UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

ANGEL MARIO DE ALVA-ESCOBEDO, *Petitioner*, v. KRISTI NOEM, Secretary, U.S. Department of Homeland Security; MIGUEL VERGARA, Field Office Director of Enforcement and Removal Operations, Harlingen and San Antonio Field Offices, Immigration and Customs Enforcement; CARLOS CISNEROS, Assistant Field Office Director of Enforcement and Removal Operations, Harlingen Field Office Immigration and Customs Enforcement; TODD LYONS, Acting Director, Immigration and Customs Enforcement; PAMELA BONDI, U.S. Attorney General, in their official capacities, *Respondents*.	§ §	Civil Action No.

PETITION FOR WRIT OF HABEAS CORPUS

1. On September 19, 2025, immigration judge (IJ) Julian Castaneda of the Harlingen Immigration Court issued an opinion explaining his August 28, 2025, grant of a custody redetermination and bond of $2,000 for Petitioner. In between

these two actions, the Department of Homeland Security (DHS) filed an appeal to the Board of Immigration Appeals (BIA) on September 5, 2025. When Petitioner, who had been taken into custody on July 2, 2025, attempted to post bond on September 22, 2025, Immigration and Customs Enforcement (ICE) issued a denial stating "NO BOND OPLA filled [*sic*] E-43s for stay," with a date of September 2, 2025 attached to the entry. The entry does not make clear whether ICE acted within the required one business day after the IJ's decision of August 28, 2025. *See* 8 C.F.R. § 1003.19(i)(2) ("In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order . . . .").

2. By citing EOIR Form E-43 in its bond denial, ICE appears to be referring to an exercise of the automatic-stay authority DHS claims in 8 C.F.R. § 1003.19(i)(2). This court recently concluded that that regulation "is likely ultra vires in that it allows DHS to unilaterally stay an IJ's order of release on bond and thus interferes with the Attorney General's—and thereby an IJ's—statutory power to 'release [an] alien on . . . bond.' 8 U.S.C. § 1226(a)(2)." Case No. 1:25-cv-00181, Dkt. 11 (order on Temporary Restraining Order, Aug, 26, 2025); *see also id.* (concluding that the regulation also "likely violates due process").

3. The IJ's bond decision noted that Petitioner entered the United States without inspection in November 2004, but now has "relief available" that creates "a strong incentive to attend all future hearings." He added that Petitioner does not have a criminal history and has five U.S.-citizen children. "The Court found that [Petitioner] does not pose a danger to the people and places in the United States. The [Court] also found that the respondent does not pose a flight risk due to his significant ties to the United States."

4. The IJ's legal analysis of his authority to grant bond contrasted bond-ineligible applicants "who are present in the United States without admission and are detained pursuant to I.N.A. Section 235" with Petitioner's situation of being "present in the United States . . . and detained pursuant to I.N.A. Section 236." DHS had filed a Form I-200 "Warrant for Arrest of Alien" in Petitioner's case, stating "that an immigration warrant was issued and [Petitioner] was placed into removal proceedings pursuant to I.N.A. Section 236." The IJ concluded that, "[t]herefore, [Petitioner] is not subject to mandatory custody. See Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025)." *See also Guerrero Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025), at *8 ("The use of a warrant is strong evidence that petitioner may be detained, if at all, only pursuant to section 1226(a).").

5. In these circumstances, neither an automatic nor a discretionary stay of the IJ's custody redetermination is warranted. Petitioner files this habeas petition pursuant to 28 U.S.C. § 2241 and respectfully requests an order requiring Respondents to release him from custody consistent with the IJ's bond decision.

JURISDICTION

6. Petitioner is in the physical custody of Respondents at Port Isabel Service Processing Center (PISPC) in Los Fresnos, Texas. District courts have jurisdiction to consider habeas petitions from non-citizens who challenge the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Garza-Garcia v. Moore*, 539 F.Supp.2d 899, 903-04 (S.D. Tex. 2007) (courts retain jurisdiction over questions of law regarding statutory authority and regulatory framework).

7. This Court has jurisdiction under 28 U.S.C. §§ 2241 (habeas corpus statute), 1331 (federal question), 1651 (All Writs Act), and the U.S. Constitution's Article I, § 9, Cl. 2 (Suspension Clause).

8. This Court may grant relief pursuant to 28 U.S.C. §§ 2241, 2201 (Declaratory Judgment Act), and 1651 (All Writs Act).

VENUE

9. Venue lies in the U.S. District Court for the Southern District of Texas because Petitioner is detained at PISPC. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 498 (1973).

10. Venue is also proper in this Court under 28 U.S.C. § 1391 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 this district.

PARTIES

11. Petitioner is a citizen of Mexico who has resided in south Texas since 2004. On July 2, 2025, immigration officials arrested Petitioner and refused to set a bond for his release. At the time of filing of this habeas petition, Petitioner is detained in Respondents' custody at PISPC in Los Fresnos, Texas.

12. 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 U.S. Immigration and Customs Enforcement ("ICE"), which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

13. Respondent Miguel Vergara is the Director of the Harlingen and San Antonio Field Offices of ICE's Enforcement and Removal Operations division. As such, Respondent Vergara is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official capacity.

14. Respondent Carlos D. Cisneros is the Assistant Director of the Harlingen Field Office of ICE's Enforcement and Removal Operations division. As such, Respondent Cisneros is Petitioner's custodian and is responsible for Petitioner's detention. He is sued in his official capacity.

15. Respondent Todd Lyons is the Acting Director of ICE. He is responsible for implementation and enforcement of the INA and oversees ICE's Enforcement and Removal Operations division, which is responsible for Petitioner's detention. He is sued in his official capacity.

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.

ARGUMENT AND AUTHORITIES

17. This case concerns two different detention provisions in the INA, 8 U.S.C. § 1226(a) and 8 U.S.C. § 1225(b)(2). Section 1226(a) permits release from detention on bond, while Section 1225(b)(2) makes detention mandatory. The plain language of these provisions confirms the IJ's conclusion that Section 1226(a) applies to Petitioner, not Section 1225(b)(2).

18. Section 1226(a) applies broadly to anyone who is detained "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C.

§ 1226(a); *see Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (describing Section 1226(a) as the "default rule" and applicable when an individual is "already in the country").

19. To read Section 1226 as inapplicable to allegedly inadmissible noncitizens who entered the United States without inspection and resided in the U.S. for many years fails to "give independent legal effect to every word and clause in [the] statute." *United States v. Palomares*, 52 F.4th 640, 644 (5th Cir. 2022); *Aguilar Maldonado v. Olson*, No. 25-cv-3142 (SRN/SGE), 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025) (describing the presumption against superfluity when interpreting Section 1226(c) and 1225(b)(2)). One of the most recent district-court decisions rejecting the government's attempt to treat all persons who entered without inspection as mandatorily detained listed, non-exhaustively, 14 federal district-court rulings this year rejecting the government's position. *Guerrero Lepe*, 2025 WL 2716910, at *4 ("The government has not identified any authority, other than the Board of Immigration Appeals' recent decision in *Matter of Yajure Hurtado*, finding that noncitizens such as petitioner who have been present in the United States for many years are subject to section 1225(b)(2)(A).").

20. In contrast, Section 1225(b)(2) applies to "applicant[s] for admission" who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). This provision addresses non-citizens who are "seeking entry into the United States,"

not individuals who have resided in the United States for decades. *Rodriguez*, 583 U.S. at 297.

21. In the last three months, district courts throughout the country have found that Section 1226(a), including its bond provisions, governs detention of non-citizens whom the government alleges are inadmissible and who entered the U.S. without inspection and resided for significant periods of time. *See Guerrero Lepe*, 2025 WL 2716910, at *4 (collecting cases).

22. The legislative history and relevant administrative guidance also confirm Section 1226(a)'s applicability to Petitioner. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), an amendment that added the new section 1226(c)(1)(E). Under the government's reading of Section 1225, "there would have been no need for the new section." *Guerrero Lepe*, 2025 WL 2716910, at *6.

23. Congress enacted the current Section 1226(a) in 1996 and explained then that this provision merely "restates the current provisions in [8 U.S.C. § 1252(a) (1994)] regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

24. At the same time, Congress enacted new detention provisions as part of the novel expedited-removal scheme applicable to non-citizens arriving in or who

recently entered the U.S. *See* 8 U.S.C. § 1225(b)(1)-(2). DHS's predecessor clarified that non-citizens who had entered without inspection would be "eligible for bond and bond redetermination" under Section 1226(a). *See* "Inspection and Expedited Removal of Aliens." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

25. The federal government's longstanding interpretation was that Section 1226(a) applied to non-citizens who entered without inspection and were later apprehended. *See id.*; *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) (a "longstanding practice of the government . . . can inform a court's interpretation of what the law is") (internal citations omitted).

26. On or about July 8, 2025, DHS adopted a new policy ("Mandatory Detention Policy") claiming that all people who entered without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and subject to mandatory detention under Section 1225(b)(2)(A). The policy inexplicably reads "inadmissible" non-citizens out of Section 1226's coverage.

27. DHS's Mandatory Detention Policy was issued "in coordination with DOJ," of which EOIR and the BIA are sub-agencies, and the BIA has recently adopted the same erroneous interpretation of Section 1225(b)(2), finding it applicable to non-citizens without an application for admission who have resided in the U.S. for many years. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

28. Despite unsuccessfully advocating the erroneous Mandatory Detention Policy before the IJ, Respondents have been able to continue Petitioner's detention by filing an appeal to the BIA pursuant to 8 C.F.R. § 1003.19(i)(2). This regulation creates a substantial risk of erroneous deprivation of liberty interests of people in immigration detention. It confers on Executive officials the power to "unilaterally override the immigration judge's decision" and is "anomalous in our legal system." *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *8 (D. Minn. May 21, 2025); *see also* this court's Case No. 1:25-cv-00181, Dkt. 11 (order on Temporary Restraining Order, Aug, 26, 2025).

29. 8 C.F.R. § 1003.19(i)(2) and the automatic-stay provisions of 8 C.F.R. §§ 1003.6(c) and (d), which provide for additional stay periods, omit any individualized consideration of factors relevant to whether an individual should be detained, further increasing the risk of erroneous deprivation of liberty. *See Aguilar Maldonado v. Olson*, No. 25-cv-3142 (SRN/SGE), 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025); *see also Mayo Anicasio v. Kramer*, No. 4:25-CV3158, 2025 WL 2374224, at *2-*5 (D. Neb. Aug. 14, 2025).

30. Petitioner has constitutionally protected interests in remaining at liberty during the pendency of his removal proceedings and in custody redetermination proceedings available under 8 U.S.C. § 1226(a). *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (freedom from physical restraint "is the most elemental of liberty

interests"). He is separated from his family and community and would encounter difficulties preparing defenses to his removal proceedings while detained that he would not experience in the community.

31. There is an unreasonably high risk of erroneous and prolonged detention because Respondents rely on the automatic-stay provision of 8 C.F.R. § 1003.19(i)(2) and associated regulations. These regulations apply to Petitioner even though he has demonstrated to an IJ that he is not a significant flight risk or danger to the community such that a reasonable bond is sufficient to secure his release pending the conclusion of removal proceedings.

32. DHS unilaterally invokes this provision, overriding the decision of the neutral arbiter regarding Petitioner's custody. *See Zavala v. Ridge*, 310 F.Supp.2d 1071, 1078 (N.D. Cal. 2004) (8 C.F.R. § 1003.19(i)(2) "creates a potential for error because it conflates the functions of adjudicator and prosecutor").

33. Respondents' interest in securing Petitioner's attendance at all hearings in his removal proceedings is adequately protected by the IJ's reasonable bond determination and other procedural safeguards. Respondent has no separate interest in prolonging Petitioner's unlawful detention. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *6 (W.D. Tex. Sept. 22, 2025) ("Requiring him to wait, indefinitely, for a ruling on [a BIA] appeal would be

inappropriate because it would exacerbate his alleged constitutional injury—detention without a bond hearing. Bond denial appeals typically take six months or more to be resolved at the BIA. The prevention of six months or more of unlawful detention thus outweighs the interests the BIA might have in resolving [an appeal]. Accordingly, Lopez-Arevelo's claim is properly before the Court with no further requirement to exhaust administrative remedies." (internal quotation marks and citations omitted)).

CLAIMS FOR RELIEF

COUNT ONE
Violations of the INA

34. The allegations in the above paragraphs are realleged and incorporated herein.

35. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the U.S. who are inadmissible. As relevant here, it does not apply to those who previously entered the country and have been residing in the U.S. prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) absent exceptional circumstances not present here.

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

37. The automatic-stay provisions of 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. §§ 1003.6(c) and (d) effectively eliminate the IJ's individualized custody redetermination and permit mandatory detention of a class of non-citizens whom Congress saw fit to make eligible for bond under 8 U.S.C. § 1226(a).

38. To the extent automatic-stay provisions of 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. §§ 1003.6(c) and (d) provide the basis for Petitioner's ongoing detention, these regulations violate the INA, are ultra vires, and are invalid.

COUNT TWO
Violation of Due Process

39. The allegations in the above paragraphs are realleged and incorporated herein.

40. 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).

41. Petitioner has a fundamental interest in liberty and being free from official restraint. Denying Petitioner release upon posting of a reasonable bond as determined by the IJ pursuant to 8 U.S.C. § 1226(a) and prolonging his detention pursuant to an inapplicable statute, 8 U.S.C. § 1225(b)(2), violates procedural and substantive due process.

42. Denying Petitioner's release by relying on the automatic-stay provisions set out in 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. §§ 1003.6(c) and (d) violates procedural and substantive due process. To the extent 8 C.F.R. § 1003.19(i)(2) or 8 C.F.R. §§ 1003.6(c) or (d) provide the basis for Petitioner's ongoing detention, the regulations violate due process and are invalid.

RELIEF REQUESTED

43. Petitioner respectfully requests that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Issue a writ of habeas corpus requiring that Respondents release Petitioner from custody in accordance with the terms set out in the Immigration Judge's August 28, 2025, bond order;

(4) 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

(5) Grant any other and further relief that this Court deems just and proper.

DATED: September 29, 2025. Respectfully submitted,

By: /s/ Jaime Diez

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