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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
Phoenix Division**

Erlan Moldogaziev, an adult,


Petitioner,

v.

John Cantu, Phoenix Field Office
Director Immigration and Customs
Enforcement and Removal Operations
("ICE/ERO"); Todd Lyons, Acting
Director of Immigration Customs
Enforcement ("ICE") U.S.
Immigration and Customs
Enforcement; Kristi Noem,
Secretary of the Department of
Homeland Security ("DHS"); U.S.
Department of Homeland Security;
and Pamela Bondi,
Attorney General of the United States,

Respondents.

Case No. 2:25-cv-03265-MTL--JFM

Agency No. 

**Amended Petition For Writ Of
Habeas Corpus**

INTRODUCTION

1. Petitioner Moldogaziev is a noncitizen and longtime resident of the United States who is harmed by Respondents' new, draconian policy reinterpreting the immigration detention statutes to preclude Petitioner from eligibility for bond under the Immigration and Nationality Act (INA), 8 U.S.C. § 1226(a), and for bond hearings under 8 C.F.R. §§ 1003.19(a), 1236.1(d). Instead, pursuant to this new policy, Respondents now consider Petitioner as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), without the opportunity for release on bond during the pendency of his lengthy removal proceedings.
2. Petitioner is charged with having entered the United States without inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).
3. Based on this allegation in Petitioner's removal proceedings, DHS denied his release from immigration custody. That denial was consistent with a new DHS policy issued on July 8, 2025, instructing all ICE employees to consider anyone alleged to be inadmissible under §1182(a)(6)(A)(i) --i.e., those who entered the United States without inspection--to be subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A) and therefore eligible for release only on parole.
4. Petitioner sought a bond redetermination hearing before an immigration judge (IJ) at the Eloy Immigration Court, but the IJs denied Petitioner bond. The IJs reached this conclusion by reasoning that, notwithstanding the years that

Petitioner has lived in the United States, Petitioner is nevertheless an "applicant for admission" who is "seeking admission" and subject to mandatory detention under § 1225(b)(2)(A).

5. Petitioner's detention on this basis violates the plain language of the INA and its implementing regulations.

6. Subparagraph 1225(b)(2)(A) applies to individuals who are apprehended on arrival in the United States. It states that an "applicant for admission" who is "seeking admission" shall be detained for a removal proceeding. *Id.* It does not apply to individuals like Petitioner, who are arrested and detained by ICE after having entered and begun residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to Petitioner who is charged as inadmissible for having entered the United States without inspection.

7. Respondents' new legal interpretation is plainly contrary to the statutory framework and its implementing regulations. Indeed, for decades, Respondents have applied § 1226(a) to people like Petitioner. Respondents' new policies are thus not only contrary to law, but arbitrary and capricious in violation of the Administrative Procedure Act (APA). They were also adopted without complying with the APA's procedural requirements.

8. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents' attempts to detain and deport Petitioner are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing Petitioner's transfer out of this district.

JURISDICTION

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

10. This 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).

11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

VENUE

12. Venue is proper because Petitioner is in Respondents' custody in Eloy, Arizona. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

13. For these same reasons, divisional venue is proper under LRCiv 5.1(b).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

14. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

15. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

16. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

17. Petitioner is a 23-year-old citizen of Kyrgyzstan. Petitioner is present within the state of Arizona as of the time of the filing of this petition.

18. Respondent John Cantu is the Field Office Director for the Phoenix Field Office, Immigration and Customs Enforcement and Removal Operations (“ICE”). The Phoenix Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States,

including the arrest, detention, and custody status of noncitizens. Respondent Cantu is a legal custodian of Petitioner.

19. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent John Cantu and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

20. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.

21. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

22. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens.

23. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

24. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

25. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

26. First, 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 until their removal proceedings are concluded, *see* 8 U.S.C. § 1226(c).

27. Second, the INA 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).

28. Last, the INA also provides for detention of noncitizens who have received a final order of removal from the United States, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b).

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

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

31. 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) ("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").

32. For decades, this interpretation has governed the administration of custody. Noncitizens who were not deemed "arriving aliens" at the time of inspection, or who were released into the United States after inspection and issuance of an NTA, were treated as detained under § 1226. *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining that § 1226(a) "restates" the detention authority previously codified at 8 U.S.C. § 1252(a) (1994)).

33. In recent weeks, Respondents have adopted an entirely new interpretation of the statute. On May 22, 2025, the Board of Immigration Appeals (BIA), issued an unpublished decision holding that all noncitizens who entered the United States without admission or parole are considered applicants for admission, and are therefore ineligible for IJ bond hearings under 8 U.S.C. § 1225(b)(2)(A).

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

35. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be deemed subject to mandatory detention under § 1225(b)(2)(A). *Id.* 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.

36. It is estimated that this novel interpretation of the INA would require a person's detention any time that immigration authorities arrest one of the millions of immigrants residing in the United States who entered without inspection and who has not since been admitted or paroled.¹

37. Nationwide, pursuant to its July 8, 2025, policy, Respondents are now asserting that all persons who entered without inspection are subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A).

38. While some IJs in other immigration courts have continued to grant bond to people like Petitioner, consistent with its new policy, DHS also has begun filing Form EOIR-43, Notice of Service Intent to Appeal Custody

¹ Maria Sacchetti & Carol D. Leonnig, *ICE declares millions of undocumented immigrants ineligible for bond hearings*, Washington Post (July 14, 2025), <https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/> [<https://perma.cc/5ZTR-EN4B>].

Redetermination. This notice not only appeals any IJ decision granting bond but also triggers an automatic stay of the bond decision during the appeal. *See* 8 C.F.R. § 1003.19(i)(2).

39. The "auto-stay" provision of 8 C.F.R. § 1003.19(i)(2) prevents noncitizens from posting bond and being released even in jurisdictions where IJs have rejected DHS's unlawful reinterpretation of §1225(b)(2) and have granted bond.

40. ICE and DOJ have adopted this new and unprecedented position on bond even though federal courts have rejected this exact conclusion. For example, in the Tacoma, Washington, immigration court, IJs previously stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, reasoning such people are subject to mandatory detention under § 1225(b)(2)(A). There, in granting preliminary injunctive relief, the U.S. District Court for 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 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ---- 2025 WL 2084238, at *9 (D. Mass. July 24, 2025) (ordering release where noncitizen was redetained based on ICE's assertion of detention authority under §1225(b)).

41. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court and other courts explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.


42. 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]."

43. The text of §1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Just this year, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from § 1226(a)'s default bond provision. Subparagraph (E)'s reference to persons inadmissible under § 1 182(6)(A), i.e., persons inadmissible for entering without inspection, 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*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393,400 (2010)). 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.


44. By contrast, §1225(b) applies to people arriving at U.S. ports of entry or who very recently entered the United States. 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); *see also Diaz Martinez*, 2025 WL 2084238, at *8 (“[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission ... and those who are within the United States after an entry, irrespective of its legality.”(quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). 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).

45. Accordingly, the mandatory detention provision of §1225(b)(2) does not apply to Petitioner, who has already entered and has been residing in the United States at the time he was apprehended

FACTUAL BACKGROUND

46. Petitioner is a citizen and national of Kyrgyzstan born on 



47. Petitioner was threatened by 



48. Fearing for his life, he sought protection in the United States.

49. On or about September 21, 2022, Petitioner came to the San Ysidro Port of entry in California to seek asylum. Respondents paroled him into the United States, based on Petitioner's individual facts and circumstances, under 8 U.S.C. § 1182(d)(5) and released him from custody pursuant to the same statute.

50. On or about September 21, 2022, Respondents initiated removal proceedings against Petitioner under 8 U.S.C. § 1229a in Chicago, Illinois and filed his Notice to Appear.

51. Respondents alleged that Petitioner was inadmissible to the United States under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and commanded that Petitioner appear for a hearing in the immigration court in Chicago, IL on September 11, 2023.

52. Petitioner applied for asylum before the Chicago Immigration Court on June 23, 2023.

53. The Chicago Immigration Court sent a Notice of Hearing scheduling Petitioner's master hearing on December 5, 2023.

54. Petitioner appeared for his scheduled immigration court hearing on December 5, 2023, where an Immigration Judge ("IJ") scheduled an individual/merits hearing for February 3, 2027.

55. On August 26, 2025, while driving his vehicle, Petitioner was arrested near Blythe, California and placed in custody on a warrant issued under Section 236. *See* I-213 Record of Deportable/ Inadmissible Alien.

56. DHS then transported Petitioner to Yuma, Arizona. *See id.*

57. On September 2, 2025, Petitioner, through his Counsel, filed a request for

bond redetermination.

58. On September 8, 2025, an Eloy, Arizona IJ issued a decision that the immigration court lacked jurisdiction to conduct a bond redetermination hearing, because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

59. As a result, Petitioner remains in detention. Without relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

60. Any appeal to the BIA is futile. DHS's new policy was issued "in coordination with" DOJ. EOIR--the immigration court system--is a component agency of DOJ. Further, as noted, a recent unpublished BIA decision held that persons like Petitioner are subject to mandatory detention as applicants for admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are subject to detention under § 1225(b)(2)(A). *See, e.g., Mot. 19 to Dismiss, Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. 20 June 6, 2025), Dkt. 49 at 27-30.

CLAIMS FOR RELIEF

COUNT I

**Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond**

61. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

62. The mandatory detention provision at 8 U.S.C. § 1225 (b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to Petitioner who previously entered the country and has been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such a noncitizen is detained under § 1226(a) and is eligible for release on bond, unless he is subject to § 1225(b)(1), § 1226(c), or § 1231.

63. Nonetheless, Respondents have adopted a policy and practice of applying § 1225(b)(2) to Petitioner.

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

COUNT II

**Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19
Unlawful Denial of Release on Bond**

65. Petitioner incorporates by reference the allegations of fact set forth in paragraphs 1-60 as if fully set forth herein.

66. 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.

67. Nonetheless, Respondents adopted a policy and practice of applying §1225(b)(2) to Petitioner.

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

COUNT III

Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and Capricious Agency Policy

69. Petitioner incorporates by reference the allegations of fact set forth in paragraphs 1-60 as if fully set forth herein.

70. The APA provides that a "reviewing court shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary and

capricious, an abuse of discretion, or otherwise not in accordance with law."

5 U.S.C. § 706(2)(A).

71. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to Petitioner who previously entered the country and has been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such a noncitizen is detained under § 1226(a) and are eligible for release on bond, unless he is subject to § 1225(b)(1), § 1226(c), or § 1231.

72. Nonetheless, Respondents have a policy and practice of applying §1225(b)(2) to Petitioner.

73. Moreover, Respondents have failed to articulate reasoned explanations or their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

74. The application of §1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT IV

**Violation of the Administrative Procedure Act
Failure to Observe Required Procedures**

75. Petitioner incorporates by reference the allegations of fact set forth in paragraphs 1-60 as if fully set forth herein.

76. The APA provides that a "reviewing court shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... without observance of procedure required by law." 5 U.S.C. § 706(2)(D). Specifically, the APA requires agencies to follow public notice-and-comment rulemaking procedures before promulgating new regulations or amending existing regulations. *See* 5 U.S.C. § 553(b), (c).

77. Respondents failed to comply with the APA by adopting its policy and departing from its regulations without any rulemaking, let alone any notice or meaningful opportunity to comment. Respondents failed to publish any such new rule despite affecting the substantive rights of thousands of noncitizens under the INA, as required under 5 U.S.C. § 553(d).

78. Had Respondents complied with the advance publication and notice-and-comment rulemaking requirements under the APA, members of the public and organizations that advocate on behalf of noncitizens like Petitioner would have submitted comments opposing the new policies.

79. The APA's notice and comment exceptions related to “foreign affairs function[s] of the United States,” *id.* § 553(a)(1), and “good cause,” *id.* § 553(d)(3), are inapplicable.

80. Respondents’ adoption of their no-bond policies therefore violates the public notice-and-comment rulemaking procedures required under the APA.

COUNT V

Violation of Fifth Amendment Right to Due Process

81. Petitioner incorporates by reference the allegations of fact set forth in paragraphs 1-60 as if fully set forth herein.

82. Petitioner’s detention by DHS violates his rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

83. Immigration detention violates due process if it is not reasonably related to the purpose of ensuring a noncitizen’s removal from the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92, 699-700 (2001); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Where removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and is unlawful. *See id.* at 699-700.

84. The Supreme Court has also established that noncitizens in deportation or removal proceedings are just as entitled to due process protections as anyone else. *See Zadvydas*, 533 U.S. at 690 (2001) (“A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth

Amendment's Due Process Clause forbids the Government to 'depriv[e]' any "person . . . of . . . liberty . . . without due process of law."").

85. Here, there is no reason to justify Petitioner's detention. Petitioner has been living in the United States for 3 years, where he has very strong ties to the community.

86. Petitioner has also been unable to have a bond hearing before an Immigration Court, because the Court previously denied jurisdiction to hear his custody redetermination request. Therefore, Petitioner is being held in custody without the possibility of having his case reviewed by an Immigration Judge – despite not being subject to mandatory detention.

87. Here, Petitioner has resided in the United States since October 2022, when DHS inspected him at the San Ysidro Port of Entry, issued a Notice to Appear, and allowed him to reside in the country pending removal proceedings. For nearly three years, Petitioner lived openly in the interior with the knowledge and acquiescence of DHS.

88. In *Jennings v. Rodriguez*, the Supreme Court makes a clear distinction between noncitizens who are detained while entering the country and noncitizens who are already present in the United States. *Jennings v. Rodriguez*, 804 F. 3d 106. The opinion of the Supreme Court recognizes that "§ 1226 applies to aliens already present in the United States. . . ." and that "§ 1226(a) authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'" § 1226(a). As

long as the detained alien is not covered by § 1226(c), the Attorney General “may release” the alien on “bond . . . or conditional parole.” § 1226(a). Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention. See 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1).

89. The Ninth Circuit has long recognized that individuals held in detention under § 1226(a) have the right to a bond hearing in which the government needs to show by clear and convincing evidence that continued detention is justified. *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

90. Here, Petitioner has been living in the United States for three years prior to his detention, and the reason for his current detention is not related to his first detention as an “applicant for admission.” In the present case, there is not the issue of a continued detention of someone who is trying to enter the country, but rather a new detention – on a new warrant – for someone who has been in the country for three years.

91. The Arrest Warrant issued by the Department of Homeland Security states that the Petitioner was detained under Section 236 of the Immigration and Nationality Act. The document clearly shows that Petitioner is detained under §1226(a).

92. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted. Such noncitizens are detained under § 1226(a), unless they are subject

to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231. *See Rocha Rosado v. Figueroa*, 2025 WL 2349133, (D. Ariz. Aug. 13, 2025).

93. Petitioner was placed in removal proceedings pursuant to 8 U.S.C. § 1229 by a Notice to Appear in October of 2022. Because Petitioner was placed into removal proceedings pursuant to § 1229, an alternative process to that stated in § 1225, his release in 2022 and his current detention are pursuant to § 1226, not § 1225. This conclusion is supported by the fact that the Deportation Officer ordering Petitioner detained in October 2022, cited INA § 236, i.e., 8 U.S.C. § 1226.

94. The only exception permitting the release of aliens detained under § 1225(b) is the parole authority provided by § 1182(d)(5)(A). Parole into the United States employs a legal fiction whereby noncitizens are physically permitted to enter the country but are nonetheless “treated,” for legal purposes, “as if stopped at the border.” *Department of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020), *quoting Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953).

95. Noncitizens paroled into the United States are in a fundamentally different and less protected position than “those who are within the United States after an entry, irrespective of its legality.” *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). Individuals detained as inadmissible upon inspection at the border can only be paroled into the United States ““for urgent humanitarian reasons or significant public benefit.”” *Jennings v. Rodriguez*, 583 U.S. 281,

300 (2018), *quoting* 8 U.S.C. § 1182(d)(5)(A). Because there is no evidence that Petitioner was released into the United States for urgent humanitarian reasons or significant public benefits, his “discretionary” release must be construed as conditional parole, or release on recognizance.

96. Release on recognizance is not a form of “parole into the United States” based on “humanitarian” grounds or “public benefit,” but rather a form of “conditional parole” from detention upon a charge of removability, authorized by 8 U.S.C. 1226(a)(2)(B). See *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) (holding a non-citizen released on an “Order of Release on Recognizance” must necessarily have been detained and released under § 1226, *inter alia* because they were not an “arriving alien” under the regulations governing § 1225); *Rocha Rosado v. Figueroa*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025).

97. Parole “into the United States” under § 1182(d)(5)(A), permits a non-citizen to physically enter the country, subject to a reservation of rights by the government that it may continue to treat the non-citizen “as if stopped at the border.” *Thuraissigiam*, 591 U.S. at 139.

98. Conditional parole provides a mechanism of release on recognizance, without payment of a bond, at the discretion of the government. See *Rivera v. Holder*, 307 F.R.D. 539, 553 (W.D. Wash. 2015).

99. The record regarding Petitioner's lack of detention during his removal proceedings beginning in 2022, after inspection at the border, through August of

2025, can only be construed as demonstrating that he was conditionally paroled into the United States. See *Matter of Cabrera-Fernandez*, 28 I.&N. Dec. 747, 749 (B.I.A. 2023) (holding an immigration judge erred in treating release on recognizance of noncitizens “detained soon after their unlawful entry” as constructive humanitarian parole where the government had not followed the “procedures for parole under [section 1182(d)(5)]”). See also *Martinez v. Hyde*, ___ F. Supp. 3d ___, No. CV 25-11613, 2025 WL 2084238, at *3-4 (D. Mass. July 24, 2025).

100. Given the fact Petitioner was “present in the United States” long before he was taken into custody a second time in 2025 (the first time being at the border in 2022), it would make no sense to talk about admitting him into the United States or allowing him to “enter” the United States in 2025. Petitioner was already in the U.S. for three years, and he has been in the U.S. with the knowledge and approval of the Department of Homeland Security.

101. Therefore, because Petitioner's presence in the United States after his inspection and release into the United States in 2022, and after his Notice to Appear hearing, has been on a conditional parole pursuant to § 1226, the IJ's 2025 determination that he was without jurisdiction to reconsider Petitioner's detention, and Petitioner's detention itself in the absence of a bond hearing to determine if he poses a danger to community or a flight risk, violated his Fifth Amendment Due Process rights under the Constitution.

PRAAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) Declare that Petitioner's re-detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
- (4) Declare that Respondents' policy and practice of denying consideration for bond on the basis of §1225(b)(2) to Petitioner violates the INA, its implementing regulations, the APA, and the Due Process Clause;
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;
- (6) Set aside Respondents' unlawful detention policy under the APA, 5 U.S.C. § 706(2), as contrary to law, arbitrary and capricious, and contrary to constitutional right;
- (7) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;
- (8) Grant any further relief this Court deems just and proper.

Dated: September 11, 2025

/s/ Eli Goldmann
Eli Goldmann, Esq.
6664 Coral Springs Cir
Las Vegas, NV 89108
Attorney for Petitioner

VERIFICATION

I, Eli Goldmann, attorney for the petitioner in the above-entitled proceeding, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Petition for Writ of Habeas Corpus and, based on information and belief and records reasonably available to me, verify that its contents are true and correct to the best of my knowledge. Because many of the allegations of this Petition require a legal knowledge not possessed by Petitioner, I am making this verification on his behalf.

Date: September 11, 2025

/s/ Eli Goldmann
Eli Goldmann
Attorney for Petitioner

**United States District Court
District Of Arizona
Phoenix Division**

Erlan Moldogaziev, an adult,


Petitioner,

v.

John Cantu, Phoenix Field Office
Director Immigration and Customs
Enforcement and Removal Operations
("ICE/ERO"); Todd Lyons, Acting
Director of Immigration Customs
Enforcement ("ICE") U.S.
Immigration and Customs
Enforcement; Kristi Noem,
Secretary of the Department of
Homeland Security ("DHS"); U.S.
Department of Homeland Security;
and Pamela Bondi,
Attorney General of the United States,

Respondents.

Case No. 2:25-cv-03265-MTL--JFM

Agency No. 

**Amended Petition For Writ Of
Habeas Corpus**




INDEX

<u>DOCUMENT:</u>	
<u>Exhibit</u>	<u>Description</u>
A	Petitioner's Custody Determination
B	IJ order denying bond
C	Petitioner's Notice of Scheduled Individual Hearing for 02/23/2027 in Chicago, IL

U.S. Department of Homeland Security

Subject ID XXXXXXXXXX

Record of Deportable/Inadmissible Alien

Family Name (CAPS) MOLDOGAZIEV, ERLAN		First	Middle	Sex M	Hair BLK	Eyes BRO	Cmplxn MED
Country of Citizenship KYRGYZSTAN	Passport Number and Country of Issue	XXXXXXXXXX		Height 70	Weight 208	Occupation LABORER	
Date, Place, Time, and Manner of Last Entry 09/09/2022, 0800, 4 mile(s) W of SYS, PWA (AFOOT)				Passenger Boarded at		Scars and Marks	
Number, Street, City, Province (State) and Country of Permanent Residence BISHKEK BISHKEK, BISHKEK, KYRGYZSTAN				F.B.I. Number XXXXXXXXXX		<input type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Married <input type="checkbox"/> Widower <input type="checkbox"/> Separated	
Date of Birth XXXXXXXXXX	Age: 22	Date of Action 08/26/2025	Location Code YUM/BLY	Method of Location/Apprehension PB			
City, Province (State) and Country of Birth BISHKEK, KYRGYZSTAN	AR <input checked="" type="checkbox"/>	Form: (Type and No.) Lifted <input type="checkbox"/> Not Lifted <input type="checkbox"/>		At/Near BLYTHE, CA	Date/Hour 08/26/2025 1225		
NIV Issuing Post and NIV Number	Social Security Account Name		By DOUGLAS B. NIMARK				
Date Visa Issued	Social Security Number		Status at Entry PWA Mexico		Status When Found TRAVEL/SEEKIN G		
Immigration Record NEGATIVE	Criminal Record		Length of Time Illegally in U.S. OVER 1 YEAR				
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)				Number and Nationality of Minor Children			
Father's Name, Nationality, and Address, if Known See Narrative			Mother's Present and Maiden Names, Nationality, and Address, if Known See Narrative				
Monies Due/Property in U.S. Not in Immediate Possession None Claimed	Fingerprinted? <input type="checkbox"/> Yes <input type="checkbox"/> No	Systems Checks	Charge Code Words(s) I7A1				
Name and Address of (Last)(Current) U.S. Employer	Type of Employment	Salary	Employed from/to Hr				
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.) FINS # XXXXXXXXXX							
							
ARREST COORDINATES: ----- Latitude: 33.25946 Longitude: -114.24327		CONSEQUENCE DELIVERY SYSTEM: ----- Classification: SOTA					
Alien has been advised of communication privileges		<u>08/26/2025</u> (Date/Initials)		_____ (Signature and Title of Immigration Officer)			
Distribution: Original to A file Copy to Sector		Received: (Subject and Documents) (Report of Interview) Officer: JAIME M. GOMEZ on: August 26, 2025 at 2012 (time) Disposition: Notice to Appear Detained (I-862) Examining Officer: _____					

EOIR - 1 of 6

U.S. Department of Homeland Security

Continuation Page for Form I213

Alien's Name MOLDOGAZIEV, ERLAN	File Number 	Date 08/26/2025
<p>ADDRESS USED ON I-862: ----- Address Type: UNVALIDATED Address: </p> <p>FATHER NAME AND ADDRESS: ----- Nationality: AFGHANISTAN UNKNOWN BISHKEK BISHKEK, BISHKEK, KYRGYZSTAN</p> <p>MOTHER NAME AND ADDRESS: ----- Nationality: KYRGYZSTAN UNKNOWN BISHKEK BISHKEK, BISHKEK, KYRGYZSTAN</p> <p>Other Family/Associates Not in Event: ----- Child, , NA Father, , UNKNOWN, AFGHA Mother, , UNKNOWN, KYRGY</p> <p>NARRATIVE: ----- A# FIN </p> <p>CRIMINAL HISTORY: FBI# (see records for criminal history)</p> <p>MOLDOGAZIEV, ERLAN was previously apprehended on September 21, 2022 in the Imperial Beach Border Patrol Station area of responsibility. MOLDOGAZIEV was served with a WA/NTA. MOLDOGAZIEV has an upcoming individual hearing on February 3, 2027 at 1300 hrs. in Chicago, Illinois.</p> <p>On August 26, 2025, while performing assigned duties at the U.S. Border Patrol station in Yuma, Arizona, I was assigned to complete the case of MOLDOGAZIEV, ERLAN.</p> <p>As per Mobile Intake Module, on August 26, 2025, at approximately 1225 hours, Agent Douglas NIMARK arrested MOLDOGAZIEV, ERLAN at the 11-53 checkpoint in the Blythe Border Patrol</p>		
Signature		Title

FOIR - 2 of 6

U.S. Department of Homeland Security

Continuation Page for Form I213

Alien's Name MOLDOGAZIEV, ERLAN	File Number 	Date 08/26/2025
<p>Station area of responsibility. Agent D. NIMARK determined that MOLDOGAZIEV, ERLAN was an alien present in the United States without having been admitted or paroled, and without the proper documents to allow him to be in or remain in the United States legally.</p> <p>MOLDOGAZIEV was arrested and transported to the Yuma, Arizona Border Patrol Station for further processing. See G-166c for further apprehension encounter.</p> <p>At the station, MOLDOGAZIEV's biographical information, fingerprints, and photo were submitted into the E3/IDENT/IAFIS databases.</p> <p>Records revealed MOLDOGAZIEV had applied for and received an EAD card (Employment Authorization Document).</p> <p>I questioned MOLDOGAZIEV about his citizenship. He stated that he is a citizen and national of Kyrgyzstan and has never been a citizen or national of any other country. I asked MOLDOGAZIEV if he had any valid U.S. immigration documents to be present in the United States and he stated that he did not.</p> <p>MOLDOGAZIEV stated his mother is a citizen and national of Kyrgyzstan and has never been a citizen or national of any other country.</p> <p>MOLDOGAZIEV stated his father is a citizen and national of Kyrgyzstan and has never been a citizen or national of any other country.</p> <p>MOLDOGAZIEV was advised of his right to speak with his consulate office and he declined.</p> <p>MOLDOGAZIEV speaks English, Russian, and Kirgiz.</p> <p>All communications with MOLDOGAZIEV were held in the English language.</p> <p>Records show MOLDOGAZIEV did not present himself to immigration officers at any port of entry.</p> <p>MOLDOGAZIEV is being presented for an NTA/DT (Notice to Appear/Detained) under 8 USC 1182 Removal Proceedings.</p> <p>Subject was detained for an ongoing investigation, pending digital forensic exploitation and analysis for national security concerns. (08/27/2025)</p>		
Signature		Title

EOIR - 3 of 6



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ELOY IMMIGRATION COURT**

Respondent Name:

MOLDOGAZIEV, ERLAN

To:

Goldmann, Eli
6664 Coral Springs Cir
Las Vegas, NV 89108

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

09/08/2025

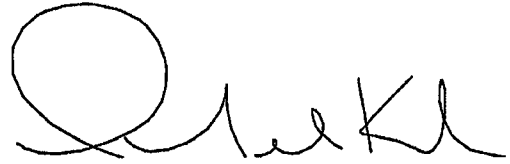
ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

Denied, because
Court lacks jurisdiction. (Matter of Yajure Hurtado, 29 I & N Dec. 216 (BIA 2025)).

Granted. It is ordered that Respondent be:
 released from custody on his own recognizance.
 released from custody under bond of \$
 other:

Other:



Immigration Judge: Karlen, Melissa 09/08/2025

Appeal:	Department of Homeland Security:	<input type="checkbox"/> waived	<input checked="" type="checkbox"/> reserved
	Respondent:	<input type="checkbox"/> waived	<input checked="" type="checkbox"/> reserved

Appeal Due: 10/08/2025

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [] Alien | [] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS


Respondent Name : MOLDOGAZIEV, ERLAN | A-Number :



Riders:

Date: 09/08/2025 By: Jess Ridgeway, Court Staff

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
CHICAGO IMMIGRATION COURT

LEAD FILE: 
IN REMOVAL PROCEEDINGS
DATE: Jul 16, 2025

TO: Jason Sager & Associates
Sager, Jason
800 E. Northwest Highway
Suite 107
Mount Prospect, IL 60056

RE:  BAIZAKOVA, 
MOLDOGAZIEVA, 
MOLDOGAZIEV, 
MOLDOGAZIEV, 

Notice of In-Person Hearing

Your case has been Rescheduled for a INDIVIDUAL hearing before the immigration court on:

Date: Feb 3, 2027
Time: 1:00 P.M. CT
Court Address: 55 E MONROE, SUITE 1500
COURTROOM 3, CHICAGO, IL 60603

Representation: You may be represented in these proceedings, at no expense to the Government, by an attorney or other representative of your choice who is authorized and qualified to represent persons before an immigration court. If you are represented, your attorney or representative must also appear at your hearing and be ready to proceed with your case. Enclosed and online at <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers> is a list of free legal service providers who may be able to assist you.

Failure to Appear: If you fail to appear at your hearing and the Department of Homeland Security establishes by clear, unequivocal, and convincing evidence that written notice of your hearing was provided and that you are removable, you will be ordered removed from the United States. Exceptions to these rules are only for exceptional circumstances.

Change of Address: The court will send all correspondence, including hearing notices, to you based on the most recent contact information you have provided, and your immigration proceedings can go forward in your absence if you do not appear before the court. If your contact information is missing or is incorrect on the Notice to Appear, you must provide the immigration court with your updated contact information within five days of receipt of that notice so you do not miss important information. Each time your address, telephone number, or email address changes, you must inform the immigration court within five days. To update your contact information with the immigration court, you must complete a Form EOIR-33

either online at <https://respondentaccess.eoir.justice.gov/en/> or by completing the enclosed paper form and mailing it to the immigration court listed above.

Internet-Based Hearings: If you are scheduled to have an internet-based hearing, you will appear by video or telephone. If you prefer to appear in person at the immigration court named above, you must file a motion for an in-person hearing with the immigration court at least fifteen days before the hearing date provided above. Additional information about internet-based hearings for each immigration court is available on EOIR's website at <https://www.justice.gov/eoir/eoir-immigration-court-listing>.

In-Person Hearings: If you are scheduled to have an in-person hearing, you will appear in person at the immigration court named above. If you prefer to appear remotely, you must file a motion for an internet-based hearing with the immigration court at least fifteen days before the hearing date provided above.

For information about your case, please call **1-800-898-7180** (toll-free) or **304-625-2050**.

The Certificate of Service on this document allows the immigration court to record delivery of this notice to you and to the Department of Homeland Security.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL [M] PERSONAL SERVICE [P] ELECTRONIC SERVICE [E]
TO: [] Noncitizen | [] Noncitizen c/o Custodial Officer |
[e] Noncitizen ATT/REP | [e] DHS
DATE: 7-16-25 BY: COURT STAFF _____ i.c. _____
Attachments: [] EOIR-33 [] Appeal Packet [] Legal Services List [] Other NH

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使用智能手机摄像头扫描本页面的代码，即可在线阅读该通知。

ਨੋਟਿਸ ਨੂੰ ਔਨਲਾਈਨ ਪੜ੍ਹਨ ਲਈ ਇਸ ਪੇਜ 'ਤੇ ਕੋਡ ਨੂੰ ਸਕੈਨ ਕਰਨ ਲਈ ਸਮਾਰਟਫੋਨ ਦੇ ਕੈਮਰੇ ਦੀ ਵਰਤੋਂ ਕਰੋ।

অনলাইনে নোটিশ পড়ার জন্য এই পৃষ্ঠায় ক্যাডাট স্ক্যান করতে স্মার্টফোনের ক্যামেরা ব্যবহার করুন



सूचना अनलाइनमा पढ्न यस पृष्ठमा कोड स्क्यान गर्न स्मार्टफोनको क्यामेरा प्रयोग गर्नुहोस्।

Sèvi ak kamera yon telefòn entèljjan pou eskane kòd ki nan paj sa a pou li avi a sou entènèt.

استخدم كاميرا الهاتف الذكي لمسح الرمز الموجود في هذه الصفحة لقراءة الإشعار على الإنترنت

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