UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

Jose Abercio Perdomo Flores,

Petitioner,

v.

Cause No._____

Kristi Noem
Secretary, U.S. Department of Homeland Security

Todd Lyons, Acting Director, U.S. Immigration and Customs Enforcement (ICE)

Marcos Charles, Acting Executive Associate Director, ICE and Removal Operations

Field Office Director, ICE Laredo Field Office Director

Pamela Bondi, U.S. Attorney General

Warden, Rio Grande Processing Center

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241 AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Petitioner Jose Abericio Perdomo Flores, through counsel, seeks a writ of *habeas corpus* under 28 U.S.C. § 2241, challenging the legality of her continued detention by Immigration and Customs Enforcement ("ICE").

2. Petitioner is in the physical custody of Respondents at the Rio Grande Processing Center in Laredo, Texas. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention. (*Ex 1 ICE Detainee Locator*)

3. Petitioner is charged with, *inter alia*, having entered the United States without admission or inspection. *See 8 U.S.C. § 1182(a)(6)(A)(i).* Consistent with a new DHS policy issued on July 8, 2025 This policy instructs all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under *8 U.S.C. § 1182(a)(6)(A)(i)* to wit., those who entered the United States without admission or inspection. Under this policy the Petitioner is therefore subject to detention under *8 U.S.C. § 1225(b)(2)(A)* and therefore ineligible to be released on bond.

4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond

requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Petitioner's 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 Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.
6. That statute expressly applies to people who, like Petitioner, are charged as being inadmissible for having entered the United States without inspection.
7. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.
8. Accordingly, Petitioner seeks a writ of *habeas corpus* requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

PARTIES

1. Petitioner, Jose Abericio Perdomo Flores, is a non-citizen who is currently detained by ICE at the Rio Grande Processing Center in

Laredo, Texas.

2. Defendant Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). She is the cabinet-level secretary responsible for all immigration enforcement in the United States. She is sued in her official capacity only.
3. Defendant Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). He is the head of the federal agency responsible for all immigration enforcement in the United States. He is sued in his official capacity only.
4. Defendant Marcos Charles is the Acting Executive Associate Director of ICE Enforcement and Removal Operations. He is the head of the ICE office that carries out arrests of noncitizens and removals from the United States. He is sued in his official capacity only.
5. Defendant Laredo Field Office Director- ICE is the ICE Laredo Field Office Director. He is the head of the ICE office that is unlawfully facilitating the continued detention of Petitioner. He is sued in his official capacity only.
6. Defendant, Pamela Bondi is the Attorney General of the United States. The Immigration Judges who decide removal cases and application for relief from removal do so as her designees. She is sued in her official capacity only.

7. Defendant Warden of Rio Grande Processing Center, is the individual charged supervising the detention facility in which the Petitioner is being held at. He is sued in his official capacity only.

JURISDICTION

8. This Court has jurisdiction to hear this case under *28 U.S.C. § 2241* and *28 U.S.C. § 1331*, Federal Question Jurisdiction as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to *28 U.S.C. § 2241*, and the *All Writs Act, 28 U.S.C. § 1651.*

CUSTODY

9. Petitioner is under the Physical custody of the Respondents and is currently detained at the Rio Grande Process Center Detention facility in Laredo, Texas.

VENUE

10. Venue is proper in this court, pursuant to *28 USC §1391(e),* in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where the Petitioner is detained. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973)

REQUIREMENTS SET FORTH IN 28 U.S.C 2243

11. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. *28 U.S.C. § 2243*. If an order to show cause is issued, the Court must require respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

12. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

LEGAL FRAMEWORK

i. Immigration Bond Process

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

14. 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).*

15. 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).

16. 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).*

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

18. 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).

19. 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).

20. 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 pursuant to 8 U.S.C. § 1226(c). 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)).

21. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

22. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be 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.

23. On September 5, 2025, the BIA adopted the same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

24. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authority. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

25. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court improperly stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. Reviewing the EOIR interpretation, 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 § 1225(b), applies to noncitizens who are not apprehended upon arrival to the *United States. Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

26. Subsequently, court after court adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation.

See, e.g., *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL

2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); see also, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

27. Courts have uniformly rejected DHS' and EOIR's new interpretation because it patently defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

28. 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]." These pending decisions include matters on appeal to the Board of Immigration Appeals, as the matter is

not final.

29. 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, 779 F. Supp. 3d at 1257 *(citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

30. 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.

31. 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.

32. § 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).

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

FACTS

34. Petitioner entered the United States on or about May 6, 2019, and was taken into immigration custody. He was charged with removability under *INA 212(a)(6)(A)(i)* of the Immigration and Nationality Act, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. (*Ex 2 Notice to Appeal/OREC*)

35. On May 7, 2022, the Petitioner was then placed into removal proceedings and issued a notice to appear. (*Id*)

36. On the same day, the Petitioner was released on her own recognizance ("OREC") with orders to report for check-ins with ICE. (*Id*)

37. On June 3, 2024, an Immigration Judge ordered Petitioner removed from the United States. (*Ex 3 EOIR Automated Case Info*)

38. On June 28, 2024, a timely appeal was filed to the Board of Immigration Appeals filed. (*Ex 4 BIA Appeal*) His appeal remains pending with a briefing scheduled for October 15, 2025.

39. Per *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) an IJ is unable to consider a bond for the Petitioner. Any bond application at this point would be deemed futile as IJ's are bound by *Yarjure Hurtado*.

40. The Petitioner currently remains in detention. It should be noted that there is no defined processing time frame for a BIA appeal. Without relief from this Court the Petitioner will remain in custody for months or even years while her appeal is processed.

CAUSE OF ACTION I
Unlawful Detention in Violation of 8 U.S.C. § 1226 and INA Regulations

41. Petitioner incorporates by reference paragraphs 1 - 40

42. 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.

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

CAUSE OF ACTION II
Violation of Bond Regulations

44. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs 1-40.

45. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." *62 Fed. Reg. at 10323* (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

46. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individual like Petitioner.

47. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Due Process
U.S. Constitution, 5th Amendment

48. Petitioner incorporates by reference paragraphs 1 – 40.

49. 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).

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

51. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

REQUEST FOR RELIEF

Petitioners pray for judgment against Respondents and respectfully request that the Court enters an order:

1. Assume jurisdiction over this matter;
2. Order that Petitioner shall not be transferred outside the Southern District of Texas while this habeas petition is pending;
3. Issue a writ of habeas corpus directing Respondent to immediately release Petitioner from detention or, in the alternative, provide Petitioner with a

bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

4. Declare that Petitioner's continued detention violates federal law and the Constitution;
5. Award reasonable attorney's fees and costs under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412;
6. Grant any other relief the Court deems just and proper.

Respectfully submitted,

/s/Javier Rivera
Javier Rivera. Esq.
Lead Counsel for Petitioner
Texas Bar No. 24070508
Rivera & Shirhatti, PC
PO Box 848
Houston, Texas 77001
jrivera@rsimmilaw.com
(P): (832) 991-1105

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

I represent Petitioner, Jose Abercio Perdomo Flores, and 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.

Dated this 2nd day of October, 2025.

/s/ Javier Rivera
Javier Rivera