UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Fernando Gonzalez Guerrero,	§	
	§	
Petitioner,	§	
	§	
V.	§	
	§	
KRISTI NOEM, Secretary of the United States Department of Homeland Security; PAMELA BONDI, United States Attorney General; MIGUEL VERGARA, San Antonio Field Office Director for Enforcement and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security; CHARLOTTE COLLINS, Warden, T. Don Hutto Detention Center, Taylor, Texas; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;	§	Civil Case No. 1:25-cv-1334
	§	
Respondents.		

SECOND AMENDED
EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

1. This Second Amended Petition incorporates the Board of Immigration Appeals' September 29, 2025, decision sustaining DHS's appeal and vacating the Immigration Judge's bond order, relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

2. Petitioner Fernando Gonzalez Guerrero, through counsel, respectfully petitions this Court for an emergency writ of habeas corpus under 28 U.S.C. § 2241 to challenge his unlawful detention by Immigration and Customs Enforcement (ICE) at the T. Don Hutto Detention Center, Taylor, Texas. Petitioner seeks immediate release on the $5,000 bond ordered by the Immigration Judge (IJ) on July 23, 2025, or, alternatively, an order vacating the Board of Immigration Appeals' (BIA) decision and enforcing the IJ's bond decision. This petition raises constitutional claims and pure questions of law, over which this Court has jurisdiction.

I. INTRODUCTION

3. Petitioner, a Mexican citizen, has resided in the U.S. for over 20 years, with U.S. citizen children, stable employment, and no criminal convictions. On July 17, 2025, ICE detained him after a dismissed assault charge in Travis County, Texas, pursuant to an ICE Detainer and a Warrant for Arrest of Alien. On July 23, 2025, the IJ granted a $5,000 bond, finding detention governed by 8 U.S.C. § 1226(a) (discretionary detention), not § 1225(b) (mandatory detention for arriving aliens), and that the respondent was not a danger to the community and not a flight risk.

4. DHS invoked an automatic stay under 8 C.F.R. § 1003.19(i)(2) and appealed to the BIA, keeping Petitioner detained since July 17, 2025. On September 29, 2025, the BIA sustained DHS's appeal, vacated the IJ's bond order, and ordered Petitioner detained without bond, relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which interprets §

1225(b) to mandate detention for all "applicants for admission," including long-term residents apprehended in the interior. The BIA's interpretation violates the INA and the Fifth Amendment due process rights.

II. JURISDICTION AND VENUE

5. Petitioner is in the physical custody of the Respondents in the T. Don Hutto Detention Center, in Taylor, Texas.

6. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101–1537.

7. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

8. This Court has jurisdiction under 28 U.S.C. § 2241 to review the lawfulness of Petitioner's detention, as this petition raises constitutional claims (Fifth Amendment due process violations) and pure questions of law (whether the BIA's interpretation of 8 U.S.C. § 1225(b) under *Matter of Yajure Hurtado*, and applied to the Petitioner's bond proceedings, is erroneous when detention is governed by 8 U.S.C. § 1226(a) rather than § 1225(b)). See *Rosales v. Bureau of Immigration and Customs Enforcement*, 426 F.3d 733, 736 (5th Cir. 2005) (holding that courts retain jurisdiction to review constitutional claims and questions of law in immigration cases under the REAL ID Act); see also *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024) (eliminating *Chevron* deference to agency interpretations, requiring courts to independently interpret statutes).

9. Venue is proper as Petitioner is detained in Taylor, Texas, within this District.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. All administrative remedies have been exhausted. On July 23, 2025, the Petitioner was granted a $5000 bond by an IJ after finding he had jurisdiction to set a bond amount and that the Petitioner was not a flight risk or a danger to the community. DHS appealed the IJ's decision to the BIA, which, on September 29, 2025, sustained DHS's appeal, vacated the IJ's decision, and ordered the Petitioner detained without bond.

11. Additionally, there is no statutory exhaustion requirement for habeas corpus petitions under 28 U.S.C. § 2241. See *Puri v. Gonzales*, 464 F.3d 1038, 1041 (9th Cir. 2006) (noting that § 2241 does not contain an exhaustion requirement). Although courts may impose a prudential exhaustion requirement, exhaustion is excused here because this petition raises pure questions of law and constitutional claims that the BIA resolved unfavorably to the Petitioner under *Matter of Yajure Hurtado*. See *McCarthy v. Madigan*, 503 U.S. 140, 147-48 (1992) (exhaustion not required where administrative remedies cannot provide relief or are futile); *Rosales*, 426 F.3d at 736.

IV. PARTIES

12. Petitioner, Fernando Gonzalez Guerrero, is a Mexican citizen currently in ICE Custody at the T. Don Hutto Detention Center.

13. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

14. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review

and the immigration court system it operates is a component agency. She is sued in her official capacity.

15. Respondent Miguel Vergara is the Director of the San Antonio Field Office of ICE's Enforcement and Removal Operations division; however, on information and belief, the DHS is rotating their Field Office Director without publishing a schedule of rotation. As such, Miguel Vergara or his unknown, unannounced provisional replacement is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He or his acting counterpart is named in his or her official capacity.

16. Respondent, Charlotte Collins, is employed by the private, for-profit detention corporation contracted by the Government as an agent to confine immigrants at T. Don Hutto Detention Center, where Petitioner is detained. She has immediate physical custody of Petitioner. She is sued in her official capacity.

17. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

18. Respondent Immigration and Customs Enforcement is the federal agency, branch of DHS, responsible for the enforcement of the INA, apprehension of non-citizens in the U.S., and detention and removal of noncitizens.

19. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

V. LEGAL FRAMEWORK

20. The INA prescribes forms of detention for noncitizens in removal proceedings.

21. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 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), Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

22. The INA also provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

23. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

24. 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. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

25. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained 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)[1].

[1] https://www.justice.gov/sites/default/files/eoir/legacy/2005/01/12/fr03ja97P.pdf

26. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" or "seeking admission" 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 found at § 1252(a)).

27. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b). During oral argument on November 30, 2016, then–Solicitor General Ian Gershengorn stated: "If they are not detained within 100 miles of the border or within 14 days… then they are under 1226(a) and not 1226(c)" and further clarified, in response to a question concerning "an alien who has come into the United States illegally without being admitted [and] who takes up residence 50 miles from the border," the Government responded, "The answer is they are held under 1226(a) and that they get a bond hearing…" Transcript of Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. ___ (2018) (No. 15-1204). DHS reiterated that such individuals "would be held under 1226(a)" and cited the administrative record to support that position. *Id.* These statements reflect DHS's prior litigation stance that § 1226(a) governs detention for noncitizens who have entered and are residing in the United States, a position directly contrary to the agency's current interpretation applying § 1225(b)(2)(A) to such individuals. Having prevailed in

Jennings after taking this position, they should be estopped from taking the contrary position now simply because their political or litigation interests have changed.

28. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[2] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision 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.

29. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

30. Since Respondents adopted their new policies, several federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

31. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not

[2] https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission

apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

32. A growing number of federal courts have rejected DHS, ICE, and EOIR's recent interpretation of the INA's detention provisions. These courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority applicable in long-resident EWIs, such as the present cases. For example, courts in Massachusetts, Arizona, New York, Minnesota, California, and Nebraska have reached this conclusion. See: *Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025).

33. These decisions reflect a clear judicial consensus that the government's reliance on § 1225(b)(2) is misplaced in cases involving long-resident EWIs whose immigration status lawfully falls under § 1226(a).

34. Courts have uniformly rejected DHS, ICE, and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

35. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

36. The text of § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at 7.

37. Section 1226, therefore, leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

38. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States and were not free to mingle with the general population after being free from official restraint. 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). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "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 v. Rodriguez*, 583 U.S. 281, 287 (2018).

39. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who entered the U.S. without inspection and have resided here for decades.

VI. FACTS

40. Petitioner entered the U.S. without inspection in 2005 and has resided continuously in Austin, TX, with his wife (a VAWA self-petitioner with a prima facie determination) and four U.S. citizen children. He has no criminal convictions.

41. On June 24, 2025, Petitioner was arrested for an alleged assault charge in Travis County, Texas, which was dismissed "in the interest of justice" on July 15, 2025, due to self-defense circumstances involving his stepson. While he was in Travis County custody, Petitioner was served with Form I-200, Warrant for Arrest of Alien, and Form I-247A, ICE Detainer.

42. On July 16, 2025, after the charges were dismissed, ICE picked up the Petitioner at the Travis County Jail pursuant to the arrest warrant and detained him at T. Don Hutto Detention Center. He has been there since that date. On that same date, ICE issued the Petitioner a Notice to Appear (NTA), charging the respondent as inadmissible pursuant to INA § 212(a)(6)(A)(i).

43. On July 23, 2025, after a bond hearing, the IJ granted a $5,000 bond, finding § 1226(a) applies, as Petitioner was apprehended inside the U.S. after 20 years of residence and pursuant to a Warrant for Arrest of Alien issued by DHS. On that same date, DHS filed Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination, invoking an automatic stay. On August 5, 2025, DHS filed an appeal with the BIA.

44. On September 29, 2025, the BIA issued a decision sustaining DHS's appeal, vacating the IJ's bond order, and ordering Petitioner detained without bond. The BIA relied exclusively on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that Petitioner is

an "applicant for admission" subject to mandatory detention under INA § 235(b)(2)(A), despite his long-term residence and interior apprehension. This decision ignores legislative history, longstanding agency practice, and federal court precedent limiting § 1225(b) to recent border arrivals. See: *Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025).

45. Petitioner's detention has now exceeded 75 days, causing ongoing irreparable harm. Petitioner has significant equities: 20 years of U.S. residence, stable employment in construction, young U.S. citizen children, and eligibility for VAWA relief (as a battered stepparent) and Cancellation of Removal under INA § 240A(b)(1) due to exceptional hardship to his U.S. citizen children.

VII. CLAIMS FOR RELIEF

A. Violation of the INA

46. Petitioner incorporates by reference the law and allegations of fact set forth in the preceding paragraphs.

47. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizen EWIs who are long-time residents of the U.S. and who are subject to that ground of inadmissibility. As relevant here, it does not apply to those who entered without inspection

decades ago. Such noncitizens, as Petitioner, are detained under § 1226(a), and shall be released on bond upon an IJ's order.

48. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates the INA.

B. Violation of Bond Regulations

49. Petitioner incorporates by reference the law and allegations of fact set forth in preceding paragraphs.

50. 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 (emphasis added). 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.

51. Nonetheless, pursuant to *Matter of Yajure Hurtado*, DHS, ICE, and EOIR have a policy and practice of unlawfully applying § 1225(b)(2) to individuals like Petitioner, who are instead detained under § 1226(a).

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

C. Violation of Due Process

53. Petitioner repeats, re-alleges, and incorporates by reference the law and each and every allegation in the preceding paragraphs as if fully set forth herein.

54. 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).

55. Petitioner has a fundamental interest in liberty and being free from official restraint.

56. The government's detention of Petitioner without a bond, after being determined by an IJ that he is not a flight risk or a danger to the community, violates his right to due process.

VIII. RELIEF REQUESTED

57. Petitioner prays that this Court grant the following relief:

(a) Assume jurisdiction over this matter;

(b) Order that Petitioner shall not be transferred outside the Western District of Texas while this habeas petition is pending;

(c) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days under 28 U.S. Code § 2243;

(d) A writ of habeas corpus ordering immediate release on the $5,000 bond ordered by the IJ;

(e) An order vacating the BIA's September 29, 2025, decision;

(f) A declaration that Petitioner detention is unlawful;

(g) 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

(h) Grant any other and further relief that this Court deems just and proper.

58. I declare under penalty of perjury that I am the petitioner's attorney, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Respectfully submitted, October 1, 2025.

Patricio Garza Izaguirre
Attorney for the Petitioner

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Austin, TX 78752

TX SBN 24087568

INDEX OF DOCUMENTS

	Exhibit
- **Notice to Appear**	A
- **Order of the IJ granting a $5000 bond**	B
- **Form EOIR-26, DHS Bond Appeal**	C
- **Order of the BIA denying bond**	D

CERTIFICATE OF SERVICE

I, Patricio Garza Izaguirre, certify that on this date a true and correct copy of this **EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**, and all the attached documents described in the index above, were served to the following by the CM/ECF system:

1. KRISTI NOEM, Secretary of the United States Department of Homeland Security;
2. PAMELA BONDI, United States Attorney General;
3. MIGUEL VERGARA, San Antonio Field Office Director for Enforcement and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security;
4. CHARLOTTE COLLINS, Warden, T. Don Hutto Detention Center, Taylor, Texas;
5. UNITED STATES DEPARTMENT OF HOMELAND SECURITY;
6. UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT;
7. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

On October 1, 2025

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