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

OLBAN ROBERTO ERAZO ACOSTA,
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.

Civil Case No.: 26-cv-3492-JLS-MMP

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

1 INTRODUCTION

2 Mr. Erazo Acosta is a citizen of Honduras who came to the United States as
3 a nine-year-old. He was placed in a shelter with the Office of Refugee Resettlement
4 (“ORR”) and then released to his mother so that he could seek asylum in the United
5 States. Instead of remaining free to fight his immigration case, ICE later took Mr.
6 Erazo Acosta back into custody without a warrant, any paperwork, or any
7 opportunity to contest his re-detention. In doing so, Respondents violated Mr. Erazo
8 Acosta’s Constitutional due process rights.

9 Alternatively, because Respondents did not “compl[y] with the express terms
10 of section 1226 when [they] detained” him absent the “[i]ssuance of a[n
11 administrative] warrant,” this Court must order his “immediate release.” *JACP v.*
12 *Wofford*, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, *8 (E.D. Cal. Oct. 27,
13 2025); *accord R.D. v. Bondi*, No. 26-cv-1904-ECT-EMB, 2026 WL 788263, *2 (D.
14 Minn. Mar. 20, 2026) (collecting cases ordering immediate release in the absence
15 of a warrant). At least one judge in this district recently concluded the same. *See*
16 *Cruz Pedraza v. Larose*, 26-cv-2697-LL-MSB, ECF 12 at 4 (S.D. Cal. May 27,
17 2026) (finding that because petitioner was “arrested by ICE without a warrant,”
18 immediate release is the “appropriate remedy”).

19 Because the agency’s actions violated the Due Process Clause and 8 U.S.C.
20 § 1226, this Court should immediately order his release.

21 STATEMENT OF FACTS

22 Mr. Erazo Acosta fled his native country of Honduras at nine years old.
23 Declaration of Olban Roberto Erazo Acosta, Exhibit A at ¶¶ 1–2.

24 In 2014, Mr. Erazo Acosta entered the United States without inspection. *Id.*
25 at ¶ 2. He traveled to the United States to seek asylum because he was afraid for his
26 life in Honduras. *Id.* at ¶ 3. He came here with his sister, who was 16 or 17 years
27 old at the time. *Id.* at ¶ 2. He did not arrive with any adults. *Id.* at ¶ 2. He was
28 arrested almost immediately after entering the country and detained by Border

1 Patrol. *Id.* at ¶ 4. After his arrest, Mr. Erazo Acosta was transferred to the custody
2 of the Department of Health and Human Services (“HHS”) and ORR and brought
3 to a shelter for children. *Id.* at ¶ 4. Sometime later, he was released to his mother,
4 who was living in Florida at the time. *Id.* at ¶ 4.

5 On April 30, 2026, Mr. Erazo Acosta was riding as a passenger in his sister’s
6 car with two other people. *Id.* at ¶¶ 5–6. The car was pulled over by a trooper. *Id.*
7 at ¶ 5. The trooper first told them the car was pulled over for turning incorrectly.
8 *Id.* at ¶ 5. More troopers and Border Patrol agents showed up. *Id.* at ¶ 5. They were
9 later told the car was pulled over because the window tint was too dark. *Id.* at ¶ 5.
10 The troopers asked to see the IDs of everyone in the car. *Id.* at ¶ 5. Mr. Erazo Acosta
11 showed troopers a photo of his ID. *Id.* at ¶ 5. He was then told to step out of the car
12 and was arrested. *Id.* at ¶ 6. The trooper did not tell Mr. Erazo Acosta why he was
13 being arrested. *Id.* at ¶ 6. He was never shown a warrant or any other documents
14 authorizing his arrest. *Id.* at ¶ 6.

15 Mr. Erazo Acosta has been detained since then. *Id.* at ¶ 6. He has not been
16 ordered removed by an immigration judge. *Id.* at ¶ 7. His next master calendar
17 hearing is set for July 1, 2026. *Id.* at ¶ 7.

18 CLAIMS FOR RELIEF

19 **I. Count 1: The Due Process Clause required notice and a chance to be**
20 **heard before Mr. Erazo Acosta was re-detained after previously being**
released to a sponsor as an unaccompanied alien child.

21 Respondents’ re-detention of Mr. Erazo Acosta clearly violates the Due
22 Process Clause. Mr. Erazo Acosta could not be re-detained without a pre-
23 deprivation hearing. *See Garcia Domingo v. Castro*, 806 F. Supp. 3d 1246, 1253
24 (D.N.M. 2025) (ordering immediate release of a noncitizen who entered the United
25 States as an unaccompanied minor, was initially released from ORR to the custody
26 of his father, and then re-detained by ICE without any process).

1 **A. ORR had already made a determination of Mr. Erazo Acosta's**
2 **dangerousness and risk of flight when they released him to the**
3 **custody of his mother.**

4 To understand how this violation occurred requires a brief overview of
5 processes related to unaccompanied alien child[ren] (“UACs”). The Homeland
6 Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act
7 [“TVPRA”] provide special protections for UACs who come to the United States.
8 *See Garcia Domingo*, 806 F. Supp. 3d at 1250. After detention by ICE, UACs must
9 be transferred to the custody of ORR and HHS within 72 hours. *See* 8 U.S.C. §
10 1232. Once in the custody of ORR, UACs are transferred to appropriate facilities
11 for dependent children. *See id.* When possible, the ORR is required to release UACs
12 to a parent, guardian, or other approved sponsor. 8 U.S.C. § 1232; 6 U.S.C. §
13 279(b)(2)(A). And, as required by the TVPRA, when making that determination,
14 ORR considers “danger to self, danger to the community, and risk of flight” in that
15 decision. *See* 8 U.S.C. § 1232(c)(2)(A). “ORR may release the minor to a ‘sponsor’
16 who already lives in the country but was not with the minor when DHS picked him
17 up . . . so long as the minor is not dangerous and the placement is otherwise
18 suitable.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1178 (N.D. Cal. 2017).
19 “Release reflects a determination by the government that the noncitizen is not a
20 danger to the community or a flight risk.” *Id.* at 1176.

21 ORR released Mr. Erazo Acosta by making the same determinations required
22 by ICE when releasing noncitizens. *See Garcia Domingo*, 804 F. Supp. 3d at 1250
23 (listing danger to the community and flight risk as determinations made by ORR
24 prior to release); *Saravia*, F. Supp. 3d at 1176 (“Release reflects a determination by
25 the government that the noncitizen is not a danger to the community or a flight
26 risk.”). And he was released to his mother, to whom he could not have been released
27 without filing an application and receiving approval by ORR before any
28 determination of release was made. *See Safe and Timely Release from ORR Care*,
Office of Refugee Resettlement (Mar. 13, 2026), <https://acf.gov/orr/policy->

1 guidance/unaccompanied-children-program-policy-guide-section-2. Only then was
2 Mr. Erazo Acosta released. Mr. Erazo Acosta's subsequent re-detention without
3 those determinations and without any indication of changed circumstances goes
4 against that initial determination by ORR and the Constitution.

5 **B. Respondents violated the Due Process Clause by unilaterally re-**
6 **detaining Mr. Erazo Acosta.**

7 "The Fifth Amendment guarantees that '[n]o person shall be . . . deprived of
8 life, liberty, or property, without due process of law.'" *Salazar*, 2025 WL 3063629,
9 at *3 (quoting U.S. Const. amend. V). "[T]he Due Process Clause applies to all
10 'persons' within the United States, including aliens, whether their presence here is
11 lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693
12 (9th Cir. 2001).

13 "Generally, due process protections depend on the situation and must
14 account for (1) the private interest at issue, (2) the risk of erroneous deprivation of
15 that interest through the procedures used, and (3) the Government's interest." *Noori*
16 *v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025);
17 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)); *see also Garcia Domingo*, 806
18 F. Supp. 3d at 1252. Weighing those considerations here, Respondents violated the
19 Due Process Clause by revoking Mr. Erazo Acosta's release with no notice,
20 hearing, or a finding of changed circumstances.

21 "First, Petitioner has a private interest in remaining free, which developed
22 over the [months] he resided in the United States." *Noori*, 2025 WL 2800149, at
23 *10. It does not matter that his release is temporary or discretionary. "Comparing
24 Petitioner's release from immigration custody in this case to the liberty interest in
25 parole discussed in *Morrissey*, Petitioner's release from immigration custody
26 enabled 'him to do a wide range of things,' including to live at home, work, and 'be
27 with family and friends and to form the other enduring attachments of normal life.'" *Garcia Domingo*, 806 F. Supp. 3d at 1252 (quoting *Morrissey v. Brewer*, 408 U.S.

471, 482 (1972)). “[And] ‘decisions defining the constitutional rights of prisoners establish a *floor* for the constitutional rights of [noncitizens in immigration custody],’ who are ‘most decidedly entitled to *more* considerate treatment than those who are criminally detained.’” *Singh v. Andrews*, 803 F. Supp. 3d 1035, 1048 (E.D. Cal. 2025) (quoting *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016)). Here, Mr. Erazo Acosta had been out of custody, living with his mother and sister, for nearly 12 years before his re-detention. See Exh. A at ¶¶ 2, 5. Mr. Erazo Acosta is being deprived of the life he began to build when Respondents determined he was not a danger or a flight risk and released him from detention when he was just nine years old.

“Second, the risk of an erroneous deprivation of such interest is high as Petitioner’s [release] was revoked without providing [him] a reason for revocation or giving [him] an opportunity to be heard.” *Salazar*, 2025 WL 3063629, at *4. “Civil immigration detention is permissible only to prevent flight or protect against danger to the community.” *Perez v. LaRose*, No. 25-cv-02620-RBM-JLB, 2025 WL 3171742, at *5 (S.D. Cal. Nov. 13, 2025). “[W]here ICE [makes] a unilateral decision to re-detain [a noncitizen] and [] have not explained why,” the risk of erroneous deprivation is considerable. *Garcia Domingo*, 806 F. Supp. 3d at 1252. Similarly, ICE has re-detained Mr. Erazo Acosta with no explanation as to why, and there is no evidence that the prior findings by ORR have changed. See *supra* p. 5; *Perez*, 2025 WL 3171742, at *5 (“[s]ince DHS’s initial determination that Petitioner should be paroled because [he] posed no danger to the community and was not a flight risk, there is no evidence that these findings have changed.”).

Third, “[t]he effort and costs to provide Petitioner with procedural safeguards is minimal.” *Garcia Domingo*, 806 F. Supp. 3d at 1252. “Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest.” *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036 (N.D. Cal.

2025). It would have taken very little effort on Respondents' part to have provided Mr. Erazo Acosta with "notice, reasoning, and a hearing." *Salazar*, 2025 WL 3063629, at *5. But he clearly received none of that when he was arrested after a random traffic stop. *See* Exh. At at ¶ 5–6.

A case in another district has addressed similar facts as those presented in Mr. Erazo Acosta's case. In *Garcia Domingo v. Castro*, a court in the District of New Mexico granted a temporary restraining order because Petitioner was likely to succeed on his argument that re-detention after a UAC was released from ORR custody but after that same person turned 18 violated due process. 806 F. Supp. 3d at 1253. There, Mr. Garcia Domingo had been released as a UAC from ORR custody to live with his father. *Id.* at 1251. He was later re-detained after he had turned 18 without any redetermination of dangerousness or flight risk and no information about why he was re-detained. *Id.* at 1251–52.

Mr. Erazo Acosta has been subjected to the same unconstitutional detention seen in *Garcia Domingo*. Thus, because Respondents did not provide "proper notice, reasoning, and a pre-deprivation hearing" before revoking his release, Mr. Erazo Acosta's re-detention violated the Due Process Clause. *Salazar*, 2025 WL 3063629, at *5.

C. Noncitizen children released after a determination by the Office of Refugee Resettlement are akin to noncitizens released on parole by DHS.

The due process concerns governing Mr. Erazo Acosta's re-detention can be analogized to those of a noncitizen who received parole and was later detained with no notice or explanation. Just like those noncitizens allowed to reside in the United States pending their applications for admission, there are provisions that allow UACs to apply for asylum while out of custody.

As with parole, ORR made determinations about Mr. Erazo Acosta's dangerousness and risk of flight when they decided to release him to the custody of his mother. *See supra* at p. 4. Per ICE regulations, a person shall only be

1 “returned to the custody from which he was paroled” when “the purposes of such
2 parole . . . have been served.” 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. §
3 212.5(e)(2)(i) (parole may only be terminated “upon accomplishment of the
4 purpose for which parole was authorized”); *Y-Z-L-H*, 2025 WL 1898025, at *12
5 (same). Alternatively, the regulations permit revocation of parole when “neither
6 humanitarian reasons nor public benefit warrants the [noncitizen’s] continued
7 presence.” 8 C.F.R. § 212.5(e)(2)(i). But under either scenario, parole shall only
8 be “terminated upon written notice to the alien.” 8 C.F.R. § 212.5(e)(2)(i). But
9 under either scenario, parole shall only be “terminated upon written notice to the
10 alien.” 8 C.F.R. § 212.5(e)(2)(i). So under the statute and the regulations, the
11 agency may only revoke parole and re-detain a noncitizen when the parole’s
12 purpose is served or no humanitarian reasons warrant it *and* the noncitizen
13 receives notice.

14 This Court recently agreed with this argument in a similar case. In *Torres*
15 *Sanchez v. Mullin*, this Court ordered petitioner released from custody when he
16 had originally been released from ORR custody after arriving to the United States
17 as a UAC. No. 26-CV-2957-JLS-AHG, ECF 9 at 2 (S.D. Cal. June 16, 2026).
18 There, Respondents conceded that this Court and others have found the proper
19 remedy to be immediate release “under the same and/or similar facts.” *Id.* at 1–2
20 (quoting Return, ECF 8 at 2).

21 Like in *Torres Sanchez*, Mr. Erazo Acosta did not receive any of the
22 protections afforded to someone who has been released and therefore has liberty
23 interests. Because “the purpose” of Mr. Erazo Acosta’s release was to allow him
24 to live free from unnecessary detention while applying for asylum, that purpose
25 has not yet “been served” because his asylum claims are still pending. 8 U.S.C. §
26 1182(d)(5)(A). And the humanitarian reasons for parole—to avoid unnecessary
27 detention when an asylum seeker poses no danger or flight risk—remains the
28 same even though Mr. Erazo Acosta was initially released as a UAC. Put

1 differently, “upon Petitioner's entry into the United States, Respondents
2 determined that Petitioner was suitable for [release]. Respondents have not
3 provided a reasoned explanation or any changed circumstances that would justify
4 their current departure from their prior decision.” *Y-Z-L-H v. Bostock*, 792 F.
5 Supp. 3d 1123, 1146 (D. Or. 2025).

6 Because Mr. Erazo Acosta had been released after ORR made specific
7 determinations regarding his eligibility for release, his re-detention is akin to the
8 re-detention of a noncitizen on parole without any process. He should therefore be
9 released.

10 **II. Alternatively, Mr. Erazo Acosta’s arrest without a warrant requires his**
11 **immediate release, or at least a bond hearing under 8 U.S.C. § 1226(a).**

12 Alternatively, even if Mr. Erazo Acosta’s re-detention after release as a UAC
13 does not violate due process, he should have been afforded the process in 8 U.S.C.
14 § 1226(a). This, in addition to being afforded a bond hearing where a neutral arbiter
15 make determinations about his dangerousness and risk of flight, requires that ICE
16 have a warrant *prior* to any arrest. Mr. Erazo Acosta was afforded none of the
17 protections under § 1226(a) and should be released.

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

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

23 “Section 1226(a) provides for the arrest and detention of noncitizens
24 ‘pending a decision on whether the alien is to be removed from the United States.’”
25 *Hernandez Nieves*, 2025 WL 2533110, at *3. It instructs that, “[o]n a warrant issued
26 by the Attorney General, an alien may be arrested and detained.” 8 U.S.C. §
27 1226(a). Then, the Attorney General “may continue to detain” arrestees or “may
28 release [them] on bond of at least \$1,500 with security approved by, and containing

1 conditions prescribed by, the Attorney General.” *Id.* (punctuation altered). “Federal
2 regulations” implementing this statute “provide that aliens detained under § 1226(a)
3 receive a bond hearing at the outset of detention.” *Jennings v. Rodriguez*, 583 U.S.
4 281, 306 (2018) (citing 8 C.F.R. § 1236.1(d)(1)).

5 Section 1225(b)(2)(A), by contrast, provides that “in the case of an alien who
6 is an applicant for admission, if the examining immigration officer determines that
7 an alien seeking admission is not clearly and beyond a doubt entitled to be admitted,
8 the alien shall be detained for” certain immigration proceedings. 8 U.S.C. §
9 1225(b)(2)(A). Federal regulations do not prescribe bond hearings for people
10 detained under that section. Instead, “DHS has the sole discretion to temporarily
11 release on parole ‘any alien applying for admission to the United States’ on a ‘case-
12 by-case basis for urgent humanitarian reasons or significant public benefit.’”
13 *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting 8 U.S.C. § 1182(d)(5)(A)).

14 By their terms, these statutes apply to different groups of immigrants.
15 “Section 1226(a) sets out the default rule,” which governs unless some other, more
16 specific definition provision overrides it. *Rodriguez*, 779 F. Supp. 3d at 1246
17 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an
18 “applicant for admission” who is also an “alien seeking admission.” 8 U.S.C.
19 1225(b)(2)(A).

20 *Yajure Hurtado* considered which of these provisions—the default rule in §
21 1226(a) or the mandatory detention provision in § 1225(b)(2)(A)—applies to
22 immigrants who enter the United States without inspection but live for years in the
23 country’s interior. 29 I.&N. Dec. at 216. The BIA concluded that noncitizens who
24 enter without inspection have no right to seek bond from an IJ, regardless of how
25 long they have been residing in the country and irrespective of whether they were
26 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 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. § 1225(a); 8 U.S.C. § 1752(a); 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*

1 “applicants for admission” *and* in the process of “seeking admission.” 8 U.S.C.
2 §1225(b)(2)(A). Because the statute’s first clause already limits the provision to
3 “applicants for admission,” the phrase “seeking admission” must have a different
4 meaning. Any other reading would constitute “an obvious violation of the rule
5 against surplusage.” *Romero*, 2025 WL 2403827, at *10.

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

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

26 The BIA’s contrary reading of the legislative history is not persuasive. True,
27 IIRIRA “altered the typology of immigration *proceedings* to ‘place[] on equal
28 footing’ ‘all immigrants who have not been lawfully admitted.’” *Romero*, 2025 WL

1 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th
2 Cir. 2020)). But that “says nothing about *detention* pending the outcome of those
3 proceedings.” *Id.* (emphasis added). All these indicators suggest that
4 § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry, not
5 people who have already entered the country.

6 On the other hand, § 1226(a) is best read to apply to some inadmissible
7 persons. It cannot plausibly be the case that all inadmissible persons fall under
8 § 1225(b)(2)(A) and none fall under § 1226(a).

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

25 Second, § 1226(a)’s legislative history supports Petitioner’s reading. “After
26 passing the IIRIRA, Congress declared the new § 1226(a) ‘restates the current
27 provisions in [the predecessor statute] regarding the authority of the Attorney
28 General to arrest, detain, and release on bond’ a noncitizen ‘who is not lawfully in

1 the United States.’” *Rosado*, 2025 WL 2337099, at *9. Because noncitizens deemed
2 inadmissible “were entitled to discretionary detention under § 1226(a)’s
3 predecessor statute, and Congress declared the statute’s scope unchanged by
4 IIRIRA,” § 1226(a) must “allow for a discretionary release on bond for”
5 inadmissible noncitizens, too. *Id.*

6 Finally, other courts have found that § 1226(a) applies in very similar
7 circumstances as Mr. Erazo Acosta’s. *See Salvador v. Bondi*, No. 25-CV-7946-
8 MRA-MAA, 2025 WL 2995055 (C.D. Cal. Sept. 2, 2025) (finding § 1226(a)
9 applies to a Petitioner who entered the United States, was transferred to the custody
10 of ORR, released, and re-detained years later). Similarly, Mr. Erazo Acosta was not
11 actually seeking entry when he was detained. He had already entered the United
12 States nearly 12 years prior, been detained by ICE, transferred to ORR custody,
13 moved to a kids’ shelter, and then released to his mother’s custody. *See* Exh. A at
14 ¶¶ 1–4.

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

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

4 Mr. Erazo Acosta 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).” *Choglló Chafla 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). Such a warrant “must be issued *before* the alien is
10 arrested and taken into custody.” *Ramos v. Lyons*, 809 F. Supp. 3d 1015, 1023
11 (C.D. Cal. Nov. 12, 2025). “[I]t follows that absent a warrant a noncitizen may
12 *not* be arrested and detained under section 1226(a).” *Choglló Chafla*, 804 F. Supp.
13 3d at 264.

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

21 Importantly, the court then noted that the statutory language of § 1226(a)
22 provides that “a noncitizen may only be arrested and detained pending a decision
23 on removal ‘[o]n a warrant issued by the Attorney General.’” *Id.* (quoting 8 U.S.C.
24 § 1226(a)). And “[w]hen the government does not comply with the plain language
25 of section 1226(a), a petitioner’s immediate release is justified.” *Id.* (quotations and
26 alterations omitted). Because Respondents did not dispute that they lacked the
27 necessary warrant to arrest the petitioner, the court held that “Petitioner’s arrest and
28

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 JACP 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); *Romero-Perez v. Blanche*, 26-cv-1708-RFB-BNW, 2026 WL 1724752, *3 (D. Nev. June 15, 2026) (finding petitioner’s detention “unlawful from the very moment it began”).

Here, Mr. Erazo Acosta was arrested when he was the passenger in his sister’s car. Exh. A at ¶ 5. He has never been shown a warrant, and it appears he was arrested without one. *Id.* And he certainly was not arrested *after* an administrative warrant, as required by 8 U.S.C. § 1226(a), was issued and signed because he was arrested during a traffic stop. Exh. A at ¶¶ 5–6. 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.

D. 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*

1 *sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL
2 3678485 (C.D. Cal. Dec. 18, 2025). The Ninth Circuit subsequently stayed the
3 order, “insofar as the district court’s judgment extends beyond the Central District
4 of California.” *Maldonado Bautista v. DHS*, No. 26-1044, Dkt. No. 5.1 (Mar 6,
5 2026). The Ninth Circuit left the judgement in place in the Central District. *Id.*

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

11 **III. This Court must hold an evidentiary hearing on any disputed facts.**

12 Resolution of a detention-based habeas petition may require an evidentiary
13 hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr. Erazo Acosta
14 hereby requests such a hearing on any material, disputed facts.

15 **IV. Prayer for relief**

16 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 17 1. Order Respondents to immediately release Petitioner from custody,
18 subject to the conditions of his preexisting release;
- 19 2. Order that, prior to any re-detention of Petitioner, Petitioner is entitled to
20 notice of the reasons for revocation of his release and a hearing before an
21 immigration judge to determine whether detention is warranted. The
22 government should bear the burden of establishing, by clear and
23 convincing evidence, that circumstances have changed since HHS and
24 ORR’s initial determination of release such that Mr. Erazo Acosta now
25 poses a danger to the community or is a risk of flight at that hearing;
- 26 3. Alternatively, order Petitioner’s immediate release based on the absence
27 of a warrant as required by § 1226(a) and require Respondents to hold a
28

1 pre-deprivation bond hearing before a neutral arbiter pursuant to §
2 1226(a) at which Respondents shall demonstrate the issuance of a warrant
3 and at which Petitioner's eligibility for bond must be considered, *see, e.g.*,
4 *JACP*, 2025 WL 3013328 at *8; and

5 4. Order any other relief that the Court deems just and proper.

6 Respectfully submitted,
7

8 Dated: June 29, 2026

s/ Hannah Basalone

Hannah Basalone

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