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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

VICTOR NEVAREZ-SANCHEZ, *Petitioner,* vs. JUAN BALTAZAR, Warden, Aurora ICE Processing Center; DAVID VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; and TODD BLANCHE, Acting Attorney General of the United States, *Respondents.*	Case No.: **PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** **[EMERGENCY RELIEF REQUESTED -- IMMEDIATE RELEASE OR BOND HEARING]**

INTRODUCTION

Petitioner Victor Nevarez-Sanchez (A#[redacted]), a native and citizen of Mexico, has lived in the United States since in or about 1991 and is the father of four United States citizen children. He brings this petition under 28 U.S.C. section 2241 to challenge the legality of his current immigration detention and the denial of the individualized bond hearing to which he is entitled.

Petitioner is not subject to a final order of removal. Although an immigration judge ordered him removed on April 21, 2023, Petitioner filed a timely appeal to the Board of

Immigration Appeals (BIA) on May 22, 2023, and that appeal remains pending. Under 8 U.S.C. section 1101(a)(47)(B), an order of removal does not become final while a BIA appeal is pending, and under 8 C.F.R. section 1003.6(a), the removal order may not be executed while the appeal is pending. Petitioner's removal is therefore stayed by operation of law, and the removal period under 8 U.S.C. section 1231(a) has not begun.

Because there is no administratively final order, Petitioner is detained under 8 U.S.C. section 1226 during the pendency of his proceedings, not under section 1231. As a noncitizen who entered without inspection, was not apprehended upon arrival, and is not subject to detention under section 1226(c), section 1225(b)(1), or section 1231, Petitioner is detained under section 1226(a) and is entitled to a bond hearing.

Petitioner's entitlement to a bond hearing is confirmed by *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), in which the court certified a nationwide "Bond Eligible Class" of exactly such individuals, declared them detained under section 1226(a) rather than section 1225(b)(2), and vacated the July 8, 2025 DHS Interim Guidance that drove the government's no-bond policy. Petitioner is a member of that class.

On information and belief, Respondents nonetheless treat Petitioner as categorically ineligible for a bond hearing under *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Those decisions are contrary to the plain text of the INA, are not entitled to deference after *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), have been rejected by federal courts across the country, and rest on guidance that has been vacated under the Administrative Procedure Act.

Petitioner poses no danger and no flight risk. He has approximately thirty-five years of residence, four United States citizen children, and no disqualifying criminal history. He suffers from asthma and arthritis. Respondents refused to release him even after he posted his state bond, and instead transferred him out of Wyoming to Colorado. This Court should order Petitioner's immediate release or, at a minimum, order a section 1226(a) bond hearing within seven days, with the Government bearing the burden by clear and convincing evidence.

JURISDICTION AND VENUE

This Court has subject matter jurisdiction under 28 U.S.C. section 2241, 28 U.S.C. section 1331, and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause). The Court may grant declaratory and injunctive relief under 28 U.S.C. sections 2201-2202, the All Writs Act, 28 U.S.C. section 1651, and Federal Rule of Civil Procedure 65.

This is a challenge to the legality of custody, not to any removal order. Petitioner does not ask this Court to review, delay, or overturn his removal proceedings; he challenges only the statutory basis for his detention and the denial of a custody determination. Such claims are core habeas claims cognizable under section 2241 and are not barred by 8 U.S.C. section 1252(g) or section 1252(b)(9). *See Demore v. Kim*, 538 U.S. 510, 517 (2003).

Venue and jurisdiction are proper in this District because Petitioner is detained here and his immediate custodian is located here. *See Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). [Confirm Petitioner's present facility and county before filing; if Petitioner is

not held in Colorado, this Petition must be filed in the district of his confinement against his immediate custodian there.]

PARTIES

Petitioner Victor Nevarez-Sanchez is a native and citizen of Mexico who entered the United States without inspection in or about 1991 and has resided here continuously for approximately thirty-five years. He is currently in immigration detention, believed to be at the Aurora ICE Processing Center (Denver Contract Detention Facility) in Aurora, Colorado.

Respondent Juan Baltazar is the Warden of the Aurora ICE Processing Center, operated by The GEO Group, Inc. under contract with ICE. He is Petitioner's immediate custodian and is sued in his official capacity. [Confirm the current warden and that Petitioner is in fact held at this facility before filing.]

Respondent David Venturella is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity.

Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security and is sued in his official capacity.

Respondent Todd Blanche is the Acting Attorney General of the United States, who oversees the Executive Office for Immigration Review, and is sued in his official capacity.

STATEMENT OF FACTS

Petitioner entered the United States without inspection in or about 1991 and has lived here continuously for approximately thirty-five years. He is the father of four United States citizen children, all of whom are United States citizens. No member of his family has served in the United States Armed Forces.

Petitioner was placed in removal proceedings under INA section 240. His case was docketed on or about March 11, 2020, before the Immigration Court in West Valley City, Utah (2975 S. Decker Lake Dr., #200, West Valley City, UT 84119).

On April 21, 2023, the immigration judge ordered Petitioner removed. Petitioner disagreed with that decision and filed a timely appeal to the Board of Immigration Appeals. The BIA received his appeal on May 22, 2023, and, according to EOIR records, that appeal remains pending. No future hearings are scheduled.

Because Petitioner's BIA appeal remains pending, his removal order is not administratively final and his removal is stayed by operation of 8 C.F.R. section 1003.6(a).

During and after his proceedings, Petitioner remained at liberty and living in Wyoming with his family. He complied with the conditions of his release.

On or about June 24, 2026, Petitioner was arrested by ICE and booked into the Sweetwater County Detention Center in Rock Springs, Wyoming, on an ICE hold. He separately faced a single state charge -- failure of a legal title holder to obtain a proper salvage vehicle title within thirty days -- in the Sweetwater County Circuit Court, on which he posted a $3,000 cash bond (Bond No. 16961). That offense is a minor regulatory

matter and is not a crime involving moral turpitude, an aggravated felony, or any offense that triggers mandatory detention.

Although Petitioner posted and satisfied his state bond, Respondents refused to release him. On the strength of the ICE hold alone, Respondents transferred Petitioner out of the State of Wyoming to an immigration detention facility in Colorado, believed to be the Aurora ICE Processing Center.

Petitioner suffers from asthma and arthritis, chronic conditions aggravated by detention and by repeated transfers.

Petitioner has substantial equities weighing in favor of release, including approximately thirty-five years of continuous residence, four United States citizen children, compliance with prior release conditions, and no disqualifying criminal history.

I. Petitioner Is Detained Under 8 U.S.C. § 1226, Not § 1231, and His Removal Is Stayed.

An order of removal becomes final only "upon" the BIA's dismissal of an appeal or the expiration of the time to appeal. 8 U.S.C. section 1101(a)(47)(B). While a timely BIA appeal is pending, the order is not administratively final, and the removal order "shall not be executed" during the pendency of the appeal. 8 C.F.R. section 1003.6(a).

The statutory "removal period," which triggers detention under 8 U.S.C. section 1231(a), does not begin until the latest of, among other events, the date the order becomes administratively final. 8 U.S.C. section 1231(a)(1)(B). Because Petitioner's order is not final, the removal period has not begun and section 1231 does not govern his detention.

Detention during the pendency of removal proceedings, including during an administrative appeal, is governed by 8 U.S.C. section 1226. Petitioner is therefore a section 1226 detainee, not a section 1231 detainee.

Because Petitioner's removal is stayed by operation of law, it is legally impossible for Respondents to remove him during the pendency of his BIA appeal. His continued detention therefore does not serve the Government's stated purpose of effectuating removal; removal cannot occur while the automatic stay is in effect.

Nor is there any reasonably foreseeable end to that stay. BIA appeals commonly take many months, and often more than a year, to adjudicate. See Executive Office for Immigration Review, Adjudication Statistics: Board of Immigration Appeals. Here, Petitioner's appeal has already been pending for more than three years -- since May 22, 2023 -- with no decision issued and no future hearings scheduled. There is thus no definite or reasonably foreseeable date on which Petitioner's removal could occur, and his detention has no foreseeable endpoint tied to removal. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022) (persuasive) (recognizing the lengthy and indeterminate nature of immigration appellate adjudication).

Jennings v. Rodriguez, 583 U.S. 281 (2018), confirms that 8 U.S.C. sections 1225 and 1226 govern pre-final-order custody and that constitutional challenges to prolonged detention that lacks procedural safeguards remain available. Petitioner's pre-final-order detention is governed by section 1226, and, as shown below, both the statute and the Due Process Clause entitle him to an individualized bond hearing.

II. As an EWI, Non-Arrival Detainee, Petitioner Is Detained Under § 1226(a) and Is Entitled to a Bond Hearing Under Maldonado Bautista.

Section 1226(a) authorizes discretionary detention and expressly permits release on bond during removal proceedings. Section 1225(b)(2), by contrast, applies only to "applicants for admission" who are seeking admission -- typically those apprehended at or near a port of entry. Petitioner is neither. He entered without inspection decades ago and was arrested in the interior. He is detained, if at all, under section 1226(a).

In *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), the court granted partial summary judgment on November 20, 2025 (2025 WL 3289861), certified a nationwide "Bond Eligible Class" on November 25, 2025 (2025 WL 3288403), and entered Final Judgment on December 18, 2025 (2025 WL 3678485). The court declared that class members are detained under section 1226(a), are not subject to mandatory detention under section 1225(b)(2), and are entitled to consideration for release on bond and, if not released, a custody redetermination hearing before an immigration judge. The court also vacated DHS's July 8, 2025 Interim Guidance under the APA.

The certified Bond Eligible Class consists of all noncitizens without lawful status who (1) entered without inspection, (2) were not apprehended upon arrival, and (3) are not subject to detention under section 1226(c), section 1225(b)(1), or section 1231 at the time DHS makes an initial custody determination. Petitioner satisfies each element: he entered without inspection; he was not apprehended upon arrival; and, because his removal order is not final, he is not subject to section 1231, and, on the facts alleged, he is not subject to section 1226(c) or section 1225(b)(1). Petitioner is therefore a class

member entitled to the class-wide declaratory relief and to a bond hearing under section 1226(a).

III. Matter of Q. Li and Matter of Yajure Hurtado Are Wrong, Widely Rejected, and Rest on Vacated Guidance.

The BIA's 2025 decisions in *Matter of Q. Li* and *Matter of Yajure Hurtado* recast noncitizens arrested in the interior as section 1225(b) "applicants for admission" in mandatory, no-bond detention. That reading contradicts the plain text and structure of the INA and *Jennings v. Rodriguez*, 583 U.S. 281 (2018), which addressed only the statutory question and did not hold that all noncitizens who entered without inspection are subject to section 1225(b)(2) during section 240 proceedings.

After *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), courts do not defer to these agency interpretations; they construe the statute de novo. Numerous federal district courts have rejected the government's reliance on *Yajure Hurtado* and ordered release or bond hearings under section 1226(a).

Most significantly, the DHS Interim Guidance that implemented the no-bond policy has been vacated under the APA in *Maldonado Bautista*. Reliance on *Q. Li* and *Yajure Hurtado* to deny Petitioner a bond hearing is therefore contrary to law.

IV. Exhaustion Would Be Futile.

To the extent Respondents contend Petitioner must first seek and be denied a bond hearing before an immigration judge, exhaustion is futile. EOIR has instructed immigration judges to continue applying *Yajure Hurtado* and to treat individuals like Petitioner as ineligible for bond notwithstanding the *Maldonado Bautista* class judgment.

Where the agency has predetermined the outcome, requiring Petitioner to pursue a foregone administrative remedy would serve no purpose and would only prolong unlawful detention.

Futility and irreparable harm are established here: Petitioner is detained, his health is at risk, and every day of unnecessary detention impairs his ability to participate in his pending BIA appeal and to maintain his relationships with his United States citizen children.

V. Due Process Independently Requires an Individualized Bond Hearing.

The Fifth Amendment protects all persons in the United States, including noncitizens, from deprivation of liberty without due process. Civil detention must bear a reasonable relation to its purpose and must be accompanied by adequate procedures. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Detaining Petitioner with no individualized custody determination, while his removal is stayed and his BIA appeal has been pending for more than three years with no foreseeable end, is not reasonably related to any legitimate detention purpose. Due process requires an individualized hearing before a neutral decisionmaker at which the Government bears the burden of justifying continued detention by clear and convincing evidence, and at which the decisionmaker considers ability to pay and less restrictive alternatives to detention. *See Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011) (persuasive).

This conclusion does not depend on which detention statute the Court applies. Even if Respondents contend Petitioner is subject to mandatory detention under 8 U.S.C.

section 1225(b), the *Zadvydas* principle controls: civil detention must bear a reasonable relationship to its purpose of effectuating removal and may not be indefinite. Where, as here, removal is stayed by the automatic stay, the IJ's order is not final, and the BIA appeal has no reasonably foreseeable end, due process requires a bond hearing or individualized custody review regardless of the statutory label. *See Diouf v. Napolitano*, 634 F.3d 1081, 1090 (9th Cir. 2011) (persuasive) (prolonged civil detention requires an individualized bond hearing).

VI. The Court Should Preserve the Status Quo Pending Resolution.

Respondents have already transferred Petitioner once, out of Wyoming and into this District. A further transfer would place Petitioner beyond this Court's reach, separate him from counsel, and threaten to render any relief meaningless. Under the All Writs Act, this Court may enter an order preventing Petitioner's transfer out of this District pending resolution of this Petition. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004).

In addition, because Petitioner's removal is already stayed by operation of 8 C.F.R. section 1003.6(a) during the pendency of his BIA appeal, the Court should enjoin Respondents from removing Petitioner in violation of that automatic stay pending resolution of this Petition.

REQUESTED RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over, and confirm venue for, this matter;

2) Grant the writ and order Petitioner's immediate release on reasonable conditions of supervision; or, in the alternative,

3) Order the Immigration Court to conduct a custody redetermination hearing under 8 U.S.C. section 1226(a) within seven days, at which (i) the Government bears the burden to show danger or flight risk by clear and convincing evidence; (ii) the immigration judge must consider ability to pay and less restrictive alternatives; and (iii) if the Government fails to meet its burden, Petitioner is released forthwith on the least restrictive conditions;

4) Declare that Petitioner is detained under 8 U.S.C. section 1226(a), not section 1225(b)(2) or section 1231, and that Respondents' reliance on *Matter of Q. Li* and *Matter of Yajure Hurtado* to deny him a bond hearing is unlawful under the INA, the Administrative Procedure Act, and the Fifth Amendment;

5) Enter an order under the All Writs Act prohibiting Respondents from transferring Petitioner out of this District, and from removing him in violation of the automatic stay under 8 C.F.R. section 1003.6(a), pending resolution of this Petition;

6) Award Petitioner reasonable attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. section 2412; and

7) Grant such other and further relief as this Court deems just and proper.

Dated:July 21, 2026.

Respectfully submitted,

/s/ Marcelo Gondim

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am counsel for Petitioner, Victor Nevarez-Sanchez, and I submit this verification on his behalf. I hereby verify that the factual statements in the foregoing Petition are true and correct to the best of my knowledge, information, and belief.

Dated: July 21, 2026.

/s/ Marcelo Gondim

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