

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF ILLINOIS**
8 **EASTERN DIVISION**

9
10 WILLIAN ALBERTO GIMENEZ
11 GONZALEZ,

12 Petitioner,

13 v.

14 SAM OLSON Field Office Director of
15 Enforcement and Removal Operations, Chicago
16 Field Office, Immigration and Customs
17 Enforcement; Kristi NOEM, Secretary, U.S.
18 Department of Homeland Security; U.S.
19 DEPARTMENT OF HOMELAND
20 SECURITY; Pamela BONDI, U.S. Attorney
21 General; EXECUTIVE OFFICE FOR
22 IMMIGRATION REVIEW, WARDEN DOE,
23 Warden of Broadview Processing Center

24 Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

ORAL ARGUMENT REQUESTED

17 Respondents.

1 INTRODUCTION

2 1. Petitioner Willian Alberto Gimenez Gonzalez (“Petitioner” or “Mr. Gimenez”) is
3 in the physical custody of Respondents at the Broadview Processing Center in Chicago, Illinois.
4 He now faces unlawful detention because the Department of Homeland Security (DHS) and the
5 Executive Office for Immigration Review (“EOIR”) of the Department of Justice (DOJ) have
6 erroneously concluded Petitioner is subject to mandatory detention.

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

9 3. On information and belief, based on this allegation in Petitioner’s removal
10 proceedings, DHS has denied Petitioner release from immigration custody, consistent with a new
11 DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE)
12 employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the
13 United States without inspection—to be an “applicant for admission” under 8 U.S.C. §
14 1225(b)(2)(A) and therefore subject to mandatory detention.

15 4. Any request by Petitioner for bond determination before EOIR would be futile.
16 DHS’s policy states that it was developed “in coordination with the Department of Justice,” and
17 in a recent published decision by the Board of Immigration Appeals (BIA), *Matter of Yajure*
18 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), Respondent EOIR adopted the same position as DHS,
19 classifying noncitizens like Petitioner as applicants for admission and statutorily ineligible for
20 bond under § 1225(b)(2)(A).

21 5. Petitioner’s detention on this basis violates the plain language of the Immigration
22 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
23 previously entered and are now residing in the United States. Instead, such individuals are

1 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.
2 That statute expressly applies to people who, like Petitioner, are charged as inadmissible for
3 having entered the United States without inspection.

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

7 7. Further, Plaintiff fears that he will be transferred to another jurisdiction by
8 Respondents in an effort to move him away from legal counsel,¹ which also threatens to separate
9 him from his family, community, and his participation as a plaintiff in a federal lawsuit which is
10 presently proceeding in the Northern District of Illinois.

11 8. Accordingly, Petitioner seeks an order prohibiting Respondents from transferring
12 Petitioner outside of the state of Illinois, holding that to do so would be a violation of the Due
13 Process Clause of the Fifth Amendment to the United States Constitution and also seeks an
14 Order to Show Cause requiring that he Petitioner be released unless Respondents provide a bond
15 hearing under § 1226(a) within fourteen days.

16 **JURISDICTION**

17 9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
18 Broadview Processing Center, located at 1930 Beach Street in Broadview, Illinois.

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

22
23 ¹ Eric Levenson and Gloria Pazmino, *Why ICE Is Really Moving Detainees Over A Thousand Miles from Where*
24 *They Were Arrested*, CNN, (Apr. 10, 2025), <https://www.cnn.com/2025/04/10/us/immigration-detainees-trump-ice-students-visa>;

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

VENUE

4 12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
5 500 (1973), venue lies in the United States District Court for the Northern District of Illinois, the
6 judicial district in which Petitioner currently is detained.

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

REQUIREMENTS OF 28 U.S.C. § 2243

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

16 15. Habeas corpus is “perhaps the most important writ known to the constitutional
17 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
18 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
19 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
20 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
21 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

1 **PARTIES**

2 16. Petitioner WILLIAN ALBERTO GIMENEZ GONZALEZ is a citizen of
3 Venezuela who has been in immigration detention since September 12, 2025. After arresting
4 Petitioner in Chicago, Illinois. On information and belief, Mr. Gimenez is currently detained at
5 the Broadview Processing Center in Broadview, Illinois, and under the direct control of
6 Respondents and their agents.

7 17. Respondent SAM OLSON is the Director of the Chicago Field Office of ICE's
8 Enforcement and Removal Operations division. As such, Respondent Olson is Petitioner's
9 immediate custodian and is responsible for Petitioner's detention and removal. He is named in
10 his official capacity.

11 18. Respondent KRISTI NOEM is the Secretary of the Department of Homeland
12 Security. She is responsible for the implementation and enforcement of the Immigration and
13 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.
14 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

15 19. Respondent U.S. DEPARTMENT OF HOMELAND SECURITY ("DHS") is the
16 federal agency responsible for implementing and enforcing the INA, including the detention and
17 removal of noncitizens.

18 20. Respondent PAMELA BONDI is the Attorney General of the United States. She
19 is responsible for the Department of Justice, of which the Executive Office for Immigration
20 Review and the immigration court system it operates is a component agency. She is sued in her
21 official capacity.

22

23

24

1 21. Respondent EXECUTIVE OFFICE FOR IMMIGRATION REVIEW is the
2 federal agency responsible for implementing and enforcing the INA in removal proceedings,
3 including for custody redeterminations in bond hearings.

4 22. On information and belief Respondent WARDEN DOE is employed by the
5 Department of Homeland Security as Warden of the Broadview Processing Center, located at
6 1930 Beach Street in Broadview, Illinois, where Petitioner is detained. This individual has
7 immediate physical custody of Petitioner. Respondent WARDEN DOE is sued in their official
8 capacity.

LEGAL FRAMEWORK

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

24. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
proceedings before an immigration judge (“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, *see* 8 U.S.C. § 1226(c).

17 25. Second, the INA provides for mandatory detention of noncitizens subject to
18 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission
19 referred to under § 1225(b)(2).

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

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

1 28. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
2 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
3 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section
4 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1,
5 139 Stat. 3 (2025).

6 29. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining
7 that, in general, people who entered the country without inspection were not considered detained
8 under § 1225 and that they were instead detained under § 1226(a). *See Inspection and Expedited*
9 *Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;*
10 *Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

11 30. Thus, in the decades that followed, most people who entered without inspection
12 and were placed in standard removal proceedings received bond hearings, unless their criminal
13 history rendered them ineligible. That practice was consistent with many more decades of prior
14 practice, in which noncitizens who were not deemed “arriving” were entitled to a custody
15 hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep.
16 No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority
17 previously found at § 1252(a)).

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

21 32. The new policy, entitled “Interim Guidance Regarding Detention Authority for
22 Applicants for Admission,”² claims that all persons who entered the United States without

23 _____
24 ² Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore
2 are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies
3 regardless of when a person is apprehended and affects those who have resided in the United
4 States for months, years, and even decades.

5 33. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a
6 published decision adopting this same position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216
7 (BIA 2025). That decision holds that all noncitizens who entered the United States without
8 admission or parole are considered applicants for admission and are ineligible for immigration
9 judge bond hearings.

10 34. ICE and EOIR have adopted this position even though numerous federal courts
11 have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington,
12 immigration court stopped providing bond hearings for persons who entered the United States
13 without inspection and who have since resided here, the U.S. District Court in the Western
14 District of Washington found that such a reading of the INA is likely unlawful and that §
15 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the
16 United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash.
17 Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D.
18 Mass. July 7, 2025) (granting habeas petition based on same conclusion); *see also Gomes v.*
19 *Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (same).
20 Accordingly, federal courts have roundly rejected Respondents’ erroneous interpretation of the
21 INA since ICE implemented its July 8, 2025 memo. *See Martinez v. Hyde*, CV 25-11613-BEM,
22 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937
23 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-
24

1 03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No.
2 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v*
3 *Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025); *Jacinto v.*
4 *Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-*
5 *Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera*
6 *Torralba v. Knight*, 2:25-cv-03166-RFB-DJA (D. Nev. Sep. 5, 2025).

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

10 36. Section 1226(a) applies by default to all persons “pending a decision on whether
11 the [noncitizen] is to be removed from the United States.” These removal hearings are held under
12 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

13 37. The text of § 1226 also explicitly applies to people charged as being inadmissible,
14 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph
15 (E)’s reference to such people makes clear that, by default, such people are afforded a bond
16 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress
17 creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions,
18 the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove*
19 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

20 38. Section 1226 therefore leaves no doubt that it applies to people who face charges
21 of being inadmissible to the United States, including those who are present without admission or
22 parole.

23
24

1 39. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
2 recently entered the United States. The statute’s entire framework is premised on inspections at
3 the border of people who are “seeking admission” to the United States. 8 U.S.C.
4 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
5 applies “at the Nation’s borders and ports of entry, where the Government must determine
6 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583
7 U.S. 281, 287 (2018).

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

FACTS

12 41. Petitioner has resided in the United States since October 2023 and lives in
13 Chicago, Illinois.

14 42. Around 11:00 AM on September 12, 2025, Petitioner was arrested by ICE as he
15 attempted to visit a barbershop in the Little Village neighborhood of Chicago, Illinois. Two
16 arresting immigration agents asked if he was Alberto Gimenez Gonzalez, and when he responded
17 in the affirmative, he was arrested. At the time of his arrest Petitioner was accompanied by his
18 wife, who was left alone in with Petitioner's car after Petitioner was taken by the agents.

19 43. As of 12:00 PM on September 13, 2025, Petitioner is detained at the Broadview
20 Processing Center, located at 1930 Beach Street in Broadview, Illinois.

21 44. Petitioner is presently in immigration proceedings in Chicago, Illinois pursuant to
22 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C.
23 § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. Previously,

1 Petitioner's case was before the Memphis Immigration Court. Due to extraordinary
2 circumstances, Petitioner was absent from an immigration hearing on April 23, 2024 and the
3 immigration court subsequently ordered him removed *in absentia*.

4 45. On October 18, 2024, Petitioner moved to reopen his case and for the immigration
5 court to rescind his order of removal. The immigration court granted this request and his case
6 was subsequently moved to the Chicago Immigration Court. Mr. Gimenez's next immigration
7 hearing is scheduled for July 7, 2026 in Chicago.

8 46. Petitioner has lived with his wife in Chicago for nearly two years. The two
9 frequently perform construction and cleaning work together. He is an active member of Latino
10 Union, a worker center in Chicago. Petitioner has no criminal record beyond traffic violations
11 and a trespassing charge which was resolved *nolle prosequi*.

12 47. Additionally, Petitioner is a plaintiff in the lawsuit *Arias v. City of Chicago*, 24-
13 cv-2869, in the Northern District of Illinois.³ His presence in Chicago is essential to his
14 participation in said lawsuit.

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

16 49. Following Petitioner's arrest and incarceration at the Broadview Processing
17 Center, he has not been given the opportunity to post bond or be released on other conditions.

18 50. Any request for bond redetermination before EOIR is futile, as the BIA recently
19 held in a published decision that persons like Petitioner are subject to mandatory detention as
20 applicants for admission under § 1225(b)(2)(A).

21
22
23 ³ Sylvan Labrun & Laura Rodriguez Presa, *Migrant day laborers sue Home Depot, CPD and city of Chicago, alleging abuse and harassment*, CHICAGO TRIBUNE (Aug. 7, 2024)
24 <https://www.chicagotribune.com/2024/08/07/migrant-day-laborers-sue-home-depot-cpd-and-city-of-chicago-alleging-abuse-and-harassment/>

1 51. As a result, Petitioner remains in mandatory detention. Absent relief from this
2 Court, he faces the prospect of months, or even years, in immigration custody, separated from his
3 family and community, and without the ability to prosecute the civil rights claims currently
4 pending before a court in this district while being deprived an individualized hearing justifying
5 his detention in violation of the INA and Due Process.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

11 53. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
12 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
13 relevant here, it does not apply to those who previously entered the country and have been
14 residing in the United States prior to being apprehended and placed in removal proceedings by
15 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to
16 § 1225(b)(1), § 1226(c), or § 1231.

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

COUNT II

Violation of Due Process

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

1 56. The government may not deprive a person of life, liberty, or property without due
2 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government
3 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the
4 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653
5 (2001).

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

8 58. The government’s detention of Petitioner without a bond redetermination hearing
9 to determine whether he is a flight risk or danger to others violates his right to due process.
10
11

PRAYER FOR RELIEF

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

- 14 a. Assume jurisdiction over this matter;
- 15 b. Issue an Order to Show Cause ordering Respondents to show cause why this
16 Petition should not be granted within three days.
- 17 c. Declare that transfer of Petitioner outside of the jurisdiction of the United States
18 and the state of Illinois violates the Due Process Clause of the Fifth Amendment,
19 and 8 U.S.C. § 1229a(b)(4)(A), 8 U.S.C. § 1362, 8 C.F.R. § 292.5, 8 C.F.R. §
20 1292.1, and, 8 C.F.R. § 1003.61.
- 21 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or
22 provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within three
23 days;

- 1 e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
- 2 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
- 3 law; and
- 4 f. Grant any other and further relief that this Court deems just and proper.

5 Dated: April 18, 2025

6 Respectfully submitted,
7 By: /s/ Kevin L. Herrera
8 Kevin L. Herrera (ARDC # 6324045)
9 RAISE THE FLOOR ALLIANCE
10 1 N. LaSalle St. Ste 1275
11 Chicago, Illinois 60602
12 312-795-9115
13 kherrera@raisetheflooralliance.org

14
15
16
17
18
19
20
21
22
23
24

1

2

3

4 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

5

6

7

I represent Petitioner, Willian Alberto Gimenez Gonzalez, and I submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

8 Dated this 13th day of September, 2025.

9

10

11 /s/ Kevin L. Herrera

12 *Attorney(s) for Petitioner*

13

14

15

16

17

18

19

20

21

22

23

24