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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Pedro Antonio MIRALRIO GONZALEZ

Petitioner,

v.

Sylvester ORTEGA, Acting Field Office Director of Enforcement and Removal Operations, San Antonio Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Bobby THOMPSON, Warden of South Texas Detention Complex,

Respondents.

Case No. 5:25-cv-1156

**PETITION FOR WRIT OF HABEAS CORPUS**

## INTRODUCTION

1. Petitioner Pedro Antonio Miralrio Gonzalez is in the physical custody of Respondents at the South Texas Detention Complex. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Because of the BIA's decision, the Immigration Judge denied Petitioner bond on September 8, 2025, stating she does not have jurisdiction.

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different detention statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

7. Respondents' new legal interpretation is plainly contrary to the statutory framework and to decades of agency practice applying § 1226(a) to people like Petitioner.

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

**JURISDICTION**

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the South Texas Detention Complex, Pearsall, Texas.

10. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

**VENUE**

12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Texas, San Antonio Division, the judicial district in which Petitioner currently is detained.

13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

**REQUIREMENTS OF 28 U.S.C. § 2243**

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless it appears from the petition that the petitioner is not entitled to relief. 28 U.S.C. § 2243. If the Court issues an order to show cause, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

**PARTIES**

16. Petitioner Pedro Antonio Miralrio Gonzalez is a citizen of Mexico who has been in immigration detention since July 27, 2025. After arresting Petitioner in Austin, Texas, ICE did not set bond or release him, and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

17. Respondent Sylvester Ortega is the Acting Director of the San Antonio Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Ortega has authority to produce Petitioner to this Court and to release him from custody. Therefore, Mr. Ortega is Petitioner's immediate custodian and is responsible for Petitioner's detention. He is named in his official capacity.

18. Respondent Kristi Noem is the Secretary 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.

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

20. 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, which operates the immigration court system, is a component agency. She is sued in her official capacity.

21. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, as well as custody redeterminations in bond hearings. EOIR consists of the immigration court system, in which the immigration judges work, as well as the BIA, which serves as the administrative appellate body for the immigration courts.

22. Respondent Bobby Thompson is employed by The GEO Group as Warden of the South Texas Detention Complex where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

**LEGAL FRAMEWORK**

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

24. 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 before an immigration judge at the outset of their detention to review ICE custody determinations, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d). These bond hearings are separate and apart, and form no part of, the removal proceedings themselves. A statutory exception to this eligibility for an immigration judge bond hearing exists for noncitizens who have been arrested, charged with, or convicted of certain crimes, for whom detention is generally mandatory under 8 U.S.C. § 1226(c).

25. Second, the INA provides for so-called "mandatory" detention of recently arriving noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1), and for other recent arrivals seeking admission under § 1225(b)(2).[1]

26. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in "withholding-only" proceedings (proceedings to determine

[1] Although the term "mandatory detention" is often used to describe detention under 8 U.S.C. § 1225(b), the term is a misnomer because, as courts have acknowledged, DHS agencies may release such individuals through parole for "urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5; see Flores v. Barr, 934 F.3d 910, 917 (9th Cir. 2019) ("The INA provides that, even for noncitizens in expedited removal, 'the Attorney General may ... in his discretion parole into the United States temporarily' any noncitizen applying for admission 'under such conditions as he may prescribe.'"). Thus, it is more accurate to say individuals detained under 8 U.S.C. § 1225(b) are detained without statutory eligibility for a bond hearing.

whether removal to a particular country should be withheld due to a likelihodd of persecution), *see* 8 U.S.C. § 1231(a)–(b).

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

28. 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).

29. 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.")(parenthetical in original).

30. 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" 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)).

31. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.

32. 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 the detention provision under § 1225(b)(2)(A) and thus ineligible for release on bond. The policy applies regardless of when a person is apprehended by DHS, and affects those who have resided in the United States for months, years, and even decades.

33. 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.

34. Since Respondents adopted their new policies, dozens of 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.

35. 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] *Available at* https://www.aila.org/library/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).

36. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g.*, *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.

Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

37. Courts have uniformly rejected DHS's 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.

38. 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]."

39. 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). 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.

40. 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.

41. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who 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). Indeed, the Supreme Court has explained that section 1225(b)'s 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).

42. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

**FACTS**

43. Petitioner has resided in the United States since June of 2010 and lives in Austin, Texas.

44. On July 25, 2025, Petitioner was stopped by Texas Department of Public Safety (hereinafter "DPS") for a nonfunctional taillight. DPS issued a traffic citation and transported him to Travis County authorities who detained him pursuant to an ICE warrant issued on July 25, 2025. ICE took physical custody of Petitioner on July 27, 2025, and transported him to the South Texas Detention Complex, where he continues to be detained.

45. DHS placed Petitioner in removal proceedings before the Pearsall Executive Office for Immigration Review (hereinafter "EOIR") pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

46. Petitioner is married and has four US citizen children. The family lives together in a home they recently purchased in Austin, Texas. Petitioner has his own business in the construction industry and is the primary wage earner for his family. Petitioner has no criminal history. Petitioner is neither a flight risk nor a danger to the community.

47. Petitioner is the beneficiary of a deferred action grant by the U.S. Department of Homeland Security (hereinafter "DHS") U.S. Citizenship and Immigration Services (hereinafter "USCIS") arising from the USCIS' bona fide determination (hereinafter "BFD") that the Petitioner qualifies for U nonimmigrant status for noncitizen victims of certain qualifying activity. USCIS issued Petitioner an Employment Authorization Document. The deferred action grant and employment authorization are still valid and have not been revoked.

48. Following Petitioner's arrest and transfer to the South Texas Detention Complex, ICE made a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

49. On September 3, 2025, Petitioner submitted to the Pearsall EOIR a request for a bond redetermination hearing. That request was accepted by the court and a hearing was held on September 8, 2025.

50. Pursuant to *Matter of Yajure Hurtado*, the immigration judge found that she was unable to consider Petitioner's bond request, and denied his request for bond redetermination.

51. 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.

## CLAIMS FOR RELIEF

### COUNT I

### Violation of the INA

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

53. The 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 those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

54. Respondents' application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA. Thus, Petitioner is "in custody in violation of the … laws… of the United States," warranting issuance of a write of habeas corpus. 28 U.S.C. § 2241(c)(3).

### COUNT II

### Violation of Due Process

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

56. 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). The Due Process Clause protects people in immigration detention. *Id.*

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

58. Respondents' detention of Petitioner without a bond redetermination hearing by a neutral adjudicator to determine whether he is a flight risk or danger to others violates his right to due process.

**PRAYER FOR RELIEF**

WHEREFORE, 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 San Antonio District 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;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

e. Declare that Petitioner's detention is unlawful;

f. 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

g. Grant any other and further relief that this Court deems just and proper.

DATED this 15th day of September, 2025.

Respectfully Submitted,
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**VERIFICATION**

Pursuant to 28 U.S.C. § 2242, undersigned counsel certifies under penalty of perjury that I am submitting this verification because I am the Petitioner's attorney and I have discussed the facts within this Petition with the Petitioner. Pursuant to these discussions, I have reviewed the foregoing petition and that, to the best of my knowledge, the facts therein are true and accurate and the attachments to the petition are true and correct.

DATED this 15th day of September, 2025.

Respectfully Submitted,
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**CERTIFICATE OF SERVICE**

I hereby certify that the defendants on this case are known filing users and service will be accomplished through the Notice of Electronic Filing (NEF).

DATED this 15th day of September, 2025.

Respectfully Submitted,
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