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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NICOLAS ZACARIAS, HUMBERTO,

Petitioner,

v.

WARDEN, Otay Mesa Detention Center,

Respondents.

CIVIL CASE NO.:

'26CV4206 CAB DDL

Petition for a Writ of Habeas Corpus

INTRODUCTION

This petition arises from a sudden change in the way that the Board of Immigration Appeals interprets 8 U.S.C. §§ 1225, 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) (quoting Petitioner's brief and noting that Respondents had not contested that claim). But in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals ("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. The government has lost this argument in districts across the United States, *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-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sept. 3, 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), including this one, *see Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.). This Court should reject that argument, too, and order Petitioner's immediate release on the bond imposed by the immigration judge ("IJ").

STATEMENT OF FACTS

Humberto Nicolas Zacarias last entered the United States on March 28, 2000, Exh. A at ¶ 3. He has lived in the U.S. continuously for about twenty-six years, never having left. *Id.* He was taken into custody when he accidentally drove onto Camp Pendleton in Oceanside, California on June 22, 2026. *Id at* ¶ 4. He was then transferred to Immigration Customs Enforcement custody where he remains without the ability to apply for release on bond. *Id.*

The Executive Office of Immigration Review, San Diego has a mandatory detention policy for those that entered the United States without inspection, This Petitioner entered without inspection 26 years ago. The immigration judge is required by the Board of Immigration Appeals to find that the immigration court lacks jurisdiction to hear his application for bond. His application for cancellation of removal for certain nonpermanent residents remains pending. *Id.* at ¶ 5.

LEGAL BACKGROUND

I. Noncitizens who enter without inspection are entitled to a bond hearing under 8 U.S.C. § 1226(a).

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

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

"Section 1226(a) provides for the arrest and detention of noncitizens 'pending a decision on whether the alien is to be removed from the United States.'" *Hernandez Nieves*, 2025 WL 2533110, at *3. It instructs that the Attorney General "may continue to detain" arrestees or "may release [them] on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General." 8 U.S.C. § 1226(a) (punctuation altered). "Federal regulations" implementing this statute "provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 306

(2018) (citing 8 C.F.R. § 1236.1(d)(1)).

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

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

Yajure Hurtado considered which of these provisions—the default rule in § 1226(a) or the mandatory detention provision in § 1225(b)(2)(A)—applies to immigrants who enter the United States without inspection but live for years in the country's interior. 29 I.&N. Dec. at 216. The respondent in *Yajure Hurtado* had entered without inspection in November 2022, before obtaining Temporary Protected Status ("TPS"). *Id.* at 216–17. He was arrested after his TPS expired in April 2025. *Id.* An immigration judge ("IJ") ruled that he was subject to mandatory detention under § 1225(b)(2)(A). *Id.* at 217.

On appeal to the BIA, the respondent conceded that he was an "applicant for admission" in the meaning of § 1225(b)(2)(A), *id.* at 221, because he had not been legally "admitted"—that is, he had not effected a "lawful entry . . . into the United States after inspection and authorization by an immigration officer." 8 U.S.C.

§ 1101(a)(13)(A). But he argued that he did not fall within § 1225(b)(2)(A)'s ambit because he was not actively "seeking admission" at the border. 29 I&N Dec. at 221. He had crossed the border and proceeded to the country's interior years ago. *Id.*

The BIA disagreed, holding that only noncitizens who were legally admitted retain bond eligibility. *Id.* at 218, 223. The BIA gave three reasons to support that conclusion.

First, the BIA rejected the distinction between immigrants who are "applicants for admission" and those who are "seeking admission." In the BIA's view, that distinction would leave people like Mr. Yajure Hurtado without any "legal status" and would create a line-drawing problem. *Id.* at 221.

Second, the BIA rejected the argument that interpreting § 1225(b)(2) to cover noncitizens like Mr. Yajure Hurtado renders superfluous much of § 1226(c). Instead, it asserted without explanation that limiting the reach of § 1225(b)(2) would render that provision superfluous. *Id.* at 221–22.

Third, the BIA claimed that the legislative history supported its construction of § 1225, because in enacting IIRIRA, Congress sought to remedy the inequity of the prior statutory scheme, which provided greater procedural and substantive rights to noncitizens who entered without inspection (and were placed in deportation proceedings) than those who presented themselves to authorities for inspection (and were placed in exclusion proceedings). *Id.* at 223–25. But the BIA did not cite any legislative history specifically addressing detention statutes or custody determinations that would support its interpretation. *Id.*

For these reasons, the BIA concluded that noncitizens who enter without inspection have no right to seek bond from an IJ, regardless of how long they have been residing in the country and irrespective of whether they were apprehended by immigration authorities. *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. § 1225a; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Petitioner's interpretation accords

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* "applicants for admission" *and* in the process of "seeking admission." 8 U.S.C. § 1225(b)(2)(A). Because the statute's first clause already limits the provision to

"applicants for admission," the phrase "seeking admission" must have a different meaning. Any other reading would constitute "an obvious violation of the rule against surplusage." *Romero*, 2025 WL 2403827, at *10.

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

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

The BIA's contrary reading of the legislative history is not persuasive. True, IIRIRA "altered the typology of immigration *proceedings* to 'place[ ] on equal footing' 'all immigrants who have not been lawfully admitted.'" *Romero*, 2025 WL 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). But that "says nothing about *detention* pending the outcome of those

proceedings." *Id.* (emphasis added). All these indicators suggest that § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry, not people who have already entered the country.

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

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

Second, § 1226(a)'s legislative history supports Petitioner's reading. "After passing the IIRIRA, Congress declared the new § 1226(a) 'restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond' a noncitizen 'who is not lawfully in the United States.'" *Rosado*, 2025 WL 2337099, at *9. Because noncitizens deemed inadmissible "were entitled to discretionary detention under § 1226(a)'s

predecessor statute, and Congress declared the statute's scope unchanged by IIRIRA," § 1226(a) must "allow for a discretionary release on bond for" inadmissible noncitizens, too. *Id.*

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

C. 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, 1226. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025), *judgment entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). The Ninth Circuit subsequently stayed the order, "insofar as the district court's judgment extends beyond the Central District of California." *Maldonado Bautista v. DHS*, No. 26-1044, Dkt. No. 5.1 (Mar 6, 2026). The Ninth Circuit left the judgement in place in the Central District. *Id.*

Because of the stay order, the government is no longer required to follow *Maldonado Bautista* in this district. But the stay order does not indicate any 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.

CLAIMS AND PRAYER FOR RELIEF

Detaining Petitioner Without a Bond Hearing Violates 8 U.S.C. § 1226(a), Associated Regulations, the Administrative Procedures Act, and the Fifth Amendment Right to Due Process.

For the reasons just given, Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a). Both the statute and its associated regulations entitle Petitioner to a bond hearing. *See* 8 C.F.R. §§ 326.1(d), 1236.1, 1003.19(a)-(f). Accordingly, the Fifth Amendment's due process clause requires the government to provide the legally required bond hearing before Petitioner is detained. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021).

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

The government violated Petitioner's Fifth Amendment due process rights by depriving him of his freedom from physical confinement without an individualized

determination of flight risk or danger to the public. Mathews v. Elridge, 424 U.S. 319, 321 (1976) (due process analysis considers (1) "the private interest that will be affected by the [government] action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional procedural safeguards"; and (3) "the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail."). In Hernandez v. Sessions, 872 F.3d 976 (9th Cir. 2017), the Ninth Circuit recognized that a noncitizen's interest in freedom from physical confinement itself constitutes a core liberty interest protected by the Due Process Clause. The Petitioner has a criminal history, poses no danger to the community, nor presents a flight risk. See 8 C.F.R. § 1236.1(c)(8). Petitioner has been subjected to unconstitutional detention and his immediate release should be ordered.

Because Petitioner is entitled to a bond hearing to justify detention pursuant to 8 U.S.C. § 1226, the Court should enjoin Respondents from redetaining him without first providing a bond hearing before an immigration judge to justify a deprivation of his liberty interest. See, e.g., Aceros v. Kaiser, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *12 (N.D. Cal. Sept. 12, 2025); Valencia Zapata v. Kaiser, 801 F. Supp. 3d 919, 938 (N.D. Cal. 2025); O.G. v. Albarran, No. 1:26-CV-00010-TLN-DMC, 2026 WL 19105, at *5 (E.D. Cal. Jan. 3, 2026). While § 1226 ordinarily provides for a bond hearing after detention, a pre-deprivation hearing is the more appropriate remedy for individuals like Petitioner who have already been subjected to unconstitutional detention. In order to prevent any further erroneous deprivation of his liberty interest and satisfy due process requirements, this hearing should take place prior to any detention. See Boumediene v. Bush, 553 U.S. 723, 779-80 (2008) (while habeas relief commonly includes release from physical imprisonment, "depending on the circumstances, more [relief] may be required"); Rodriguez v. Hayes, 591 F.3d 1105, 1117 (9th Cir. 2010) (holding that petitioner's release--revocable at the government's discretion--did not provide

complete relief where petitioner sought a legal ruling that he could only be redetained upon a bond hearing); Clark v. Martinez, 543 U.S. 371, 376 n.

Here, Petitioner never received the bond hearing required under § 1226(a), but the government detained him anyway. That violated the statute, regulations, due process, and the Administrative Procedures Act. This Court should therefore grant the petition and order that Nicolas-Zacarias be ordered released. If after his release the government wishes to re-detain him he should receive an appropriate predetention bond hearing.

July 22, 2026

Ed Haase

Edward Haase
Attorney for Petitioner

CERTIFICATE OF SERVICE

SALAS JACINTO, JUAN ADOLFO,

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v.

July
WARDEN, Otay Mesa Detention Center,

Respondents.

CIVIL CASE NO.:

Proof of Service of Petition for a Writ of Habeas Corpus

I served the accompanying document by emailing it to

usacas.habeas2241@usdoj.gov.

Dated: July 21, 2026

S/Edward Haase
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Attorney for Petitioner