David Schlesinger (CA BAR: 224701)
JACOBS & SCHLESINGER LLP
1620 Fifth Avenue, Suite 750
San Diego, CA 92101
Tel: (619) 230-0012
Fax: (619) 230-0044
david@jsslegal.com

Attorney for Petitioner JOSE OSCAR HUERTA RAMIREZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HUERTA RAMIREZ, Jose Oscar

Petitioner,

v.

CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center, San Diego, California in his official capacity;
JOSEPH FREDEN, Field Office Director of San Diego Office of Detention and Removal, U.S. Immigration and Customs Enforcement; U.S. Department of Homeland Security;
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, in his official capacity;
DAREN K. MARGOLIN, Director for Executive Office for Immigration Review, in his official capacity;
MARKWAYNE MULLIN, Secretary of U.S. Department of Homeland Security, in his official capacity;
and
TODD BLANCHE, Attorney General of the United States, in his official capacity,

Respondents.

Case No.: '26CV4295 BJC SBC

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Challenge to Unlawful Incarceration Under Color of Immigration Detention Statutes; Request for Declaratory and Injunctive Relief

Agency Doc. No. [redacted]

Petitioner Jose Oscar HUERTA RAMIERZ ("Petitioner" or "Mr. HUERTA RAMIREZ"), by and through his attorney, David Schlesinger, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully, and states as follows:

INTRODUCTION

1. Petitioner Jose Oscar HUERTA RAMIREZ ("Mr. HUERTA RAMIREZ" or "Petitioner"), by and through his undersigned counsel, files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to compel his immediate release from immigration detention where he has been held by the U.S. Department of Homeland Security ("DHS") since being detained on June 18, 2026. Mr. HUERTA RAMIREZ is in the physical custody of Respondents at the Otay Mesa Detention Center in San Diego, California.

2. Mr. HUERTA RAMIREZ is unlawfully detained. DHS and the Executive Office for Immigration Review ("EOIR") have improperly concluded that Mr. HUERTA RAMIREZ, despite being physically present within the interior of and residing in the U.S., and having been arrested in San Clemente, California, should be deemed to be seeking admission to the U.S. and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

3. DHS has placed Mr. HUERTA RAMIREZ in removal proceedings under 8 U.S.C. § 1229a and has charged Mr. HUERTA RAMIREZ with being present in the United

States without admission and therefore removable under 8 U.S.C. § 1182(a)(6)(A)(i). *Exhibit A.*

4. Based on the charge of removability, DHS has denied Mr. HUERTA RAMIREZ's release from immigration custody. This denial is largely based upon a new DHS policy issued on July 8, 2025,[1] instructing all Immigration and Customs Enforcement ("ICE") employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) - i.e., present without admission - to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention during the removal hearing process.

5. Mr. HUERTA RAMIREZ has not sought a bond hearing before an immigration judge ("IJ") because requesting bond is futile.

6. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which defies decades of precedent and practice by Respondents, stating that the plain language of 8 U.S.C. § 1225(b)(2)(A) divests jurisdiction from immigration judges to redetermine the custody of noncitizens who are present in the United States without admission.

7. Both before and since the issuance of *Matter of Yajure Hurtado*, judges in other district courts have overwhelmingly concluded that persons similarly situated to Mr. HUERTA RAMIREZ, present and residing within the United States, are not "applicants

[1] "Interim Guidance Regarding Detention Authority for Applicants for Admission", ICE, July 8, 2025. Available at: https://immpolicytracking.org/policies/ice-issuesmemo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policydocuments.

for admission" who are "seeking admission" and subject to mandatory detention under § 1225(b)(2)(A).

8. Mr. HUERTA RAMIREZ's detention on this basis violates the plain language of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq. Section 1225(b)(2)(A) does not apply to persons like Mr. HUERTA RAMIREZ who previously entered and are now present and residing in the United States. Instead, such persons are subject to a different statute or provision, § 1226(a), that allows for release on conditional parole or bond. That provision expressly applies to people like Mr. HUERTA RAMIREZ who are charged as removable for having entered the United States without inspection and being present without admission.

9. The BIA's and Respondents' new legal interpretation of the INA is plainly contrary to the statutory framework and decades of agency practice applying § 1226(a) to persons like Mr. HUERTA RAMIREZ who are present within the United States. The new interpretation also conflicts with Ninth Circuit and U.S. Supreme Court precedent. *See Jennings v. Rodriguez*, 583 U.S. 281, 288, 301 (2018); *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024); and *Torres v. Barr*, 976 F.3d 918, 926 (9th Cir. 2020).

10. In addition to Mr. HUERTA RAMIREZ's statutory right to a bond hearing under § 1226(a), persons within the United States have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their

presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

11. Accordingly, Mr. HUERTA RAMIREZ seeks a writ of habeas corpus requiring that he be released, or, at a minimum, an order that an IJ conduct a bond hearing and that Respondents adhere to any bond that may be granted.

JURISDICTION

12. Jurisdiction is proper and relief is available under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of sovereign immunity), 28 U.S.C. § 2241 (habeas corpus jurisdiction), and Article I, Section 9, clause 2 of the U.S. Constitution (the Suspension Clause).

This Court may grant relief under 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

13. Under *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in this judicial district, the one in which Mr. HUERTA RAMIREZ is currently detained.

14. Venue is also properly in this Court under 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agents of the United States, and a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of California.

PARTIES

15. Petitioner Jose Oscar HUERTA RAMIREZ ("Petitioner" or "Mr. HUERTA RAMIREZ") is a 43-year-old-Mexican national who most recently entered the U.S. in March 2008 without inspection.

16. After arresting Mr. HUERTA RAMIREZ, ICE did not set a bond. Under M*atter of Yajure Hurtado*, it would be futile for Mr. HUERTA RAMIREZ to request a bond before the IJ. Mr. HUERTA RAMIREZ is currently in Respondents' legal and physical custody at the Otay Mesa Detention Center in San Diego, California. That facility is operated by CoreCivic, Inc., a Maryland corporation.

17. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention Center where Mr. HUERTA RAMIREZ is being held. He oversees the day-to-day operations of the Otay Mesa Detention Center and acts at the Direction of Respondents FREDEN, LYONS, and MULLIN. Respondent LAROSE is a custodian of Mr. HUERTA RAMIREZ and is named in his official capacity.

18. Respondent Joseph FREDEN is the Acting Field Office Director of ICE in San Diego, California, and is named in his official capacity. ICE is the component of DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is Mr. HUERTA RAMIREZ's legal custodian.

19. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and

enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Mr. HUERTA RAMIREZ.

20. Respondent Daren K. MARGOLIN is the Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond hearings. EOIR is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. He is sued in his official capacity.

21. Respondent Markwayne MULLIN is the Secretary of the DHS and is named in his official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In his capacity as Secretary, Respondent MULLIN has responsibility for the administration and enforcement of the immigration and naturalization laws under Section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent MULLIN is the ultimate legal custodian of Mr. HUERTA RAMIREZ.

22. Respondent Todd BLANCHE is the acting Attorney General of the United States and the most-senior official in the U.S. Department of Justice ("DOJ"), and is named in his official capacity. He has the authority to interpret immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA.

LEGAL FRAMEWORK

23. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings conducted under 8 U.S.C. § 1229a.

24. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in § 1229a removal proceedings before an IJ. Persons covered by § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

25. Second, the INA provides for mandatory detention of noncitizens subject to an expedited removal order imposed under 8 U.S.C. § 1225(b)(1) and for other noncitizen applicants for admission to the U.S. who are deemed not clearly entitled to be admitted. *See* 8 U.S.C. § 1225(b)(2).

26. Lastly, the INA provides for detention of noncitizens who have been ordered removed, including persons in withholding-only proceedings. *See* 8 U.S.C. §§ 1231(a)-(b).

27. This case concerns the detention provisions in 8 U.S.C. §§ 1225(b)(2) and 1226(a). The detention provisions in §§ 1225(b)(2) and 1226(a) 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. Section 1226(a) was most recently amended in early 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

28. Following the enactment of the IIRIRA, EOIR drafted new regulations applicable to proceedings before immigration judges, explaining that, in general, people who entered the country without inspection – also referred to as being "present without admission" – were not considered detained under § 1225 and that occurred instead 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).

29. Thus, in the decades that followed, most people who entered without inspection and were placed in standard § 1229a removal proceedings received bond hearings before IJs, unless their criminal history rendered them ineligible. That practice was consistent with many decades of earlier practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously located in § 1252(a)). This practice both pre- and post-enactment of IIRIRA is consistent with the truism that noncitizens present within the United States – instead of noncitizens present at a border and seeking admission – have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

On July 8, 2025, ICE "in coordination with" the Department of Justice, announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice.

30. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[2] claims that all noncitizens present within the United States who entered without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

31. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*, stating that all persons who entered without inspection are applicants for admission and are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). The BIA stated that "[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission."

32. The overwhelming majority of district judges who have considered this question across the country (including this District), however, have rejected the ICE policy memo and the BIA's decision in *Matter of Yajure Hurtado*. District judges have instead held that Section 1225 governs detention of noncitizens outside the country who are "seeking admission" to the United States, while Section 1226 concerns those living in the United States who entered without inspection. *See Garcia v. Noem,* No.

[2] Available at: https://immpolicytracking.org/policies/ice-issues-memoeliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents.

25-cv-02180-DMS-MMP, 2025 U.S. Dist. LEXIS 171714 (S.D. Cal. Sep. 3, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 171364, at *16, (C.D. Cal. July 28, 2025) ("[T]he Court finds that the potential for Petitioners' continued detention without an initial bond hearing would cause immediate and irreparable injury, as this violates statutory rights afforded under § 1226(a)."); *Ceja Gonzalez v. Noem*, No. 5:25-cv-02054-ODW (ADSx), 2025 U.S. Dist. LEXIS 206688 (C.D. Cal. Aug. 13, 2025); *Benitez v. Francis*, 2025 U.S. Dist. LEXIS 157214 (S.D.N.Y. Aug. 8, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted without objection, Rosado v. Figueroa,* No. CV-25-02157-PHX-DLR (CDB), 2025 U.S. Dist. LEXIS 156336 (D. Ariz. Aug. 13, 2025); *Martinez v. Hyde,* Civil Action No. 25-11613-BEM, 2025 U.S. Dist. LEXIS 141724 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS 128085 (D. Mass. July 7, 2025); *Covarrubias v. Vergara,* No. 5:25-CV-112, 2025 U.S. Dist. LEXIS 206523 (S.D. Tex. Oct. 8, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Diosdado A.V. v. Bondi,* No. 25-cv-3162 (KMM/ECW), Doc. No. 16 (D. Minn. Aug. 19, 2025); *Lopez-Campos v. Raycraft,* No. 2:25-cv-12486, 2025 U.S. Dist. LEXIS 169423 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-1093, 2025 U.S. Dist. LEXIS 167280, at *7 (W.D. La. Aug. 27, 2025); *Benitez v. Noem,* No. 5:25-cv-02190-RGK-AS, 2025 U.S. Dist. LEXIS 171945, at *8, (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem,* No. 1:25-cv-02428, 2025 U.S. Dist. LEXIS 165015, at *24, (D. Md. Aug. 24,

2025); *Romero v. Hyde*, Civil Action No. 25-11631-BEM, 2025 U.S. Dist. LEXIS 160622, at *30, (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem,* No. 5:25-cv-01789, 2025 U.S. Dist. LEXIS 158808, at *4, (C.D. Cal. Aug. 15, 2025); *dos Santos v. Noem,* No. 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488, at *19-20, (D. Mass. Aug. 14, 2025); *Belsai D.S. v. Bondi,* No. 25-cv-3682 (KMM/EMB), 2025 U.S. Dist. LEXIS 194262, at *12-14, (D. Minn. Oct. 1, 2025); *Buenrostro-Mendez v. Bondi,* No. H-25-3726, 2025 U.S. Dist. LEXIS 201967 (S.D. Tex. Oct. 7, 2025); *Reyes v. Raycraft*, No. 25-cv-12546, 2025 U.S. Dist. LEXIS 175767, at *14-15, (E.D. Mich. Sep. 9, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 U.S. Dist. LEXIS 188232, at *18-20, (W.D. Tex. Sep. 21, 2025); *Chogllo Chafla v. Scott,* No. 2:25-cv-00437-SDN, 2025 U.S. Dist. LEXIS 184909, at *14-15, (D. Me. Sep. 21, 2025); *Eliseo A.A. v. Olson*, No. 25-3381 (JWB/DJF), 2025 U.S. Dist. LEXIS 201993 (D. Minn. Oct. 8, 2025).

33. As the district judge in *Rodriguez Vazquez* explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to persons like Mr. HUERTA RAMIREZ. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." *Rodriguez Vazquez,* 2025 U.S. Dist. LEXIS 193611, at *6.

34. Other portions of § 1226 also explicitly apply to persons charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to inadmissible persons makes clear that, by default, inadmissible persons not subject to subparagraph (E)(ii) are afforded a bond

hearing under subsection (a). As *Rodriguez Vazquez* explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 2025 U.S. Dist. LEXIS 193611, at *52 (*quoting Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

35. On September 19, 2025, a district judge in the Western District of Kentucky, Louisville Division, reached the same conclusion after taking notice of the recent congressional amendments, via the Laken Riley Act, to Section 1226. *See Barrera v. Tindall*, Civil Action No. 3:25-cv-541-RGJ, 2025 U.S. Dist. LEXIS 184356 (W.D. Ky. Sep. 19, 2025). The Laken Riley Act added a new subsection under Section 1226(c) for certain persons who would have otherwise fallen under Section 1226(a). *Barrera* noted that if § 1225(b)(2) already mandated detention of any person who has not been admitted, regardless of how long they have been here, then "adding § 1226(c)(1)(E) to the statutory scheme was pointless and this Court, too, will not find that Congress passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2)." *See Barrera*, at *9-10.

36. In its further analysis of the text, *Barrera* observed, "Respondents 'completely ignore,' or even read out, the term 'seeking' from 'seeking admission.'" (*citing Lopez-Campos*, 2025 U.S. Dist. LEXIS 169423, at *16). The term "seeking" "implies action." *Id.* Noncitizens who have been present in the country for years, like Barrera who has been here 20 years, are not actively "seeking admission." *Id.* Since the plain language

of Section 1225 requires someone to be "seeking admission" to be subject to mandatory detention, Mr. HUERTA RAMIREZ, like Barrera, is not subject to it.

37. Relying on the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the district judge in *Lopez Santos v. Noem*, No. 3:25-CV-01193 SEC P, 2025 U.S. Dist. LEXIS 183412 (W.D. La. Sep. 11, 2025), also reached the same conclusion. *Lopez Santos* noted that the Supreme Court in *Jennings* held that Section 1225(b), the provision at issue in this petition, "applies primarily to aliens seeking entry into the United States" (583 U.S. at 297), and that Section 1226 "applies to aliens already present in the United States." *Id.* at 303. As such, *Lopez Santos* determined that a noncitizen residing in the U.S. is entitled to a bond hearing. *Lopez Santos,* at *11.

38. Considering the foregoing, and the plain language of Sections 1225 and 1226, Section 1226 applies to noncitizens who are present without admission and who face charges in removal proceedings of being inadmissible to the United States.

39. By contrast, § 1225(b) applies to persons arriving at U.S. ports of entry or who recently entered the United States and are encountered at or near the border. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

40. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to persons like Mr. HUERTA RAMIREZ who have already entered and were residing in the United States at the time they were apprehended.

FACTS

41. Mr. HUERTA RAMIREZ is a 43-year-old devoted husband and father who has been residing in southern California since approximately March 2008, when he most recently entered the United States without inspection. *Exhibit B.*

42. Mr. HUERTA RAMIREZ is married and has three U.S. citizen children, aged 17, 13, and 10. *Exhibits B, C.* Mr. HUERTA RAMIREZ's 13-year-old son is diagnosed with autism. *Exhibit B, D.*

43. ICE detained Mr. HUERTA RAMIREZ while he was traveling in a work truck as a passenger with his coworker. They were required to pass through a truck-weighing lane at the San Clemente Checkpoint when two immigration agents approached and questioned them. One agent spoke with the driver and indicated that he was cleared to proceed. However, the agent who questioned Mr. HUERTA RAMIREZ instructed Mr. HUERTA RAMIREZ to exit the vehicle. *Exhibit E.*

44. Approximately four additional immigration agents arrived at the scene. Mr. HUERTA RAMIREZ remained silent and did not answer the agents' questions. He was held at the San Clemente Border Patrol checkpoint facility for approximately 6 hours before being transferred to a facility in Chula Vista. On approximately June 21, Mr. HUERTA RAMIREZ was transferred to the Otay Mesa Detention Facility.

45. Mr. HUERTA RAMIREZ has not requested a bond hearing before an immigration judge because doing so is futile based on recent BIA case law.

46. Considering ICE and EOIR's compliance with *Matter of Yajure Hurtado*, Mr. HUERTA RAMIREZ will continue to be detained unlawfully for the foreseeable future.

EXHAUSTION

47. Exhaustion in this case is futile. ICE's new policy was issued "in coordination with the DOJ," which oversees the immigration courts. Moreover, as noted, the most recent published BIA precedent decision on this issue (*Matter of Yajure Hurtado*) states that persons like Mr. HUERTA RAMIREZ are subject to mandatory detention as applicants for admission. Therefore, even if Mr. HUERTA RAMIREZ seeks a custody redetermination before the IJ and the IJ grants his release on bond, the government will reserve appeal and the BIA will reverse the IJ's order under *Matter of Yajure Hurtado.*

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Mr. HUERTA RAMIREZ's Detention is in Violation of 8 U.S.C. § 1226(a)

48. Mr. HUERTA RAMIREZ incorporates by reference the factual allegations set forth in the preceding paragraphs.

49. The mandatory detention provision in 8 U.S.C. § 1225(b)(2) does not apply to Mr. HUERTA RAMIREZ, who is present and residing in the United States and has been placed in § 1229a removal proceedings and charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i). As relevant here, § 1225(b)(2) does not apply to those who previously entered the country and have been present and residing in the United States before being apprehended and placed in removal proceedings by Respondents. Such noncitizens may only be detained under § 1226(a), unless subject to § 1226(c) or § 1231.

50. The application of § 1225(b)(2) to Mr. HUERTA RAMIREZ unlawfully mandates his continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).

SECOND CAUSE OF ACTION

Mr. HUERTA RAMIREZ's Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2)

51. Mr. HUERTA RAMIREZ incorporates by reference the factual allegations set forth in the preceding paragraphs.

52. Under the Administrative Procedure Act, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

53. Respondents' detention of Mr. HUERTA RAMIREZ under § 1225(b)(2) is arbitrary and capricious. Respondents' detention of Mr. HUERTA RAMIREZ violates the INA and the Fifth Amendment. Respondents do not have statutory authority under § 1225(b)(2) to detain Mr. HUERTA RAMIREZ.

54. Mr. HUERTA RAMIREZ's detention is arbitrary, capricious, an abuse of discretion, violates the Constitution, and is without statutory authority, therefore violating 5 U.S.C. § 706(2).

THIRD CAUSE OF ACTION

Mr. HUERTA RAMIREZ's Detention Violates His Fifth Amendment Right to Due Process

55. Mr. HUERTA RAMIREZ incorporates by reference the factual allegations set forth in the preceding paragraphs.

56. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690 (2001).

57. Mr. HUERTA RAMIREZ has a fundamental interest in liberty and being free from official restraint.

58. The Respondents' continued detention of Mr. HUERTA RAMIREZ without allowing Mr. HUERTA RAMIREZ to have a fair bond hearing before an IJ, and most importantly, without the assurance of knowing that Respondents will honor the bond that an IJ is likely to grant considering Mr. HUERTA RAMIREZ's longstanding community ties and lack of recent criminal history (which indicate he is neither a flight risk nor a danger to the community), violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, Mr. HUERTA RAMIREZ respectfully asks that this Court take jurisdiction over this matter and grant the following relief:

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

b. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner, or in the alternative, issue an order that requires an IJ to conduct a bond hearing for Petitioner, and that Respondents' must honor any bond that an IJ may set and to thereafter release Petitioner from their custody upon the payment of the bond;

c. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

d. Grant any other and further relief that this Court deems just and proper.

Dated: July 27, 2026

Respectfully submitted

By: /s David Schlesinger, Esq
David Schlesinger
Attorney for Petitioner
E-mail: david@jsslegal.com

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I represent Petitioner Jesus HUERTA RAMIREZ in these habeas corpus proceedings. Mr. HUERTA RAMIREZ is currently being held in detention at the Otay Mesa Detention Center and is not able to appear in my office to sign this Verification. I have reviewed his attached declaration, the documents annexed to the petition, and

discussed his case with colleagues from my office who have worked closely with him, but they are not eligible to be admitted to this Court's Bar and therefore cannot sign this Verification. Based on their representations to me, I verify that the information contained in the foregoing petition is true and correct to the best of my knowledge and belief.

Executed on July 27, 2026, in San Diego, California.

By: /s David Schlesinger, Esq
David Schlesinger
Attorney for Petitioner
E-mail: david@jsslegal.com