

1 MICHAEL T. SHAMOON, ESQ.  
2 Nevada Bar. No. 15324  
3 Attorney for Petitioner  
**SHAMOON ELIADES LLP**  
4 7995 W Sahara Ave, Suite 101  
Las Vegas, Nevada 89117  
Telephone: 702-996-7411  
Email: mts@shamooneliades.com

6 *Counsel for Petitioner Miguel Angel Hernandez Luna*

7  
8 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA (Las Vegas)**

9  
10 **MIGUEL ANGEL HERNAN**  
**DEZ-LUNA**

11  
12 v. *Petitioner,*

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

16  
17 **U.S. DEPARTMENT OF HOMELAND**  
**SECURITY**

18  
19 **PAMELA J. BONDI,**  
in her official capacity as  
20 Attorney General of the United States,  
950 Pennsylvania Avenue, NW,  
21 Washington, DC, 20530;

22  
23 **TODD LYONS,**  
in his official capacity as Acting  
24 Director and Senior Official  
Performing the Duties of the Director  
25 for U.S. Immigration and Customs  
Enforcement, 500 12th Street, SW,  
26 Washington, DC 20536;

27 **JASON KNIGHT,**

Case No.:

Agency No: A 

28  
**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).  
7

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.  
12

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.  
19

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.  
23

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  
27  
28

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

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

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

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

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

12. 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

13. Mr. Hernandez-Luna is a citizen of Mexico who has resided in the United States since 2005. He has been in immigration detention since May 22, 2025.

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

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

16. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review (EOIR) and the immigration court system it operates is a component agency. She is sued in her official capacity.

17. Respondent Department of Justice (DOJ) is the federal agency responsible for adjudicating removal and related bond cases. EOIR, and its components the immigration courts and Board of Immigration Appeals (BIA) is a division of DOJ.

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

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

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

21       22.    Respondents individually and collectively will be referred to as "Respondents."

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

14       32. The new policy, entitled “Interim Guidance Regarding Detention Authority for  
15 Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without  
16 inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and  
17 therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy  
18 applies regardless of when a person is apprehended, and affects those who have resided in the  
19 United States for months, years, and even decades.

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

1       33.     In a May 22, 2025, unpublished decision from the Board of Immigration Appeals  
2 (BIA), EOIR adopted this same position.<sup>2</sup> That decision holds that all noncitizens who entered  
3 the United States without admission or parole are considered applicants for admission and are  
4 ineligible for immigration judge bond hearings. On September 5, 2025, the BIA issued a  
5 decision adopting DHS' interpretation of the INA as mandating detention without bond for  
6 millions of noncitizens who reside in the U.S. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216  
7 (BIA 2025).

8       34.     ICE and EOIR have adopted this position even though federal courts have  
9 rejected this exact conclusion. For example, after IJs in the Tacoma, Washington immigration  
10 court stopped providing bond hearings for persons who entered the United States without  
11 inspection and who have since resided here, the U.S. District Court in the Western District of  
12 Washington found that such a reading of the INA is likely unlawful and that Section 1226(a),  
13 not Section 1225(b), applies to noncitizens who are not apprehended upon arrival to the United  
14 States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr.  
15 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*8 (D.  
16 Mass. July 7, 2025) (granting habeas petition based on same conclusion); *Maldonado Bautista*  
17 *v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, Doc. 14 (C.D. Cal. July 28, 2025) (granting  
18 temporary restraining order). A putative class action challenging the policy is currently pending  
19 before this Court. *See Maldonado Vazquez v. Feeley*, Case No. 2:25-cv-01542-RFB-EJY.  
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28       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]."

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

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

18       39.    By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
19 recently entered the United States. The statute's entire framework is premised on inspections at  
20 the border of people who are "seeking admission" to the United States. 8 U.S.C.  
21 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention  
22 scheme applies "at the Nation's borders and ports of entry, where the Government must  
23

determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

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

## FACTS

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

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

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

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

45. Petitioner was ordered removed by an Immigration Judge on June 30, 2025, and he subsequently appealed to the BIA. As long as his appeal is pending, his removal order is not final. Petitioner would have a legal pathway to remand his case to the Immigration Judge and apply for relief to remain in the United States if he were able to marry his longtime U.S. citizen

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  
24

1 admission and subject to detention under § 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez*  
 2 *Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

3 **CLAIMS FOR RELIEF**

4 **COUNT I**

5 **Violation of the INA**

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

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

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

16 **COUNT II**  
 17 **Violation of Due Process**

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

20 55. The government may not deprive a person of life, liberty, or property without  
 21 due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government  
 22 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the  
 23 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653  
 24 (2001).

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

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

## **PRAYER FOR RELIEF**

WHEREFORE, 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 and hold a new hearing to reconsider his eligibility for bond;
- 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 25th day of September, 2025.

Respectfully Submitted,

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

**SHAMOON ELIADES LLP**  
7995 W Sahara Ave, Suite 101  
Las Vegas, Nevada 89117  
Telephone: 702-996-7411

**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  
Michael T. Shamoon, Esq.  
Managing Partner  
Shamoon Eliades LLP  
7995 W Sahara Ave, Suite 101  
Las Vegas, Nevada 89117