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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSUE CONCEPCION DUARTE ROMERO,

Petitioner,

v.

WARDEN, OTAY MESA DETENTION CENTER; SAN DIEGO FIELD OFFICE DIRECTOR, ICE-ERO; U.S. ATTORNEY GENERAL,

Respondents.

'26CV4599 BJC MSB

Case No. 3:26-cv-99999

**PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Josue Concepcion Duarte Romero ("Mr. Duarte") is being unlawfully detained by U.S. Immigration and Customs Enforcement ("ICE"). Petitioner entered the United States without inspection, and his detention has been misclassified under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision misconstrues the immigration detention statutes to deny bond hearings to every noncitizen who has not been admitted to the U.S. on a visa. *Matter of Yajure Hurtado* reversed decades of precedent, and hundreds of judges have found it to be mistaken. Mr. Duarte seeks relief under both the immigration detention statutes

and the Due Process clause of the Fifth Amendment. Petitioner asks the Court to order his immediate release and/or a bond hearing.

## JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
2. Venue is proper because Petitioner is detained by ICE at the Otay Mesa Detention Center. Ex. 1 – ICE Detainee Locator; *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004).

## THE PARTIES

3. Petitioner Mr. Duarte is a citizen of Mexico who has been in the Respondents' custody since August 10, 2026.
4. Respondent Warden of the Otay Mesa Detention Center is responsible for Petitioner's detention and is a legal custodian of him.
5. Respondent Field Office Director is responsible for the implementation and enforcement of the Immigration and Nationality Act, and they oversee Petitioner's detention by ICE. They are a legal custodian of Petitioner.
6. Respondent Attorney General oversees the immigration court system, which is denying Petitioner a bond hearing.
7. All Respondents are sued in their official capacities.

## FACTUAL ALLEGATIONS

8. Mr. Duarte is a native of Mexico. He entered the United States without inspection in or around 2008, and he has resided in the United States since then.
9. Mr. Duarte resides in New Carrollton, Maryland with his girlfriend. He has two brothers in the United States and three nephews. He has three children in Mexico and works hard to support them.

10. Mr. Duarte is a Foreman installing complex underground conduit systems for power companies. He has been at the same job for 10 years.
11. On information and belief, Mr. Duarte has no criminal history.
12. On August 10, 2026 Mr. Duarte was approached by two masked men while sitting in his work truck at a gas station in Maryland. He initially believed he was being robbed, so he rolled up his windows. But after he learned the men were ICE agents, he cooperated. He was taken into custody. ICE transferred him to the Otay Mesa Detention Center on or around August 11, 2026.
13. Mr. Duarte has been unlawfully classified as detained under 8 U.S.C. § 1225(b)(2) due to a recent administrative precedent, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Although this precedent has been broadly rejected by courts, the government continues to apply it, creating an unwieldy cascade of habeas corpus petitions.

**PETITIONER CANNOT BE DETAINED UNDER 8 U.S.C. § 1225(B)(2)**

14. The issue is which statute governs Petitioner's detention: 8 U.S.C. § 1226 or § 1225(b)(2). Section 1226 allows bond hearings while section 1225(b)(2) does not. These statutes are mutually exclusive, and only one can apply. *See Jennings v. Rodriguez*, 583 U.S. 281, 297, 187 (2018).
15. For almost 30 years—from 1996 until 2025—the prevailing view throughout the immigration system was that § 1225(b) applied to people seeking admission at the border, while § 1226 applied to people who had already entered the U.S. The contrary view expressed in *Matter of Yajure Hurtado* upset decades of consistent practice under the current statutes and over a century of tradition under prior statutes.
16. First, Petitioner's argument is supported by the title and text of section 1225. Section 1225 is titled in relevant part, "Expedited Removal of Inadmissible Arriving Aliens." This signals that the statute applies to people arriving in the

U.S. According to its text, section 1225(b)(2) only applies to someone who is "seeking admission." 8 U.S.C. § 1225(b)(2)(A). The term "admission" has a geographic component that connotes entry into the U.S.: "The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Thus, § 1225(b)(2) only applies to people at the border seeking entry into the U.S., not people like Petitioner who entered the U.S. long ago.

17. Second, Petitioner's argument is supported by the text of § 1226. Under *Matter of Yajure Hurtado*, that statute would never apply to people who have not been admitted to the U.S. But the only way to give effect to every word of that statute and avoid redundancy is by applying it to some people who have not been admitted to the U.S., like Petitioner. While § 1226(a) generally permits bond to be granted, § 1226(c) disqualifies noncitizens with certain criminal convictions. Some of these exceptions are specifically targeted at noncitizens who have not been admitted. Section 1226(c) provides that a person is ineligible for bond if they are inadmissible due to criminal convictions or terrorism.[1] The grounds of inadmissibility only apply to people who have not been admitted. There would be no need to exempt certain unadmitted people from bond if all unadmitted people were already ineligible for bond under section 1225. When "Congress has created specific exceptions" to a rule, it proves the general applicability of the rule. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). Thus, § 1226 must apply to some people who entered the U.S. without admission, and *Matter of Yajure Hurtado* cannot be correct.

[1] 8 U.S.C. § 1226(c)(1) (exempting from bond any alien who "is inadmissible by reason of having committed any offense covered in 8 U.S.C. § 1182(a)(2)" or who "is inadmissible under 8 U.S.C. § 1182(a)(3)(B).").

18. Third, Congress recently passed the Laken Riley Act, which added another exception to bond eligibility that applies only to unadmitted people.[2] If *Matter of Yajure Hurtado* were correct, then the contentious public debate and passage of the Laken Riley Act was pointless and redundant because all unadmitted people were already ineligible for bond. But "[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) (citations omitted).

19. Fourth, the Supreme Court has endorsed the traditional understanding of the statutory scheme, stating in *Jennings* that § 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." *Jennings*, 583 U.S. at 297, 187. By contrast, § 1226 detention relates to people "inside the United States" and "present in the country." *Id.* at 288.

20. Fifth, the implementing regulations allow bond hearings for people who entered without inspection. The last major revision to the detention statutes occurred in 1996 when Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). Immediately after the passage of IIRIRA, the Immigration and Naturalization Service issued a regulation confirming that people apprehended within the United States are eligible for bond.[3] Those regulations are still in effect and have never been withdrawn.

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[2] 8 U.S.C. § 1226(c)(1)(E), *as amended by* Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025) (disqualifying from bond any noncitizen who "is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title" and has an inchoate offense of theft, assault on a law enforcement officer, or causing death or serious bodily injury.).

[3] Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 ("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.").

21. Sixth, every administration followed Petitioner's view, from 1996 up until 2025. *Lopez-Campos v. Raycraft*, 175 F.4th 713, 725 (6th Cir. 2026) ("As the government admits, the executive has never thought § 1225(b)(2)(A) to mean what the government now contends it means.").

22. Seventh, Petitioner's argument is supported by over a century of statutory tradition. Going back to at least 1907, the immigration statutes provided bond hearings for people who entered the U.S. without inspection.[4]

23. Lastly, Petitioner's argument is supported by a growing chorus of circuit level decisions. *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026); *Santillan Quiroz v. Mullin*, 180 F.4th 1226 (10th Cir. 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, 175 F.4th 1258 (11th Cir. 2026).

24. The expedited removal statute at 8 U.S.C. § 1225(b)(2) does not apply to Petitioner. He could be detained, if at all, only under 8 U.S.C. § 1226. However, ICE has not issued the warrant required to detain him under § 1226. Since neither statute authorizes his detention, he should be ordered released.

## FIRST CAUSE OF ACTION: 8 U.S.C. §§ 1225, 1226(A) AND ASSOCIATED REGULATIONS

25. Petitioner incorporates the foregoing paragraphs by reference.

26. Petitioner may not be detained under 8 U.S.C. § 1225. He could be detained, if at all, only under 8 U.S.C. § 1226(a). If that statute applied, it would permit him to seek release on bond. *See* 8 C.F.R. §§ 1236.1(d), 1003.19(a)-(f).[5]

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[4] *See* 34 Stat. 904-905, § 20 (1907) (providing for release on bond for noncitizens alleged to have entered the United States unlawfully); 39 Stat. 874, 890-91, §§ 19, 20 (1917) (similar); 66 Stat. 163, §§ 241(a)(2), 242(a) (1952) (last codified at 8 U.S.C. § 1252(a)(1) (1994)) (providing for release on bond, including for noncitizens alleged to have entered the United States without inspection).

[5] 8 C.F.R. § 1236.1(d) ("After an initial custody determination by [ICE], including the setting of a bond, the respondent may, at any time before an order [of removal] becomes final, request amelioration of the conditions under which he or she may

27. However, section 1226 only permits detention "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a).[6] ICE has not issued the required warrant, so detention is not authorized under § 1226. Since neither §§ 1225 nor 1226 authorizes detention, Petitioner should be ordered released from detention or alternatively granted a bond hearing.

**SECOND CAUSE OF ACTION:**
**DUE PROCESS**

28. Petitioner incorporates the foregoing paragraphs by reference.

29. 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 v. Davis*, 533 U.S. 678, 690 (2001).

30. Due Process requires balancing three concerns: the private interest affected by official action, the risk of erroneous deprivation of that interest through the procedures used and probable value of additional safeguards, and the government's interest including the function involved and the fiscal or administrative burden of additional procedures. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

31. Petitioner has a weighty interest in being free from detention, there has been no impartial assessment that their detention is necessary to serve the purposes of the immigration laws, and additional process will only save government resources given the exorbitant cost of detention.

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be released."); 8 C.F.R. § 1003.19(a) ("Custody and bond determinations made by the service pursuant to 8 CFR part 1236 may be reviewed by an Immigration Judge....").

[6] The reference to the Attorney General is outdated. Since the Homeland Security Act of 2003, this authority has resided in the Secretary of Homeland Security.

32. If Petitioner is not released, they should be granted a bond hearing at which the government is prohibited from denying bond on the basis that he is subject to mandatory detention under 8 U.S.C. § 1225.

## REQUEST FOR RELIEF

Therefore, Petitioner respectfully asks this Court to grant the following relief:

1) Order that Petitioner not be transferred outside the district;
2) Declare that Petitioner is not subject to detention under 8 U.S.C. § 1225;
3) Declare that Petitioner's detention is unlawful;
4) Order Petitioner's release from detention or alternatively that they receive a bond hearing before a neutral arbiter at which the government is enjoined from finding him subject to mandatory detention under 8 U.S.C. § 1225;
5) Grant any other relief the Court deems just and proper.

Dated: August 12, 2026

CLARK HILL LLP

By: /s/Alexandra Fuxa Ramirez
Alexandra Fuxa Ramirez

Attorneys for Petitioner Josue Concepcion Duarte Romero

## VERIFICATION

I am the Petitioner's brother. The Petitioner is unable to sign this verification personally because he is detained and has limited ability to communicate with the outside world. I am familiar with the facts mentioned in the petition and I submit this verification on Petitioner's behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge and belief.

Dated August 12, 2026

Sergio Caballero

Sergio Caballero Romero

## INDEX OF EXHIBITS

1. ICE Detainee Locator