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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA (Las Vegas)**

**MIGUEL ANGEL HERNAN
DEZ-LUNA**

Petitioner,

v.

KRISTI NOEM,
in her official capacity as
Secretary, U.S. Department of
Homeland Security; 245 Murray Lane
SW, Washington, DC 20528;

**U.S. DEPARTMENT OF HOMELAND
SECURITY**

PAMELA J. BONDI,
in her official capacity as
Attorney General of the United States,
950 Pennsylvania Avenue, NW,
Washington, DC, 20530;

TODD LYONS,
in his official capacity as Acting
Director and Senior Official
Performing the Duties of the Director
for U.S. Immigration and Customs
Enforcement, 500 12th Street, SW,
Washington, DC 20536;

JASON KNIGHT,

Case No.:

Agency No: A



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

in his official capacity as Acting Field
Office Director, Salt Lake City Field
Office Director, U.S. Immigration &
Customs Enforcement, 2975 Decker
Lake Drive Suite 100, West Valley
City, UT 84119-6096

**U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT**

JOHN MATTOS,
in his official capacity as Warden,
Nevada Southern Detention Facility,
2190 E. Mesquite Ave.
Pahrump, NV 89060

Respondents.

INTRODUCTION

1. Luis Angel Hernandez-Luna (“Petitioner” “Mr. Hernandez-Luna”) is a 28-year old resident of the United States. He has lived in this country since 2005, when he was brought here at the age of seven. He is a former beneficiary of the Deferred Action for Childhood Arrivals (DACA) program. However, Immigration and Customs Enforcement (ICE) is detaining him and is seeking his removal from the United States pending his appeal with the Board of Immigration Appeals (BIA). In violation of the Immigration and Nationality Act and in a departure from longstanding agency policy and practice, ICE is refusing to release him, and an Immigration Judge (IJ) has denied him bond.

2. ICE has charged Petitioner with, among other things, having entered the United States without inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i). On June 30, 2025, an Immigration Judge (IJ) in Las Vegas ordered that Petitioner be removed from the United States. Petitioner subsequently filed a timely appeal of the removal order with the BIA. Petitioner then requested a bond hearing at which the IJ incorrectly found him to be a danger to the community. Petitioner

1 planned to file a motion to reconsider with the Immigration Court based on the fact that the
2 crime with which he is charged is a misdemeanor DUI, and the basis for finding him to be a
3 danger to the community relied on *Begay v. United States*, 553 U.S. 137 (2008), which only
4 addresses felony DUI. Filing a motion to reconsider now would be moot due to the BIA's new,
5 inconsistent reinterpretation of the Immigration and Nationality Act that would render any
6 noncitizen who entered without inspection ineligible for bond under 8 U.S.C. § 1225(b)(2)(A).
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8 3. He files this Petition for a writ of habeas corpus ("Petition") because the court
9 refuses to issue him bond, leaving him detained in violation of the law. ICE will argue that
10 Petitioner is an "applicant for admission" who is "seeking admission," even though he has been
11 present in the U.S. for over two decades.
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13 4. Petitioner's detention on this basis violates the plain language of the Immigration
14 and Nationality Act. Section 1225(b)(2)(A), the provision that ICE is relying on, does not apply
15 to individuals like Petitioner who previously entered and are now residing in the United States.
16 Instead, such individuals are subject to a different statute, Section 1226(a), that allows for
17 release on conditional parole or bond. That statute expressly applies to people who, like
18 Petitioner, are charged as inadmissible for having entered the United States without inspection.
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20 5. Respondents' new legal interpretation is plainly contrary to the statutory
21 framework and contrary to decades of agency practice applying Section 1226(a) to people like
22 Petitioner.
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24 6. Mr. Hernandez-Luna brings this petition pursuant to 28 U.S.C. § 2241; the
25 Immigration and Nationality Act, 8 U.S.C. §§ 1101-1538 and its implementing regulations; the
26 Administrative Procedure Act, 5 U.S.C. §§ 500-596, 701-706; and the United States
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1 Constitution to allow him to be released from immigration detention by requiring the IJ to
2 reconsider the issuance of bond.

3 **JURISDICTION AND VENUE**

4 7. Petitioner is in the custody of Respondents. He is in the physical custody of the
5 Nevada Southern Detention Center, 2190 E Mesquite Ave, Pahrump, NV 89060 (“NSDC”) in
6 Pahrump, Nevada. NSDC is a private detention center operated by CoreCivic, Inc., under
7 contract with ICE.
8

9 8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28
10 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States
11 Constitution (the Suspension Clause).
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13 9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory
14 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

15 10. Venue is proper in this District under 28 U.S.C. § 2241; 28 U.S.C. § 1391(b);
16 and 28 U.S.C. § 1391(e)(1) because when this Petition was filed Petitioner was detained within
17 the geographic jurisdiction of the District of Nevada (Las Vegas). Venue is also properly in this
18 Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and
19 agencies of the United States, and a substantial part of the events or omissions giving rise to the
20 claim occurred in this district. *See* 28 U.S.C. § 1391(e).
21

22 **REQUIREMENTS OF 28 U.S.C. § 2243**

23 11. The Court must grant the petition for writ of habeas corpus or order Respondents
24 to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an
25 order to show cause is issued, the Respondents must file a return “within three days unless for
26 good cause additional time, not exceeding twenty days, is allowed.” *Id.*
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1 18. Respondent Todd Lyons is the Acting Director and Senior Officer Performing
2 the Duties of the Director of ICE. Respondent Lyons is responsible for ICE's policies, practices,
3 and procedures, including those relating to the detention of immigrants during their removal
4 procedures. Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in
5 his official capacity.

6
7 19. Respondent ICE is the subagency of DHS that is responsible for carrying out
8 removal orders and overseeing immigration detention. Respondent ICE is a legal custodian of
9 Petitioner.

10 20. Respondent Jason Knight, is the Acting Director of the Salt Lake City Field
11 Office of ICE Enforcement and Removal Operations, a federal law enforcement agency within
12 the Department of Homeland Security ("DHS"). ERO is a directorate within ICE whose
13 responsibilities include operating the immigration detention system. In his capacity as ICE ERO
14 Salt Lake City, Acting Field Office Director, Respondent Knight exercises control over and is a
15 custodian of immigration detainees held at NSDC. At all times relevant to this Complaint,
16 Respondent Knight was acting within the scope and course of his employment with ICE. He is
17 sued in his official capacity.

18
19 21. Respondent John Mattos, the Warden of NSDC which detains individuals
20 suspected of civil immigration violations pursuant to a contract with ICE. Respondent Mattos
21 exercises physical control over immigration detainees held at NSDC. Respondent Mattos is
22 sued in his official capacity.

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24 22. Respondents individually and collectively will be referred to as "Respondents."
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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 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). There are no allegations that Mr. Hernandez-Luna has any criminal record that would lead to mandatory detention under this provision.

25. 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).

26. Third, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *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

1 considered detained under § 1225 and that they were instead detained under § 1226(a). *See*
2 Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of
3 Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

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

12 31. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
13 rejected well-established understanding of the statutory framework and reversed decades of
14 practice.
15

16 32. The new policy, entitled “Interim Guidance Regarding Detention Authority for
17 Applicants for Admission,”¹ claims that all persons who entered the United States without
18 inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and
19 therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy
20 applies regardless of when a person is apprehended, and affects those who have resided in the
21 United States for months, years, and even decades.
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28 ¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

33. In a May 22, 2025, unpublished decision from the Board of Immigration Appeals (BIA), EOIR adopted 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 ineligible for immigration judge bond hearings. On September 5, 2025, the BIA issued a decision adopting DHS' interpretation of the INA as mandating detention without bond for millions of noncitizens who reside in the U.S. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

34. 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 who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that Section 1226(a), not Section 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); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, Doc. 14 (C.D. Cal. July 28, 2025) (granting temporary restraining order). A putative class action challenging the policy is currently pending before this Court. *See Maldonado Vazquez v. Feeley*, Case No. 2:25-cv-01542-RFB-EJY.

² Available at <https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf>.

1 35. DHS’s and DOJ’s interpretation defies the INA. As this court explained in
2 *Maldonado Vazquez*, the plain text of the statutory provisions demonstrates that § 1226(a), not §
3 1225(b), applies to people like Petitioner.

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

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

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

21 39. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
22 recently entered the United States. The statute’s entire framework is premised on inspections at
23 the border of people who are “seeking admission” to the United States. 8 U.S.C.
24 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention
25 scheme applies “at the Nation’s borders and ports of entry, where the Government must
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1 determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v.*
2 *Rodriguez*, 583 U.S. 281, 287 (2018).

3 40. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply
4 to people like Petitioner, who have already entered and were residing in the interior of the
5 United States at the time they were apprehended.
6

7 **FACTS**

8 41. Petitioner has resided in the United States since 2005 and until his recent
9 detention lived in Las Vegas, Nevada. His fiancée is a U.S. citizen, and his attempt to legally
10 marry her have been thwarted by ICE while he has been in their custody. He has had steady
11 self-employment as the owner of a landscaping company in Las Vegas, Nevada.
12

13 42. Petitioner has two criminal arrests and one conviction for a misdemeanor. The
14 first arrest occurred in 2019, when he was 22 years old. He was arrested and convicted for a
15 misdemeanor DUI in California. He paid a fine and successfully completed probation.
16

17 43. He had no criminal incidents for the next 6 years. In May 2025, police arrested
18 Petitioner for a misdemeanor DUI. This was his second offense of any kind, and he has not been
19 convicted of said offense. The next day, he was transferred to ICE custody.

20 44. ICE placed Petitioner in removal proceedings before the Las Vegas Immigration
21 Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with being inadmissible under 8
22 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.
23

24 45. Petitioner was ordered removed by an Immigration Judge on June 30, 2025, and
25 he subsequently appealed to the BIA. As long as his appeal is pending, his removal order is not
26 final. Petitioner would have a legal pathway to remand his case to the Immigration Judge and
27 apply for relief to remain in the United States if he were able to marry his longtime U.S. citizen
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1 fiancée. However, ICE has deprived him of his fundamental right to marry while he has been in
2 their custody.

3 46. Following Petitioner's arrest and transfer to NSDC, ICE issued a custody
4 determination to continue Petitioner's detention without an opportunity to post bond or be
5 released on other conditions.

6 47. On August 15, 2025, Petitioner filed a motion requesting bond redetermination
7 by an IJ pursuant to 8 C.F.R. § 1003.19. Las Vegas Immigration Judge Glen Baker held a bond
8 hearing on August 28, 2025.

9 48. At that hearing, the IJ denied bond, finding Petitioner to be a danger to the
10 community based on his misdemeanor conviction from 2019 and his arrest in 2025. The IJ cited
11 *Begay v. United States*, 553 U.S. 137 (2008) holding that driving under the influence of alcohol
12 is inherently a dangerous activity. However, *Begay* only addresses felony DUIs. *See Begay v.*
13 *United States*, 553 U.S. 137 (2008). Petitioner is charged with a misdemeanor DUI and has
14 never been convicted of a felony.

15 49. As a result, Petitioner remains in detention. Without relief from this Court, he
16 will face the prospect of months, or even years, in immigration custody, separated from his
17 family and community.

18 50. Pursuing his rights via the DHS appeal to the Board of Immigration Appeals
19 would be futile. DHS's new policy was issued "in coordination with DOJ," which oversees the
20 immigration courts and the Board. Further, as noted, the most recent BIA decision on this issue
21 held that persons like Petitioner are subject to mandatory detention as applicants for admission.
22 Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are
23 defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for
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admission and subject to detention under § 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

52. 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), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

COUNT II

Violation of Due Process

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

55. 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, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

1 56. Petitioner has a fundamental interest in liberty and being free from official
2 restraint.

3 57. The government's continued detention of Petitioner, exacerbated by the fact that
4 he is being denied the opportunity to marry his fiancée to seek immigration relief, violates his
5 due process.
6

7 **PRAYER FOR RELIEF**

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

- 9 a. Assume jurisdiction over this matter;
10 b. Issue a writ of habeas corpus requiring that Respondents release Petitioner and
11 hold a new hearing to reconsider his eligibility for bond;
12 c. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
13 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
14 law; and
15 d. Grant any other and further relief that this Court deems just and proper.
16
17

18 DATED this 25th day of September, 2025.

19 Respectfully Submitted,

20 /s/Michael T. Shamoon
21 Michael T. Shamoon, Esq.
22 Nevada Bar. No. 15324

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of Petitioner because I am one of the Petitioner's attorneys. I have discussed with Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: September 25, 2025

/s/Michael T. Shamoon
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