

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION**

Jesus VAZQUEZ GONZALEZ,

Petitioner,

v.

WARDEN of Folkston ICE Processing Center
in their official capacity, et al.

Respondents.

HEARING REQUESTED

Case No. 5:25-cv-00091-LGW-BWC

PETITIONER'S MOTION FOR EMERGENCY TEMPORARY RESTRAINING ORDER

INTRODUCTION

Petitioner Jesus Vazquez Gonzalez is a native and citizen of Mexico who is being unlawfully detained by U.S. Immigration and Customs Enforcement ("ICE") based on a draconian and illegal re-interpretation of the statutes and regulations regarding discretionary bond for noncitizens who entered the United States without inspection. Every single district court who has addressed this issue has granted habeas relief to similarly situated petitioners, yet Respondents continue to unlawfully implement their erroneous interpretation. Accordingly, Mr. Vazquez Gonzalez asks this Court to grant a temporary restraining order which orders Respondents to immediately release him on bond.

FACTS

Mr. Vazquez Gonzalez is a native and citizen of Mexico who was detained by ICE in June 2025. He has lived in the United States since around 2001 after entering the country without

inspection. He has three United States citizen children, who are ages 10, 15, and 19. He has no criminal history besides a 20-year-old charge that was dismissed.

On July 24, 2025, a custody redetermination hearing was held, where the Department of Homeland Security (“DHS”) argued consistent with a new DHS policy that Mr. Vazquez Gonzalez was not eligible for bond despite years of precedent and interpretation suggesting otherwise. This policy instructs all ICE employees to argue that anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for entering the country without inspection is ineligible for bond and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), rather than subject to discretionary detention under 8 U.S.C. § 1226(a). The immigration judge assigned to the case agreed with the government, finding that Mr. Vazquez Gonzalez was an “applicant for admission” who is “seeking admission” to the United States and therefore subject to mandatory detention under Immigration and Nationality Act (“INA”) § 1225(b)(2)(A). The immigration judge found this even though Mr. Vazquez Gonzalez entered the United States over two decades ago and was not apprehended until a few months ago and thousands of miles from the southern border of the United States. The immigration judge did not address whether Mr. Vazquez Gonzalez was a flight risk or a danger to the community.

ARGUMENT

This Court should issue a temporary restraining order because Petitioner has shown all four factors required for relief: “(1) he has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction would cause the opposing party; and (4) if used, the injunction would not be adverse to the public interest.” *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1268 (11th Cir. 2006). In the Eleventh Circuit, the third and fourth

traditional factors “merge” when the Government is the defendant, as it is in this lawsuit. *Swain v. Junior*, 961 F.3d 1276, 1293 (11th Cir. 2020) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)).

I. Petitioner Has Established Subject-Matter Jurisdiction and Exhaustion is Not Necessary

To the extent there is any question, this Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), and art. I sec. 9, cl. 2 of the United States Constitution (Suspension Clause), as Petitioner is presently in custody under or by color of the authority of the United States and challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). The United States Supreme Court has upheld the federal courts’ jurisdiction to review such claims in *Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018) (holding that 8 U.S.C. § 1252 does not bar a noncitizen’s claims of entitlement to bond pending resolution of their immigration proceedings); *see also Madu v. U.S. Att’y Gen.*, 470 F.3d 1362, 1366-68 (11th Cir. 2006) (recognizing that habeas jurisdiction over detention is different than jurisdiction to review a final order of removal).

Further, there is no statutory exhaustion bar for § 2241 detention claims. Exhaustion is prudential, and the Court may excuse exhaustion as futile if the Court finds that the agency has predetermined the issue. *See Santiago-Lugo v. Warden*, 785 F.3d 467, 474-75 (11th Cir. 2015) (exhaustion is not jurisdictional). Here, the BIA recently issued a decision codifying its erroneous interpretation of the bond statutes and IJ jurisdiction. *See Matter of Yajure Hurtado*, 29 I. & N.

Dec. 216 (BIA 2025). Thus, appeal to the BIA in this case would be futile, and exhaustion is not necessary.

II. Petitioner Is Substantially Likely to Succeed on the Merits

A. Petitioner Is Likely to Prevail On His Claim

Every district court to address this issue—whether 8 U.S.C. §§ 1226(a) or 1225(b) applies given the new ICE policy—has found that Mr. Vazquez Gonzalez is likely to succeed on the merits of his claim, granting a writ of habeas corpus or ordering the individual’s release as part of a motion for temporary protective order. *See Diaz v. Hyde*, Civ. No. 25-11613, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rodriguez Vazquez v. Bostock*, Civ. No. 3:25-cv-05240, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, Civ. No. 1:25-cv-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025); *Rosado v. Bondi*, Civ. No. 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez-Benitez v. Francis*, Civ. No. 25-5937, 2025 WL 2371588, ---F. Supp.3d ---- (S.D.N.Y. Aug. 13, 2025); *Dos Santos v. Lyons*, Civ. No. 1:25-cv-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, Civ. No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Escalante v. Bondi*, Civ. No. 25-cv-3051, 2025 WL 2212104 (D. Minn. July 31, 2025); *O.E. v. Bondi*, Civ. No. 25-cv-3051, 2025 WL 2235056 (D. Minn. Aug. 3, 2025); *Arrazola-Gonzalez v. Noem*, Civ. No. 5:25-cv-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, Civ. No. 25-cv-3162, 2025 WL 2374223 (D. Neb. Aug. 15, 2025); *Mayo Anicasio v. Kramer*, Civ. No. 4:25-cv-3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Rodriguez de Oliveira v. Joyce*, Civ. No. 2:25-cv-00291, 2025 WL 1826118 (D. Me. July 2, 2025); *Leal-Hernandez v. Noem*, Civ. No. 1:25-cv-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos*, Civ. No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Romero v.*

Hyde, Civ. No. 25-11631, --- F. Supp. 3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Doe v. Moniz*, Civ. No. 1:25-cv-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Herrera Torralba*, Civ. No. 2:25-cv-01366, 2025 WL 2581792 (D. Nev. Sept. 5, 2025). The only case that ruled to the contrary, *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025), concerned a different issue as to the effect of an approved family petition and is therefore not relevant to the instant case, as a different judge from that same district recognized. *Romero*, --- F. Supp. 3d ----, 2025 WL 2403827, at *1 n.1.

As discussed in the habeas petition, *see* ECF No.1, under 8 U.S.C. § 1226(a), individuals are generally entitled to discretionary bond determinations when detained. 8 C.F.R. §§ 1003.19(a), 1236.1(d). Certain noncitizens who are arrested, charged with, or convicted of certain crimes are subject to mandatory detention until removal proceedings are concluded. 8 U.S.C. § 1226(c). Under 8 U.S.C. § 1225(b)(1), certain noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) are subject to mandatory detention, as are recent arrivals “seeking admission” under INA § 1225(b)(2).

Following enactment of these statutes, the Executive Office of Immigration Review (“EOIR”) drafted new regulations stating that people who entered the country without inspection were not considered detained under § 1225 but were instead detained under § 1226(a). *See* Inspection and Expedite Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.”). Thus, from 1997 until a few weeks ago, noncitizens like Mr. Vazquez Gonzalez were eligible for bond after their detention.

Now, Respondents have adopted a new interpretation of the statute requiring detention for

all noncitizens like Mr. Vazquez Gonzalez, despite having been present in the United States for decades. Immigration judges, like the one in the instant case, have been relying on an unpublished and undisclosed opinion from the BIA and this new DHS policy to conclude that individuals are subject to mandatory detention under § 1225(b)(2)(A). While some judges are still granting bond in these cases, DHS has begun filing Form EOIR-43, Notice of Service Intent to Appeal Custody Redetermination, in every single case, triggering an automatic stay of the bond decision during appeal. As of just last week, the BIA has issued a precedential opinion codifying this illegal interpretation. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

DHS's and DOJ's interpretation defies the INA, as the above district courts have found, as a plain reading of the text of the statute supports Mr. Vazquez Gonzalez's position that he is detained under § 1226(a) and therefore eligible for bond. The text of § 1226(a) explicitly applies to those charged with inadmissibility after entering without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Congress recently enacted this subsection in the Laken Riley Act to exclude from bond eligibility noncitizens who entered without inspection who commit certain offenses. *See id.* If Congress wanted all immigrants who entered without inspection to be ineligible for bond, it could have done so, but it did not when enacting the Laken Riley Act and listed a subset of those who entered without inspection who are subject to mandatory detention. The Respondent's approach goes against the canon against surplusage, which states that a statute should be construed "so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303 (2009). There would be no need for Congress to specify that noncitizens who entered without inspection who also committed certain crimes are ineligible for bond under § 1226(c)(1)(E) if they are inherently ineligible under § 1225(b)(2)(A) for entering without inspection. The government's position thus renders this provision "mere surplusage."

Section 1225(b), on the other hand, applies to those people arriving at U.S. ports of entry or those who recently entered the United States. In *Matter of Q. Li*, the BIA recently clarified which non-citizens are “arriving alien[s]” and ineligible for bond. 29 I. & N. Dec. 66 (BIA 2025). There, the Respondent was apprehended without a warrant near the southern border of the United States after entering the country without being admitted or paroled. *Id.* at 67. The BIA noted there that the respondent was “apprehended just inside the southern border, and not at a point of entry, on the same day they crossed into the United States.” *Id.* at 68 (internal quotation marks and brackets omitted). Thus, the BIA held, the respondent there was an “arriving alien” and subject to mandatory detention under INA § 235(a)(1). The BIA held that “an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) . . . is ineligible for any subsequent release on bond under section 236(a).” *Id.* at 69. The BIA distinguished those detained under 236(a), finding that such respondents are “aliens already present in the United States” and detained by a warrant. *Id.* at 70. Section 235(b), on the other hand, “applies primarily to aliens seeking entry into the United States and authorizes DHS to detain an alien without a warrant at the border.” *Id.* at 70 (quotation marks omitted). While this Court need not defer to the agency’s analysis after the Supreme Court’s overturn of *Chevron*, see *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), it shows simply another way that Respondents are not following binding precedent in the immigration courts.

Mr. Vazquez Gonzalez’s approach is also consistent with binding precedent in the Eleventh Circuit in *Ortiz-Bouchet v. U.S. Att’y Gen.*, 714 F.3d 1353 (11th Cir. 2013). There, the Eleventh Circuit found the noncitizens were not “applicants for admission” because they were seeking to adjust status while inside the United States, as opposed to someone who was applying for entry at

the border. This is also consistent with Supreme Court precedent, which has held that mandatory detention applies “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is inadmissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Therefore, the mandatory detention provisions in § 1225(b)(2) do not apply to Petitioners like Mr. Vazquez Gonzalez, who entered the country and resided within the United States for over a decade who were apprehended hundreds of miles from the U.S. border at the time of apprehension. Indeed, the above district courts have found the same, and some have used this as a basis to order release of an individual on bond pursuant to a motion for a temporary restraining order even before granting a writ of habeas corpus doing the same. *See, e.g., Arrazola-Gonzalez*, 2025 WL2379285.

III. Petitioner Will Suffer Irreparable Injury Absent a Temporary Restraining Order

Petitioner will suffer irreparable harm if this Court does not grant a temporary restraining order, as he will stay detained without the possibility of bond in contradiction of his constitutional right to due process. *See Arrazola-Gonzalez*, 2025 WL 2379285, at *3 (“It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury”) (cleaned up). His detention far away from the metro-Atlanta area where he has lived for decades has hampered his ability to communicate with his family and immigration counsel, *See Escalante*, 2025 WL 2212104, at *2 (“Given the cited history of Respondents moving immigration detainees around the country on short notice and the harms that would arise from such an action here, the Court finds that [Petitioner] has established a threat of irreparable harm.”). Each day in patently unlawful ICE detention is an irreparable injury and deprivation of Mr. Vazquez Gonzalez’s fundamental liberty interest qualifying him for an order from this Court restraining the government

from applying its unlawful interpretation of the INA and implementing regulations.

IV. The Balance of Harms Strongly Favors the Petitioner, and the Public Interest Factors Similarly Favor Petitioner

As discussed above, Petitioner suffers the substantial loss of his due process rights and his access to his counsel and family. The Respondents face no harm as a result of Mr. Vazquez Gonzalez's release and presence in the community pending his removal proceedings, instead of continuing to detain him at the taxpayers' expense.

CONCLUSION

This Court should grant a temporary restraining order mandating Mr. Vazquez Gonzalez's immediate release on bond.

Dated: September 5, 2025

Respectfully submitted,

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