IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Vitalino Pablo Pablo, Petitioner-Plaintiff, v. Dora Orozco, *in her official capacity* as Warden of Imperial Regional Detention Facility; Gregory J. Archambeault, *in his official capacity* as Field Office Director of the San Diego Field Office of Enforcement and Removal Operations, Immigrations and Customs Enforcement, U.S. Department of Homeland Security; David Venturella, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; Markwayne Mullin, *in his official capacity* as Secretary, U.S. Department of Homeland Security; Todd Blanche, *in his official capacity* as Acting Attorney General of the United States, Respondents-Defendants.	Case No. **'26CV4099 BTM JLB** PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner-Plaintiff Vitalino Pablo Pablo ("Petitioner") is a citizen of Guatemala who is currently detained by Immigration and Customs Enforcement ("ICE") at the Imperial Regional Detention Facility.
2. Petitioner entered the U.S. without inspection approximately thirty years ago and was not apprehended by ICE when he entered.
3. Petitioner was subsequently apprehended by ICE in Salisbury, Maryland on June 14, 2026.
4. Petitioner is subject to mandatory detention pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), in which the Board of Immigration Appeals ("the Board") concluded

that anyone who entered the U.S. without inspection was subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

5. This Court has rejected the argument that Section 1225(b)(2)(A) applies to noncitizens who are apprehended by ICE in the interior of the country. *See, e.g.*, *Pacham v. Archambeault*, No. 3:25-cv-03163 (S.D. Cal. Dec. 17, 2025); *Esquivel-Ipina v. Noem*, No. 3:25-cv-2672 (S.D. Cal. Oct. 24, 2025).

6. Petitioner seeks declaratory relief that he is subject to detention under § 1226(a) and its implementing regulations and asks that this Court either order Respondents to release Petitioner from custody or provide him with a bond hearing pursuant to § 1226(a) or the due process clause of the Fifth Amendment.

CUSTODY

7. Petitioner is currently in the custody of Immigration and Customs Enforcement ("ICE") at the Imperial Regional Detention Facility. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

8. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*

9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

10. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533

U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

11. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

12. Petitioner is "in custody" for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

VENUE

13. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the Southern District of California. Petitioner is under the jurisdiction of ICE's San Diego Field Office, and he is currently detained in Calexico, California.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. Administrative exhaustion is unnecessary as it would be futile. *See Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (explaining a court may waive the exhaustion requirement if pursuing administrative remedies would be futile).

15. It would be futile for Petitioner to seek a custody redetermination hearing before an Immigration Judge ("IJ") given precedent from the Board. *See Pacham*, No. 3:25-cv-03163, at *6 n.2 (noting that the Board's decision in *Yajure Hurtado* renders exhaustion futile); *Esquivel-Ipina*, No. 3:25-cv-2672, at *6–7.

16. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

17. Petitioner Vitalino Pablo Pablo is from Guatemala and is currently detained by ICE in Calexico, California.

18. Respondent Dora Orozco is sued in her official capacity as Warden of the Imperial Regional Detention Facility. In her official capacity, Ms. Orozco is Petitioner's immediate custodian.

19. Respondent Gregory J. Archambeault is sued in his official capacity as Field Office Director, San Diego Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement ("ICE"). In his official capacity, Respondent Archambeault is the legal custodian of Petitioner.

20. Respondent David Venturella is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Venturella is a legal custodian of Petitioner.

21. Respondent Markwayne Mullin is sued in his official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Mullin is Petitioner's ultimate legal custodian.

22. Respondent Todd Blanche is sued in his official capacity as the Acting Attorney General of the United States. As Attorney General, he has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND

23. The INA prescribes two basic forms of detention for noncitizens in pending removal proceedings.

24. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

25. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

26. For decades, individuals who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to 8 U.S.C. § 1226(a) and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history. *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 n.6 ("[F]or years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection.").

27. However, in 2025, the Board issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which concluded that anyone who entered the U.S. without inspection was subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

28. This Court and numerous others have rejected this interpretation and instead have found that Section 1226(a), not Section 1225(b)(2)(A), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See,*

e.g., *Pacham*, No. 3:25-cv-03163, at *14; *Esquivel-Ipina*, No. 3:25-cv-2672, at *9; *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 2782499, at *1 (W.D. Wash. Sept. 30, 2025) ("Every district court to address this question has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice."); *Santillan Quiroz v. Mullin*, No. 26-6109 (10th Cir. 2026); *Barbosa da Cunha v. Freden*, No. 25-3141 (2d Cir. 2026); *Lopez Campos v. Raycraft*, --- F.4th ---, 2026 WL 1283891 (6th Cir. 2026).

STATEMENT OF FACTS

29. Petitioner is from Guatemala.

30. Petitioner entered the U.S. without inspection approximately thirty years ago and was not apprehended by ICE when he entered.

31. Petitioner was subsequently apprehended by ICE in Salisbury, Maryland on June 14, 2026.

32. Petitioner is now detained by ICE at the Imperial Regional Detention Facility in Calexico, California.

33. Petitioner is subject to mandatory detention based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

ARGUMENT

I. Petitioner is subject to detention under Section 1226(a) and, as such, should be afforded a bond hearing:

34. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the Board's interpretation of § 1225(b)(2)(A) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024).

35. This Court and others have recognized that Section 1226(a) should apply to individuals who ICE apprehends in the interior of the country based on the statute's plain language,

legislative history, Supreme Court precedent, and basic canons of construction. *See, e.g.*, *Pacham*, No. 3:25-cv-03163, at *14; *Esquivel-Ipina*, No. 3:25-cv-2672, at *9; *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 2782499, at *1 (W.D. Wash. Sept. 30, 2025) ("Every district court to address this question has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice."); *Santillan Quiroz v. Mullin*, No. 26-6109 (10th Cir. 2026); *Barbosa da Cunha v. Freden*, No. 25-3141 (2d Cir. 2026); *Lopez Campos v. Raycraft*, --- F.4th ---, 2026 WL 1283891 (6th Cir. 2026).

36. The plain language of § 1225(b)(2)(A) authorizes mandatory detention only if three conditions are met: the individual must be (1) an "applicant for admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted."

37. This Court and several others have recognized that "seeking admission" necessarily requires present-tense conduct. *See, e.g.*, *Pacham*, No. 3:25-cv-03163, at *9 ("As many cases in this District and this Circuit have found, "seeking admission" is best understood to require "an affirmative act such as entering the United States or applying for status."") (quoting *Mosqueda v. Noem*, No. 25-cv-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163, at *8 (E.D. Cal. Sept. 23, 2025) ("the use of a present participle, 'seeking,' necessarily implies some sort of present-tense action.") (internal quotations and citations omitted).

38. The statutory context and structure also make clear that § 1226(a) applies to individuals who have not been admitted and who entered without inspection. There are multiple provisions in § 1226(c) that mandate detention for certain inadmissible noncitizens, including § 1226(c)(1)(A), which applies to noncitizens who have committed or been

convicted of certain criminal offenses; § 1226(c)(1)(D), which applies to noncitizens who are inadmissible for having engaged in specified terrorist activity; and § 1226(c)(1)(E), which was enacted earlier this year as part of the Laken Riley Act and applies to noncitizens who entered the U.S. without admission and were thereafter charged with, arrested for, convicted of, or admitted to committing various offenses. Reading § 1225(b)(2) to encompass all noncitizens who entered without inspection would render multiple provisions of § 1226 superfluous. *See Pacham*, No. 3:25-cv-03163, at *13–14; *Medina-Ortiz v. Noem*, No. 3:25-cv-02819-DMS-MMP, at *5 (S.D. Cal Oct. 30, 2025) ("if § 1225(b)(2) already encompassed all inadmissible noncitizens, there would be no need to pass an amendment that required detention for those who are inadmissible under the same statutes and are being charged with specific crimes.").

39. As this Court has previously recognized, applying § 1225(b)(2)(A) to Petitioner conflicts with the Supreme Court's interpretation of § 1225 and § 1226 in *Jennings v. Rodriguez* 583 U.S. 281 (2018). *See Pacham*, No. 3:25-cv-03163, at *13. The Supreme Court explained in *Jennings*, "U.S. immigration law authorizes the Government to detain certain aliens seeking admission *into* the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings under § 1226(a)." 583 U.S. at 289 (emphasis added).

40. The legislative history also supports the understanding that § 1225 would only apply to individuals arriving in the U.S. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Following IIRIRA, the Executive Office for Immigration

Review ("EOIR") issued regulations clarifying that individuals who entered the country without inspection were not considered detained under § 1225, but rather under § 1226(a). *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

41. The title of § 1225 – "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing" – further indicates that Congress intended § 1225 to apply only to noncitizens apprehended upon arrival. *See Dubin v. United States*, 599 U.S. 110, 120–21 (2023) ("This Court has long considered that the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute.") (internal quotations omitted).

II. Petitioner's detention without a bond hearing violates the procedural due process clause of the Fifth Amendment.

42. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

43. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing *before* the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

44. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release. 424 U.S. 319 (1974).

45. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

46. Second, the risk of erroneous deprivation is high under the current procedures, and additional procedures would mitigate this risk. Civil detention is only valid when it is necessary to prevent danger to the community or a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In this case, Respondents have failed to demonstrate that Petitioner poses a danger or a flight risk. "At its foundation, due process prohibits detaining an individual without justification." *Mohammed H. v. Trump*, No. 25-cv-1576 (JWB/DTS), 2025 WL 1692739, at *5 (D. Minn. June 17, 2025). The imposition of additional safeguards in the form of Petitioner's release or a bond hearing would ensure that the government is only detaining those who actually pose a flight risk or a danger to the community. There is therefore a high risk of the erroneous deprivation of Petitioner's liberty, and there are procedures that could alleviate this risk; as such, the second factor also weighs in favor of Petitioner.

47. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

48. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

49. As such, the balance of factors weighs in favor of ordering Petitioner's release or that he be given a bond hearing.

COUNT I
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

50. Petitioner restates and realleges all paragraphs as if fully set forth here.

51. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

52. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

53. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

54. Petitioner's continuing detention is therefore unlawful.

COUNT II
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19 Unlawful Denial of Release on Bond

55. Petitioner restates and realleges all paragraphs as if fully set forth here.

56. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals

who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

57. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Violation of Fifth Amendment Right to Due Process

58. Petitioner restates and realleges all paragraphs as if fully set forth here.

59. Petitioner's continued detention without a bond hearing violates his right to procedural due process under the Fifth Amendment of the U.S. Constitution.

60. Considering the *Mathews* factors, Petitioner respectfully requests that this Court order his immediate release from custody or provide him with a bond hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner not be transferred outside of this District;

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(4) Declare that Petitioner's detention is unlawful;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days;

(6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(7) Grant any further relief this Court deems just and proper.

Date: July 16, 2026

Respectfully Submitted,

/s/ Madeline Taylor Diaz
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Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. The events described in this Petition are based on a review of his immigration documents and discussions with Petitioner's family. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: 7/16/2026

/s/ Madeline Taylor Diaz
Madeline Taylor Diaz
Attorney for Petitioner