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

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| OSCAR G. GONZALEZ RENDON,<br><br>Petitioner,<br><br>v.<br><br>KRISTI NOEM, Secretary, U.S. Department of Homeland Security;<br>TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement;<br>GEORGE STERLING, Atlanta Field Office Director, U.S. Immigration and Customs Enforcement; and<br>Warden, Folkston ICE Processing Center,<br><br>Respondents. | C.A.F.N._CV 525-104<br>Agency # 221 444 965 |

**PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Oscar G. Gonzalez Rendon, through undersigned counsel, files this Petition for Writ of Habeas Corpus to remedy his unlawful detention by enjoining Respondents from continuing to detain him and to release him from custody. As good cause, Petitioner states the following:

1. Petitioner Oscar G. Gonzalez Rendon is in the physical custody of Respondents at the Folkston ICE Processing Center. 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. Upon information and belief, 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 mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. Further, on September 5, 2025, the Board of Immigration Appeals ("BIA") affirmed the DHS policy by issuing a precedent decision with *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA held that an immigration judge ("IJ") has no authority to consider bond requests for any person who entered the United States without admission, as such a person is subject to mandatory detention.

5. Thus, any request by Petitioner for bond redetermination before EOIR would be futile.

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act ("INA"). 8 U.S.C. § 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, 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond. That statute expressly applies to those 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 contrary to decades of agency practice applying 8 U.S.C. § 1226(a) to those like Petitioner. Thus, Petitioner challenges his detention as a violation of the INA and the Due Process Clause of the Fifth Amendment.

8. Accordingly, Petitioner respectfully requests that this Court grant him a Writ of Habeas Corpus and order Respondents to release him from custody unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

**JURISDICTION**

9. Petitioner is in Respondents' physical custody. Petitioner is detained at Folkston ICE Processing Center in Folkston, Georgia.

10. This court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas corpus), 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.

12. Congress has preserved judicial review of challenges to detention. *See Jennings v. Rodriguez,* 138 U.S. 830, 841 (2018).

**VENUE**

13. Venue in the Southern District of Georgia is appropriate under 28 U.S.C. § 1391(e) because at least one Respondent is in this District, Petitioner is detained in this District, Petitioner's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("[T]he proper respondent to a habeas petition is 'the person who has custody over the petitioner'") (citing 28 U.S.C. § 2242) (citation modified).

**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 Petitioner is ineligible for 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.*

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 Oscar G. Gonzalez Rendon is a citizen of Mexico who is currently detained by Respondents at Folkston ICE Processing Center. He has been in ICE custody since or about September 12, 2025. After arresting Petitioner in Oglethorpe County, Georgia, ICE did not set bond, and Petitioner is unable to obtain review of his custody by an IJ based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

17. Respondent Kristi Noem is the Secretary of DHS. This suit is brought against Respondent Neom in her official capacity, as she is charged with implementing and enforcing the INA, including the detention and removal of noncitizens, and overseeing ICE. Respondent Noem has ultimate custodial authority over Petitioner.

18. Respondent Todd M. Lyons is the Acting Director of ICE. This suit is brought against Respondent Lyons in his official capacity as he is charged with the administration of ICE and the implementation and enforcement of the INA. He is Petitioner's legal custodian.

19. Respondent George Sterling is the Field Office Director of the Atlanta Field Office of ICE which holds administrative jurisdiction over Petitioner's detention and removal. He is Petitioner's legal custodian and is named in his official capacity.

20. Respondent Warden is the Warden of Folkston ICE Processing Center, where Petitioner is currently detained. He is Petitioner's legal custodian and is named in his official capacity.

## EXHAUSTION OF ADMINISTRATIVE REMEDIES

21. Neither the INA nor the applicable federal habeas corpus statute requires administrative exhaustion for immigration detention-based claims. *Compare* 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only prior to challenging a removal order in circuit court), *with* 28 U.S.C. § 2241 (including no requirement for administrative exhaustion); *see also Santiago-Lugo v. Warden,* 785 F.3d 467, 474-75 (11th Cir. 2015) ("It is no longer the law of this circuit that exhaustion of administrative remedies is a jurisdictional requirement in a § 2241 proceeding.").

## LEGAL FRAMEWORK

22. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings.

23. First, 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 8 U.S.C. § 1225(b)(2).

24. Second, 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 redetermination 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, *see* 8 U.S.C. § 1226(c).

25. Last, the INA also provides for the detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. 8 U.S.C. § 1231(a)–(b).

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

27. Congress enacted 8 U.S.C. §§ 1225(b)(2) and 1226(a) 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. 8 U.S.C. § 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

28. Following the enactment of the IIRIRA, EOIR drafted new regulations stating that those entering the country without inspection were considered detained under 8 U.S.C. § 1226(a) and not under 8 U.S.C. § 1225. *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).

29. Thus in the decades that followed, most who entered without inspection and were placed in standard removal proceedings received bond hearings unless their criminal history rendered them ineligible for release under 8 U.S.C. § 1226(c). This 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 8 U.S.C. § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

30. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected the well-established interpretation of the statutory framework and reversed decades of practice. The new policy, "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] states that all individuals who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225(a)(1). They are, therefore, now subject to the mandatory detention provision under 8 U.S.C. § 1225(b)(2)(A). 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.

31. On September 5, 2025, the BIA issued a published decision adopting this same position. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA held that all noncitizens who entered the United States without admission or parole are considered applicants for admission, subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and ineligible for a bond redetermination hearing before an immigration judge. *Id.*

32. ICE and the BIA have adopted this position even though numerous federal courts have rejected this very conclusion. For example, after IJs in the Tacoma, Washington, Immigration Court stopped providing bond hearings for individuals who entered the United States without inspection and have since resided here, the U.S. District Court in

[1] *Available at* https://www.https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission

the Western District of Washington found that such a reading of the INA was likely unlawful. That court ruled that 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 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).

33. Accordingly, federal courts have roundly rejected Respondents' erroneous interpretation of the INA since ICE implemented its July 8, 2025 memo. *See 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); *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); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. 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); *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); *Santos v. Noem*, No. 3:25-CV-01193 SEC P, 2025 WL 2642278 (W.D. La. Sep. 11, 2025); *Salazar v. Dedos*, No.

1:25-cv-00835-DHU-JMR, 2025 LX 465474 (D.N.M. Sep. 17, 2025); *Chafla v. Scott*, No. 2:25-cv-00437-SDN, 2025 LX 422663 (D. Me. Sep. 21, 2025).

34. DHS's and DOJ's interpretation defies the plain reading and intent of the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text demonstrates that 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), applies to Petitioner and those like him.

35. 8 U.S.C. § 1226(a) applies by default to all individuals "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under 8 U.S.C. § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

36. The text of 8 U.S.C. § 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, they are eligible for a bond redetermination 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)).

37. 8 U.S.C. § 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.

38. By contrast, 8 U.S.C. § 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 inspection at the border of those "seeking admission" to the United States. 8 U.S.C.

§ 1225(b)(2)(A). 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).

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

**FACTS**

40. Petitioner has resided in the United States since 2001 and lives in Lawrenceville, Georgia.

41. On or around September 12, 2025, Petitioner was arrested for driving without a license in Oglethorpe County, Georgia. Petitioner is now detained at Folkston ICE Processing Center. **Exhibit A – ICE Online Detainee Locator System Search Results for Petitioner.**

42. DHS placed Petitioner in removal proceedings before the Stewart Immigration Court pursuant to 8 U.S.C. § 1229a. Upon information and belief, DHS has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as a person who entered the United States without inspection.

43. Petitioner has lived in Lawrenceville, Georgia, for the past twelve (12) years. He and his long-term partner have a one-year-old, U.S. citizen child together. He has worked as a Superintendent at Kennedy Contracting for approximately fifteen (15) years. He is an active member of St. Patrick's Catholic Church. Petitioner has no criminal record beyond traffic violations.

44. Petitioner is neither a flight risk nor a danger to the community.

45. Upon information and belief, following Petitioner's arrest and transfer to Folkston ICE Processing Center, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

46. Any request for bond redetermination before EOIR is futile, as the BIA's recent published decision, *Matter of Yajure Hurtado*, held that IJs are unable to consider Petitioner's bond request, because individuals like Petitioner are subject to mandatory detention as applicants for admission under 8 U.S.C. § 1225(b)(2)(A).

47. As a result, Petitioner remains in mandatory detention. Absent 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 ONE

### VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

48. Petitioner realleges and incorporates by reference each and every allegation contained above.

49. 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 8 U.S.C. § 1226(a), unless they are subject to 8 U.S.C. § 1225(b)(1), 1226(c), or 1231.

50. The application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

## COUNT TWO

## VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

51. Petitioner realleges and incorporates by reference each and every allegation contained above.

52. 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).

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

54. The government's detention of Petitioner without a bond redetermination hearing 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:

1. Assume jurisdiction over this matter;
2. Order that Petitioner shall not be transferred outside the Southern District of Georgia while this habeas petition is pending;
3. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
4. Declare that Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) is unlawful, and that his custody is properly governed by 8 U.S.C. § 1226(a);

5. 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;
6. Retain jurisdiction over this case to ensure compliance with all of this Court's orders;
7. Award attorney's fees and costs as permitted under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
8. Grant any and all further relief that is necessary or appropriate.

Respectfully submitted this 23rd day of September, 2025.

/s/ Marshall Lewis Cohen
Marshall Lewis Cohen
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**Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242**

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I, Marshall L. Cohen, hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/ Marshall L. Cohen
Attorney for Petitioner

Date: September 23, 2025

# Search Results: 1

**OSCAR PEOVANI GONZALEZ-RENDON**

**Country of Birth** : Mexico
**A-Number:** [redacted]
**Status** : In ICE Custody
**State:** GA
**Current Detention Facility**: Folkston D Ray ICE Processing Center
** Click on the Detention Facility name to obtain facility contact information*

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