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**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

**MICHEL JHOVANI HERNANDEZ
SILVA,**
Petitioner,

v.

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; **U.S. DEPARTMENT OF HOMELAND SECURITY; TODD LYONS**, Acting Director of the US. Immigration and Customs Enforcement; **EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; PAMELA BONDI**, Attorney General of the United States; **CARLO JIMINEZ**, Acting Assistant Field Office Director of the Houston Field Office of U.S. Immigration and Customs Enforcement; and **ALEXANDER SANCHEZ**, Warden, IAH Polk Adult Detention Facility, in their official capacities.

Respondents

Case No. 9:25-cv-251

PETITION FOR WRIT OF
HABEAS CORPUS

Date: September 15, 2025

**PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

INTRODUCTION

1. Petitioner, Michel Jhovani Hernandez Silva, is in physical custody of Respondents at the IAH Polk Adult Detention facility. 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 inspection. 8 U.S.C. §1182(a)(6)(A)(i). *See* Exhibit 1—Notice to Appear.
3. Based on this allegation in Petitioner's removal proceeding, the 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 8 U.S.C. §1182(a)(6)(A)(i) – i.e. those who entered the United States without inspection – to be an “applicant for admission” under 8 U.S.C. §1225(b)(2)(A) and therefore subject to mandatory detention. The DHS policy states it was issued “in coordination with the Department of Justice (DOJ).”
4. Petitioner sought a bond redetermination hearing before an immigration judge (IJ), but on August 18, 2025, the IJ denied bond. The IJ based this decision on the same legal analysis. The IJ's Order specifically cites to *Matter of Q. Li*, 29

I&N Dec 66, 69 FN4 (BIA 2025) and states: “Once an alien is detained under § 235(b), DHS cannot convert the statutory authority governing her detention from § 235(b) to § 236(b).” *See* Exhibit 2—Order of the Immigration Judge dated August 18, 2025.

5. On September 8, 2025, the IJ, citing to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), issued a subsequent order *sua sponte* which declared that Petitioner is deemed an “applicant for admission” and the IJ thus lacks jurisdiction to consider or grant bond. *See* Exhibit 3 – Order of the Immigration Judge dated September 8, 2025.
6. The IJ concluded that notwithstanding Petitioner’s 22 years of residing in the United States, he is nevertheless an “applicant for admission” who is “seeking admission” and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).
7. Petitioner’s detention on this basis violates the plain language of the Immigration and Nationality Act (INA). 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 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.

8. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.
9. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within fourteen (14) days.
10. Petitioner's continued detention is in violation of his Fifth Amendment rights to substantive and procedural due process.
11. Accordingly, Petitioner seeks declaratory relief establishing he is subject to detention under § 1226(a) and its implementing regulations and is therefore entitled to an individualized custody determination following apprehension by the DHS and, if not released, a bond determination by the Immigration Court.

JURISDICTION

12. Petitioner is in the physical custody of Respondents. Petitioner is detained at the IAH Polk Adult Detention Facility in Livingston, Texas.
13. 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).
14. 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

15. Venue is proper in the Western District of Texas because Petitioner is detained at the IAH Polk Adult Detention Facility, which is located in this District. *See* 28 U.S.C. § 2242.

16. 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 district.

REQUIREMENTS OF 28 U.S.C. § 2243

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

18. 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 of 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, 1220 (9th Cir. 2000) (citation omitted).

PARTIES

19. Petitioner Michel Jhovani Hernandez Silva is a citizen of Mexico who has resided in the United States since 2003. Petitioner has been in immigration detention since July 2, 2025.

20. After arresting Petitioner, ICE did not set bond and Petitioner requested review of his custody by an IJ. On July 31, 2025, Petitioner was denied bond by an IJ at the Conroe Immigration Court because the IJ deemed him an “applicant for admission” and found he had “no jurisdiction.” On August 18, 2025, the Petitioner’s motion for bond reconsideration was denied because the IJ again found he had no jurisdiction, citing to *Matter of Q. Li*. See Exhibit 2, *supra*. On September 8, 2025, the IJ *sua sponte* issued another order which denied bond and found that the IJ had no jurisdiction to consider or grant bond in this case, citing to *Matter of Yajure Hurtado*. See Exhibit 3, *supra*.

21. Respondent, Kristi Noem, is the Secretary of the Department of Homeland Security (DHS). She has responsibility over the administration of U.S. immigration laws, has authority over ICE and its offices, and has the authority to release the Petitioner. She has legal custody of the Petitioner. She is sued in her official capacity.

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

23. Respondent, Todd Lyons, is the Acting Director of ICE. He is responsible for the policies, practices, and procedures of ICE, including those related to detaining individuals. He has legal custody of the Petitioner. He is sued in his official capacity.

24. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. DOJ. In that capacity, she has the authority to adjudicate removal cases and oversees the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA.

25. Respondent EOIR is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including authority of hearing custody redeterminations in bond hearings for noncitizens who are detained by the DHS.

26. Respondent, Carlo Jiminez, is the Acting Assistant Field Office Director for ICE ERO at the Houston Field Office. He exercises control and custody over all detainees held at the IAH Polk Adult Detention Facility. He has legal custody of the Petitioner. He is sued in his official capacity.

27. Respondent, Alexander Sanchez, is the Warden of the IAH Polk Adult Detention Facility, where Petitioner is detained. Therefore, he has immediate physical custody of the Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

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

29. 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).

30. 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).

31. 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).

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

33. 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).

34. Following the enactment of the IIRIRA, the 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”).

35. Thus, in the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a

custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *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)).

36. In *Jennings v. Rodriguez*, the United States Supreme Court analyzed the differences between §1225 and §1226, noting that §1225 “applies primarily to aliens seeking entry into the United States” and §122 “applies to aliens already present in the United States.” *Jennings v. Rodriguez*, 583 U.S. 281, 297-303 (2019).

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

38. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ claims that all persons who entered the United States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. §1225, and therefore are subject to mandatory detention provision under §1225(b)(2)(A). The policy applies regardless of when a person

¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

is apprehended and affects those who have resided in the United States for months, years and even decades.

39. On May 22, 2025, following an unpublished decision from the Board of Immigration Appeals (BIA), the EOIR adopts this same position.² That decision holds 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).

40. This erroneous 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.³

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

42. ICE and EOIR have adopted this position even though federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons

²Available at <https://nwirp.org/our-work/impact-litigation/assets/vazquez/591%20ex%20A%20decision.pdf>.

³ 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-trumpundocumented-immigrants-bond-hearings/> [<https://perma.cc/5ZTR-EN4B>].

who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western Division 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*, --- 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 and stating “DHS cannot convert the statutory authority governing ... detention from [Section 1225(b)] to [Section 1226(a)] through the post-hoc issuance of a warrant.”) (citing *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 n.4 (BIA 2025); *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), finding that detention of non-citizens already present within the United States, based on certain inadmissibility grounds, as that would nullify a recent amendment to the immigration statutes.”).

43. Recently, the U.S. District Court in the Western District of Louisiana also found that a Petitioner with similar circumstances was not subject to mandatory detention and ordered Respondents to provide a bond hearing before an

immigration judge. *Lopez Santos v. Noem*, No. 3:25-CV-01193 SEC P (W.D. La. Sept. 11, 2025) (Mem. Op. & Order granting bond hearing).

44. The DHS' and the DOJ's interpretation defies the statute. 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 Plaintiffs.

45. 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]."

46. 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 § 1182(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)).

47. 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.

48. 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. *See* 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). 55.

49. Accordingly, the mandatory detention provision of 8 U.S.C. § 1225(b)(2) does not apply to people like Plaintiff, who have already entered and were residing in the United States at the time they were apprehended.

50. The Supreme Court has made clear that “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority,” and “may not defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). The text of Sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions, all lead to the conclusion that Petitioner is subject to Section 1226(a)’s discretionary detention scheme.

FACTS

51. Petitioner has resided in the United States since 2003 and lives in Houston, Texas.

52. On July 2, 2025, while driving to work, Petitioner was stopped and taken into ICE custody at the IAH Polk Adult Detention Facility where he is still currently detained.

53. The DHS placed Petitioner in removal proceedings before the Conroe Immigration Court 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 one who entered the United States without inspection. *See* Exhibit 1, *supra*.

54. Petitioner has three children who are United States citizens, has been employed with the same employer since 2005, and has no criminal history. Petitioner is neither a flight risk nor a danger to the community.

55. Following Petitioner's arrest and transfer to the IAH Polk Adult Detention Facility, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

56. Petitioner subsequently requested a bond redetermination hearing before an IJ.

57. On August 18, 2025, a Conroe Immigration Court IJ issued a decision that the court lacked jurisdiction to conduct a bond redetermination hearing because Petitioner was an applicant for admission under § 1225(b)(2)(A). *See* Exhibit 2, *supra*. The IJ sua sponte issued another order on September 8, 2025, stating that the court lacked jurisdiction under *Matter of Yajure Hurtado*. *See* Exhibit 3, *supra*.

58. 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 their family and community.

59. Any appeal to the BIA is futile. DHS' new policy was issued "in coordination with DOJ," which oversees the immigration courts. Further, the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) on this issue held that persons like Petitioner are subject to mandatory detention as

applicants for admission. Finally, in the *Rodriguez Vasquez* litigation, where the EOIR and the Attorney General are respondents, the DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under 8 U.S.C. § 1225(b)(2)(A). *See* Mot. To Dismiss, *Rodriguez Vasquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27-31. *See also Sampiao v. Hyde*, No. 1:25-cv-11981-JEK (D. Mass. Sept. 9, 2025) (finding that waiver of exhaustion requirement is warranted because Petitioner is likely to experience irreparable harm if unable to seek habeas relief until the BIA decides the appeal.).

CLAIMS FOR RELIEF

COUNT I

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

60. Plaintiffs incorporate by reference the allegations of fact set forth in paragraphs 1-59, as if fully set forth herein.

61. 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 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) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

62. Nonetheless, the DHS and the Conroe Immigration Court have adopted a policy and practice of applying § 1225(b)(2) to Petitioner.

63. 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

64. Petitioner incorporates by reference the allegations of fact set forth in paragraphs 1-63, as if fully set forth herein.

65. In 1997, after Congress amended the INA through the IIRIRA, the 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.

66. Nonetheless, the DHS and the Conroe Immigration Court have adopted a policy and practice of applying § 1225(b)(2) to Petitioner.

67. 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 Fifth Amendment Due Process Clause

68. Petitioner incorporates by reference the allegations of fact set forth paragraphs 1-67, as if fully set forth herein.

69. The Fifth Amendment provides that “[n]o person” shall be “be deprived of life, liberty, or property, without due process of law.”

70. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

71. Moreover, “[t]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.

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

73. Respondents' mandatory detention of Petitioner without consideration for release on bond or access to a bond hearing violates his due process rights.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring that Respondents release Petitioner or provide Petitioner with a bond hearing pursuant to 8 U.S.C. §1226(a) within 14 days;
- c. 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
- d. 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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/s/ Frances Bourliot

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INDEX OF EXHIBITS

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