IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Alfa Nohemi Chavez Alvarez;

Jaime Misael Ramirez Ambrosio;

D.R.C.;

J.R.C.;

Petitioners,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity;

GREGORY BOVINO, Chief Patrol Agent for El Centro Sector of the U.S. Border Patrol, in his official capacity;

RODNEY S. SCOTT, Commissioner of Customs and Border Protection, in his official capacity;

TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;

SAMUEL OLSON, Field Office Director, Chicago Field Office, Immigration and Customs Enforcement , in his official capacity;

Respondents.

Case No. 25-cv-11853

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioners, Alfa Nohemi Chavez Alvarez, Jaime Misael Ramirez Ambrosio, and their two minor children, D.R.C. and J.R.C.,[1] are in the physical custody of Respondents. Petitioner Chavez is currently detained at the O'Hare International Airport with her two minor children. Petitioner Ambrosio is currently detained at Immigration and Customs Enforcement's (ICE's) Broadview Processing Center just outside of Chicago, Illinois. All Petitioners now face unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) of the Department of Justice (DOJ) have erroneously concluded that they are subject to mandatory detention.

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

3. Based on this allegation in Petitioners' removal proceedings, DHS is detaining them without bond, 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 inspection—to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

4. Any request by Petitioners for bond redetermination before EOIR would be futile. DHS's policy states that it was developed "in coordination with the Department of Justice," and in a recent published decision by the Board of Immigration Appeals (BIA), *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), Respondent EOIR adopted the same position as DHS,

[1] Under Federal Rule of Civil Procedure 5.2(a), D.R.C. and J.R.C. are entitled to proceed under initials because they are minors.

classifying noncitizens like Petitioners as applicants for admission and statutorily ineligible for bond under 8 U.S.C. § 1225(b)(2)(A).

5. Petitioners' detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioners 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), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioners, are charged as inadmissible for having entered the United States without inspection.

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

7. Accordingly, Petitioners seek a writ of habeas corpus requiring that they be released unless Respondents provide a prompt bond hearing under § 1226(a).

JURISDICTION AND VENUE

8. This court has subject-matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Federal questions in this case arise under the Immigration and Naturalization Act, 8 U.S.C. § 1101-1524, and the United States Constitution.

9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651.

10. Under 28 U.S.C. § 2241 and § 1391(b), (e), venue is proper in this district. Venue is proper because both Petitioners are in Respondents' custody in the Northern District of Illinois. *See, e.g., Vidal-Martinez v. Prim,* 2020 WL 6441341, at *4-6 (N.D. Ill. 2020). Venue is further

proper because a substantial part of the events or omissions giving rise to Petitioners' claims occurred in this district, where Petitioners are now in Respondent's custody.

REQUIREMENTS OF 28 U.S.C. § 2243

11. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for 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. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

13. Petitioners Alvarez and Ambrosio are citizens of Guatemala who entered the United States with their two minor children in approximately December 2023. On September 28, 2025, Petitioners were arrested and detained by Respondents at Millenium Park in Chicago, Illinois. Petitioners are in the physical custody of Respondents. Petitioner Chavez is currently detained at or near the O'Hare International Airport with her two minor children. Petitioner Ambrosio is currently detained at Immigration and Customs Enforcement's (ICE's) Broadview Processing Center just outside of Chicago, Illinois.

14. Respondent Kristi Noem is the Secretary of Homeland Security. She is sued in her official capacity. In that capacity, Respondent Noem is responsible for overseeing the enforcement of federal immigration policies, including those that resulted in Petitioners' detention.

15. Gregory Bovino is the chief of the El Centro Sector of the U.S. Border Patrol, and the commander at large of U.S. Border Patrol. He is sued in his official capacity. In that capacity, Respondent Bovino is responsible for overseeing the enforcement of federal immigration authorities working for Border Patrol, who on information and belief orchestrated the arrest of Petitioners.

16. Rodney S. Scott is the Commissioner of Customs and Border Protection. He is sued in his official capacity. In that capacity, Respondent Scott is responsible for overseeing enforcement operations undertaken by border patrol and by CBP, including the operation that resulted in Petitioners' arrest.

17. Respondent Todd Lyons is named in his official capacity as Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also a legal custodian of Petitioners.

18. Respondent Samuel Olson is sued in his official capacity as the Chicago Field Office Director of U.S. Immigration and Customs Enforcement (ICE), which has administrative jurisdiction over Petitioners' detention.

LEGAL FRAMEWORK

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

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

21. 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).

22. Last, 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).

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

24. 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).

25. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *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).

26. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That 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 § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

27. On July 8, 2025, ICE announced a new policy "in coordination with" DOJ. That policy rejected well-established understanding of the statutory framework for detention under Section 1226 as opposed to detention under Section 1225 and reversed decades of practice.

28. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[2] claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 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.

29. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision adopting this same position. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). 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.

30. ICE and EOIR have adopted this position even though numerous 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 § 1226(a), not §

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

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). Accordingly, federal courts have roundly rejected Respondents' erroneous interpretation of the INA since ICE implemented its July 8, 2025 memo. *See Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA, 2025 WL 2581792 (D. Nev. Sep. 5, 2025). Courts have rejected the BIA's interpretation of the INA in *Matter of Yajure Hurtado* for the same reasons. *See, e.g., Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6-8 (E.D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis and according no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)); *Sampiao v. Hyde*, 2025 WL 2607924, at *8 n.11 (D. Mass. Sept. 9, 2025) (same).

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

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

33. The text of § 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, such people are afforded a bond 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*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

34. Section 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.

35. By contrast, § 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 inspections at the border of people who are "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).

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

EXHAUSTION OF REMEDIES

37. No statutory requirement of administrative exhaustion applies to Petitioners' case. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioners' present challenge, as there are no prescribed administrative remedies to which they could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81 (2006).

38. In particular, DHS has taken the position that Petitioners are subject to mandatory detention under 8 U.S.C. § 1225, and the Executive Office for Immigration Review has affirmed that view. In a published decision, the Board of Immigration Appeals recently held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA's interpretation, regardless of their prior release and placement in standard removal proceedings, Petitioners are ineligible for bond as noncitizens who entered the United States without inspection. Accordingly, there are no administrative remedies that Petitioners could exhaust before seeking habeas relief.

39. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a petitioner's constitutional claims. *See Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the

regulations."); s*ee also Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues").

FACTS

40. Petitioners Alvarez and Ambrosio are citizens of Guatemala who entered the United States with their two minor children in approximately December 2023. Petitioners entered the United States without inspection and were apprehended by immigration authorities shortly after entry. After being briefly detained, Petitioners were released on orders of recognizance and placed in standard removal proceedings pursuant to 8 U.S.C. § 1229a.

41. ICE has charged Petitioners with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as noncitizens who entered the United States without inspection.

42. On September 28, 2025, Petitioners were detained by DHS while having a family outing at Millenium Park in Chicago, Illinois. On information and belief, the operation that resulted in Petitioners' arrest was conducted by ICE in coordination with CBP. Petitioner Chavez is currently detained at or near the O'Hare International Airport with her two minor children. Petitioner Ambrosio is currently detained at Immigration and Customs Enforcement's (ICE's) Broadview Processing Center just outside of Chicago, Illinois.

43. Petitioners have lived in the United States for nearly two years. Neither Petitioner is a danger to the community nor a flight risk, nor has there been any change in circumstances to justify the revocation of their release on recognizance and sudden detention. Both have pending removal proceedings with hearing dates set for October 2027.

44. Any request for bond redetermination before EOIR is futile, as the BIA recently held in a published decision that persons like Petitioners are subject to mandatory detention as applicants for admission under § 1225(b)(2)(A). *See Mosqueda v. Noem*, 2025 WL 2591530, at *7

(C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders prudential exhaustion futile).

45. As a result, Petitioners remain in mandatory detention. Absent relief from this Court, they face the prospect of months, or even years, in immigration custody, separated from their family and community without ever receiving an individualized hearing justifying their detention in violation of the INA and Due Process.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

46. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

47. 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.

48. The application of § 1225(b)(2) to Petitioners unlawfully mandates their continued detention and violates the INA.

COUNT II
Violation of Due Process

49. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

50. 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).

51. Petitioners have a fundamental interest in liberty and being free from official restraint.

52. The government's detention of Petitioners without a bond redetermination hearing to determine whether they are a flight risk or danger to others violates their right to due process.

PRAYER FOR RELIEF

Petitioners pray that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order Respondents to refrain from transferring Petitioners outside of the jurisdiction of the Northern District of Illinois without the Court's approval;

c. Declare that Petitioners' current detention without an individualized determination is unlawful;

d. Issue a writ of habeas corpus requiring that Respondents release Petitioners or provide Petitioners with a prompt bond hearing pursuant to 8 U.S.C. § 1226(a);

e. 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

f. Grant any other and further relief that this Court deems just and proper.

Dated: September 29, 2025

Respectfully submitted,

s/ Charles Roth
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