

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

BACKENBAUER ESPINOZA PARDAVE

Petitioner,

v.

ANDREW ACKLEY, Acting Warden of the Federal Correctional Institute, Berlin; **DAVID WESLING**, Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Boston Field Office; **TODD LYONS**, Acting Director, U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary of U.S. Department of Homeland Security; **PAMELA BONDI**, U.S. Attorney General;

Respondents.

Case Number:

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
(Expedited Consideration Requested)

INTRODUCTION

Petitioner Backenbauer Espinoza Pardave is a noncitizen from Peru. Exhibit 1 (Form I-213 Record of Deportable/Inadmissible Alien). On June 21, 2024, Petitioner was apprehended by immigration officials in Texas after entering the United States without a lawful entry and the following day was released from immigration detention under conditional parole pursuant to 8 U.S.C. § 1226(a)(2)(B). *See Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (B.I.A. 2023) (“[t]he [petitioners] were . . . released on their own recognizance pursuant to DHS’ conditional parole authority under . . . 8 U.S.C. § 1226(a)(2)(B)”); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) (“It is apparent that the [government] used the phrase ‘release on

recognizance’ as another name for ‘conditional parole’ under § 1226(a).”). See Exhibit 1; Exhibit 2 (Release on Recognizance under 8 U.S.C. § 1226).

On May 15, 2025, Respondents re-detained Petitioner during a traffic stop. Exhibit 1. Respondents served Petitioner Form I-200 (administrative arrest warrant) and Form I-286 (notice of custody determination pursuant to authority in 8 U.S.C. § 1226). Exhibit 1 at 3 (“Subject was served with forms (I200, I286, and list of legal services) and provided with copies of (I200, I286, and list of legal services).”).

On September 6, 2025, the Board of Immigration Appeals (BIA) released *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). The BIA took the novel position that all noncitizens present in the United States who entered the country without a lawful entry—which would include Petitioner—must be mandatorily detained under 8 U.S.C. § 1225(b). *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220, 228. However, many courts, including one Judge of this Court, have disagreed with this broad interpretation. See *Jimenez v. FCI Berlin, Warden et al*, 2025 DNH 107 P, No. 1:25-cv-326-LM-AJ, at *7, 24 n.9 (D.N.H. Sept. 8, 2025) (8 U.S.C. § 1226(a) governs Petitioner’s detention, even though Petitioner had not been admitted to the United States). See also *Romero v. Hyde*, No. 1:25-11631-BEM, 2025 U.S. Dist. LEXIS 160622, at *16 (D. Mass Aug. 19, 2025) (holding that the petitioner is detained under 8 U.S.C. § 1226 because “[p]ending her initial removal proceedings, Petitioner was arrested and released under section 1226.”; and collecting cases); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS 128085, at *3 (D. Mass July 7, 2025) (“Because Gomes was arrested on a warrant and ordered detained under Section 1226, his detention continues to be governed by Section 1226(a)’s discretionary framework. Gomes’ petition will accordingly be granted, and the government respondents will be ordered to provide him with a bond hearing before an Immigration Judge.”); *Martinez v. Hyde*,

Civil Action No. 25-11613-BEM, 2025 U.S. Dist. LEXIS 141724, at *22 (D. Mass. July 24, 2025) (“The April 2024 Notice to Appear and Order of Release on Recognizance demonstrate why Petitioner cannot be detained under section 1225(b)(2)(A).”); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488, at *3 (D. Mass. Aug. 14, 2025) (“The government’s argument contravenes the plain text of Section 1226(a) and would render superfluous Section 1226(c), which mandates the detention of certain noncitizens and is the sole exception to Section 1226(a)’s discretionary framework. Because dos Santos was arrested on a warrant and ordered detained under Section 1226, his detention continues to be governed by Section 1226(a)’s discretionary framework.”); *Benitez v. Francis*, 2025 U.S. Dist. LEXIS 157214, at *7 (S.D.N.Y. Aug. 8, 2025) (holding that 8 U.S.C. § 1226 governs the detention because “(1) DHS has consistently treated Mr. Lopez Benitez as subject to detention on a discretionary basis under § 1226(a), which is fatal to Respondents’ claim that he is subject to mandatory detention under § 1225(b); and (2) a proper understanding of the relevant statutes, in light of their plain text, overall structure, and uniform case law interpreting them, compels the conclusion that § 1225’s provision for mandatory detention of noncitizens ‘seeking admission’ does not apply to someone like Mr. Lopez Benitez, who has been residing in the United States for more than two years.”).

Given that Petitioner was both released on an order of recognizance and subsequently re-arrested pursuant to Respondents’ authority set forth in 8 U.S.C. § 1226, he is entitled to a bond hearing under 8 U.S.C. § 1226(a). *See Jimenez*, 2025 DNH 107 P, at *3-4 (Petitioner was released on an order of recognizance in accordance with 8 U.S.C. § 1226 and arrested on a warrant issued pursuant to 8 U.S.C. § 1226); *Gomes*, 2025 U.S. Dist. LEXIS 128085, at *3 (“Because Gomes was arrested on a warrant and ordered detained under Section 1226, his detention continues to be governed by Section 1226(a)’s discretionary framework. Gomes’ petition will accordingly be

granted, and the government respondents will be ordered to provide him with a bond hearing before an Immigration Judge.”). See Exhibit 1; Exhibit 2.

Therefore, this Court should order a bond hearing under 8 U.S.C. § 1226(a). See *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (“we hold that, in order to continue detaining Hernandez under section 1226(a), due process requires the government to either (1) prove by clear and convincing evidence that she poses a danger to the community or (2) prove by a preponderance of the evidence that she poses a flight risk”).

In the alternative, this Court should, in its inherent power, release Petitioner pending resolution of this Petition. See *Jimenez*, 2025 DNH 107 P, at *24 (“Because [Petitioner] has a clear case on the law and facts, this court exercised its inherent authority to hold a bail hearing.”).

Petitioner further alleges as follows:

PARTIES

1. Petitioner Backenbauer Espinoza Pardave is a noncitizen from Peru who is currently detained by Respondents at the Federal Correctional Institute (FCI) Berlin in Berlin, New Hampshire.

2. Respondent Andrew Ackley is the acting warden of FCI Berlin, and he is being sued in his official capacity as the warden. He is Petitioner’s immediate custodian.

3. Respondent David Wesling is the Acting Boston Field Office Director, U.S. Immigration and Customs Enforcement, and he is being sued in his official capacity. He is Petitioner’s legal custodian.

4. Respondent Todd Lyons is the Acting Director, U.S. Immigration and Customs Enforcement, and he is being sued in his official capacity. He is Petitioner’s legal custodian.

5. Respondent Kristi Noem is the Secretary of U.S. Department of Homeland Security, and she is being sued in her official capacity. She is Petitioner's legal custodian.

6. Respondent Pamel J. Bondi is the United States Attorney General, and she is being sued in her official capacity. She oversees Immigration Judges and the Board of Immigration Appeals. She is also Petitioner's legal custodian.

JURISDICTION AND VENUE

7. The Court has jurisdiction under 28 U.S.C. § 1331, 2241 (habeas corpus) and Article I, Section 9, Clause 2 of the U.S. Constitution ("Suspension Clause").

8. Venue is proper in the District of New Hampshire because Petitioner is currently detained by Respondents at FCI Berlin in Berlin, New Hampshire, which is in the territorial jurisdiction of this Court. 28 U.S.C. § 1391; *Vasquez v. Reno*, 233 F. 3d 688, 696 (1st Cir. 2000).

FACTS

9. Petitioner is 34 years old and from Peru. Exhibit 1.

10. On or about June 21, 2024, Petitioner entered the United States without a lawful entry near Texas and was subsequently apprehended. Exhibit 1; Exhibit 3 (Notice to Appear). He fled Peru due to fear of persecution. Exhibit 4 (Form I-589 Application for Asylum and Withholding of Removal).

11. Respondents placed Petitioner in regular removal proceedings under 8 U.S.C. § 1229a. Exhibit 5 (Charging Document); Exhibit 3 (identifying Petitioner as "an alien present in the United States who has not been admitted or paroled").

12. On June 22, 2024 Respondents released Petitioner under 8 U.S.C. § 1226(a)'s release on recognizance. *See* Exhibit 1; Exhibit 2 (Release on Recognizance under 8 U.S.C. § 1226).

13. In August 2024, approximately two months after he arrived in the United States, Petitioner filed his asylum application, thus satisfying the one-year filing requirement under the law. Exhibit 4.

14. On May 15, 2025, Respondents re-arrested and detained Petitioner during a traffic stop in Vermont. Exhibit 1. He was served and provided with Form I-200 (administrative arrest warrant pursuant to 8 U.S.C. § 1226) and Form I-286 (notice of custody determination pursuant to authority in 8 U.S.C. § 1226). Exhibit 1 at 3.

15. Petitioner has no criminal record. Exhibit 1.

16. Petitioner initially requested a bond hearing, but he later withdrew this request. Exhibit 6 (Order of the Immigration Judge).

CLAIMS FOR RELIEF

COUNT 1 **8 U.S.C. § 1226**

17. The foregoing allegations are realleged and incorporated herein.

18. Petitioner is detained under 8 U.S.C. § 1226(a) because Respondents released him pursuant to 8 U.S.C. § 1226 and re-detained him under the same statute.

19. Under 8 U.S.C. § 1226(a), Petitioner is entitled to a bond hearing at which Respondents must justify his detention.

PRAYER FOR RELIEF

Petitioner asks that this Court grant the following relief:

- (1). Assume jurisdiction over this matter;
- (2). Issue a Writ of Habeas Corpus directing Respondents to immediately provide a bond hearing pursuant to 8 U.S.C. § 1226(a);
- (3). In the alternative, hold a bail hearing through the Court's inherent authority pending adjudication of this Petition, as Petitioner has a clear case on the law and facts given that Petitioner is detained under 8 U.S.C. § 1226(a). *See Gomes v. US Dep't of Homeland Sec.*,

460 F. Supp. 3d 132, 144 (D.N.H. 2020) (this Court “has inherent power to release the petitioner pending determination of the merits’ . . . if (1) the petitioner has a clear case on the law and facts, *or* (2) exceptional circumstances are present and the petitioner demonstrates a substantial claim of constitutional error.”) (citing *Glynn v. Donnelly*, 470 F.2d 95, 98 (1st Cir. 1972)) (emphasis added).

- (4). Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (5). Order any further relief this Court deems just and proper.

Respectfully submitted this 10th day of September 2025.

Backenbauer Espinoza Pardave,

By and through his Counsel,

/s/ Chelsea Eddy

Gilles R. Bissonnette (NH Bar: 265393)

SangYeob Kim (NH Bar: 266657)

Chelsea Eddy (NH Bar: 276248)

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