

1 **Hannah Basalone**

2 Va. Bar No. 96857; Cal. Bar No. Pending

3 Federal Defenders of San Diego, Inc.

4 225 Broadway, Suite 900

5 San Diego, California 92101-5030

6 Telephone: (619) 234-8467

7 Facsimile: (619) 687-2666

8 hannah_basalone@fd.org

9 Attorneys for Mr. Calmo Perez



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

12 **DIONICIO CALMO PEREZ,**

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.**

Case No.: 26-cv-3178-LL-JAC

Amended Petition
for a
Writ of Habeas Corpus

INTRODUCTION

Because Respondents have improperly detained Mr. Calmo Perez 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

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-*

1 Mr. Calmo Perez's immediate release, or at least a bond hearing.

2 **STATEMENT OF FACTS**

3 Dionicio Calmo Perez entered the United States without detection in
4 November 2018. Declaration of Dionicio Calmo Perez, Exhibit A at ¶ 1. At the
5 time, he was 18 years old. *Id.* He has lived in the U.S. since then. *Id.* During this
6 entire time, Mr. Calmo Perez has never been deported. *Id.* at ¶ 2.

7 On January 3, 2026, Mr. Calmo Perez was being driven by his coworker in
8 Oceanside. *Id.* at ¶ 3. The car they were in was pulled over and surrounded by many
9 ICE detention officers. *Id.* Mr. Calmo Perez's coworker was arrested. *Id.* Officers
10 then asked Mr. Calmo Perez if he had any documents and he said no. *Id.* They then
11 arrested him. *Id.* He was never shown a warrant or any other documents related to
12 his arrest. *Id.*

13 Mr. Calmo Perez was placed in removal proceedings and his immigration
14 case remains pending. *Id.* at ¶ 6. His next master calendar hearing was scheduled
15 for June 3, 2026. *Id.* at ¶ 6. If he is ultimately ordered removed, he will appeal the
16 decision to the BIA; if the BIA dismisses his appeal, he will appeal to the Ninth
17 Circuit. *Id.* As a result, he will likely be detained for several more years pending
18 his case. *Id.* at ¶ 7.

19 **LEGAL BACKGROUND**

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

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

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

26 _____
27 *Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sept. 3,
28 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),

1 8 U.S.C. § 1225(b)(2)(A).

2 “Section 1226(a) provides for the arrest and detention of noncitizens
3 ‘pending a decision on whether the alien is to be removed from the United
4 States.’” *Hernandez Nieves*, 2025 WL 2533110, at *3. It instructs that, “[o]n a
5 warrant issued by the Attorney General, an alien may be arrested and detained.”
6 8 U.S.C. § 1226(a). Then, the Attorney General “may continue to detain”
7 arrestees or “may release [them] on bond of at least \$1,500 with security approved
8 by, and containing conditions prescribed by, the Attorney General.” *Id.*
9 (punctuation latered). “Federal regulations” implementing this statute “provide
10 that aliens detained under § 1226(a) receive bond hearings at the outset of
11 detention.” *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R.
12 § 1236.1(d)(1)).

13 Section 1225(b)(2)(A), by contrast, provides that “in the case of an alien
14 who is an applicant for admission, if the examining immigration officer
15 determines that an alien seeking admission is not clearly and beyond a doubt
16 entitled to be admitted, the alien shall be detained for” certain immigration
17 proceedings. 8 U.S.C. § 1225(b)(2)(A). Federal regulations do not prescribe bond
18 hearings for people detained under that section. Instead, “DHS has the sole
19 discretion to temporarily release on parole ‘any alien applying for admission to
20 the United States’ on a ‘case-by-case basis for urgent humanitarian reasons or
21 significant public benefit.’” *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting
22 8 U.S.C. § 1182(d)(5)(A)).

23 By their terms, these statutes apply to different groups of immigrants.
24 “Section 1226(a) sets out the default rule,” which governs unless some other,
25 more specific detention provision overrides it. *Rodriguez* 779 F. Supp. 3d at 1246
26 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an
27 “applicant for admission” who is also an “alien seeking admission.” 8 U.S.C.
28 § 1225(b)(2)(A).

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

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

9 Since *Yajure Hurtado* was decided, many immigrants who otherwise would
10 have received bond hearings under § 1226(a) have challenged that decision in the
11 federal courts. Courts broadly agree that the BIA’s novel constructions of
12 § 1225(b)(2)(A) and § 1226(a) are not correct.

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

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

1 ports of entry, further supporting the conclusion that § 1225 has a limited
2 temporal and geographic scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a;
3 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA
4 2010). Petitioner’s interpretation accords with these usages.

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

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

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

1 There was no suggestion in the legislative history that Congress intended to
2 subject all people present in the United States after an unlawful entry to
3 mandatory detention and thereby transform immigration detention and sweep
4 millions of noncitizens into § 1225(b).

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

13 On the other hand, § 1226(a) is best read to apply to some inadmissible
14 persons. It cannot plausibly be the case that all inadmissible persons fall under
15 § 1225(b)(2)(A) and none fall under § 1226(a).

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

1 *See Garcia*, 2025 WL 2549431, at *6. The better reading is the Supreme Court’s
 2 in *Jennings*: that § 1226(a) “applies to aliens already present in the United States.”
 3 583 U.S. at 303.

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

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

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

4 Mr. Calmo Perez may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
5 But, under section 1226, “[i]ssuance of a warrant is a necessary condition to
6 justify discretionary detention under section 1226(a).” *Chogllo Chafila v. Scott*,
7 804 F. Supp. 3d 247, 264 (D. Me. 2025). It provides that, “[o]n a warrant issued
8 by the Attorney General, an alien may be arrested and detained.” 8 U.S.C.
9 § 1226(a) (emphasis added). “[I]t follows that absent a warrant a noncitizen may
10 not be arrested and detained under section 1226(a).” *Chogllo Chafila*, 804 F. Supp.
11 3d at 264 (emphasis in original).

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

19 Importantly, the Court then noted that the statutory language of § 1226(a)
20 provides that “a noncitizen may only be arrested and detained pending a decision
21 on removal ‘[o]n a warrant issued by the Attorney General.’” *Id.* (quoting 8
22 U.S.C. § 1226(a)). And “[w]hen the government does not comply with the plain
23 language of section 1226(a), a petitioner’s immediate release is justified.” *Id.*
24 (quotations and alterations omitted). Because Respondents did not dispute that
25 they lacked the necessary warrant to arrest the petitioner, the Court held that
26 “Petitioner’s arrest and detention are unauthorized” and immediate release was
27 the “appropriate remedy.” *Id.*

28 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

1 unauthorized, and the appropriate remedy for detention that lacks a proper
2 statutory basis under § 1226(a) is release.” *Eslid. B.G. v. Bondi*, No. 26-cv-5020-
3 RAL, 2026 WL 734992, *6 (D.S.D. Mar. 16, 2026) (collecting cases); *see also*
4 *JAACP v. Wofford*, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, *8 (E.D. Cal.
5 Oct. 27, 2025); *Diaz v. Albarran*, No. 25-cv-9837-JSC, 2025 WL 3214972 (N.D.
6 Cal. Nov. 18, 2025); *R.D. v. Bondi*, No. 26-cv-1904-ECT-EMB, 2026 WL
7 788263, *2 (D. Minn. Mar. 20, 2026) (collecting cases ordering immediate release
8 in the absence of a warrant).

9 Here, Mr. Calmo Perez was arrested when he was the passenger in a
10 coworker’s car. Exh. A at ¶ 3. He has never been shown a warrant, and it appears
11 he was arrested without one. *Id.* Because this arrest violated the plain language of
12 § 1226(a), his “arrest and detention are unauthorized,” and immediate release is
13 the “appropriate remedy.” *Cruz Pedraza*, 26-cv-2697-LL-MSB, ECF 12 at 4.

14 **III. The Ninth Circuit’s stay in *Maldonado Bautista* does not prevent this**
15 **Court from granting relief.**

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

26 Because of the stay order, the government is no longer required to follow
27 *Maldonado Bautista* in this district. But the stay order does not indicate any
28 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 unless Petitioner requests a continuance, 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 3, 2026

s/ Hannah Basalone

Hannah Basalone
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Calmo Perez
Email: hannah_basalone@fd.org