founded our democracy precisely to protect against the government’s arbitrary
 8 deprivation of liberty would have thought so”). The Supreme Court has
 9 “repeatedly recognized that civil commitment for any purpose constitutes a
 10 significant deprivation of liberty that requires due process protection,” including
 11 an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425
 12 (1979); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987); *Foucha v.*
 13 *Louisiana*, 504 U.S. 71, 81–83 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357
 14 (1997).

15 Here, Mr. Aguilar-Martin has not received a bond hearing. That violated
 16 the statute, regulations, due process, and the Administrative Procedures Act.

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

19 In *Maldonado-Bautista v. DHS*, 25-cv-1873-SSS-BFM (C.D. Cal.), a
 20 district judge granted national, class-wide relief to plaintiffs challenging the
 21 BIA’s interpretation of §§ 1225, 1226. *Bautista v. Santacruz*, No. 5:25-CV-
 22 01873-SSS-BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025), *judgment*
 23 *entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM,
 24 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). The Ninth Circuit subsequently
 25 stayed the order, “insofar as the district court’s judgment extends beyond the
 26 Central District of California.” *Maldonado Bautista v. DHS*, No. 26-1044, Dkt.
 27 No. 5.1 (Mar 6, 2026). The Ninth Circuit left the judgement in place in the
 28 Central District. *Id.*

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

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

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

11 **III. Prayer for relief**

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

15 Respectfully submitted,

16
17 Dated: May 26, 2026

s/ Kara Hartzler

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