UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

VICTOR MANUEL ALVAREZ PUGA,

Petitioner,

v.

ASSISTANT FIELD OFFICE DIRECTOR, KROME NORTH SERVICE PROCESSING CENTER, U.S. Immigration and Customs Enforcement; GARRET RIPA, Field Office Director Miami Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, Attorney General of the United States,

Respondents.

Case No: 1:25-cv-24535

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Victor Manuel Alvarez Puga (A# [redacted]) is a native and citizen of Mexico. He last entered the United States without inspection in July 2021. He timely filed an application for asylum based on his fear of political persecution in Mexico, and has been residing in the United States continuously for more than four years.

2. Nevertheless, on September 24, 2025, he was arrested by Immigration and Customs Enforcement and is detained at North Service Processing Center, where he has been held for more than a week before ICE commenced removal proceedings by lodging a Notice to Appear with the immigration court in the afternoon of October 2, 2025.

3. This petition for a writ of habeas corpus challenges the legal basis for Respondents continuing to hold Petitioner without affording him an individualized custody determination on the theory that he is subject to mandatory detention under 8 U.S.C. § 1225(b).

4. That theory is incorrect. Petitioner is in removal proceedings and, as a noncitizen already in the country, his custody is governed by 8 U.S.C. § 1226(a), which provides for discretionary detention and bond eligibility. Treating him as mandatorily detained under § 1225 conflicts with the statutory text, structure, and long-standing practice.

5. The government's recent policy shift—culminating in agency guidance and the BIA's decision in *Matter of Yajure Hurtado*—categorically denies bond eligibility to individuals like Petitioner based solely on manner of entry. Applied here, that approach would foreclose a neutral, individualized assessment despite Petitioner's ability to show that he poses no danger to the community and no flight risk.

6. Petitioner therefore seeks habeas relief to hold that § 1226(a) governs his custody and to order Respondents to release Petitioner, or at least provide him the individualized custody redetermination hearing before an immigration judge to which he is statutorily and constitutionally entitled.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 2201 (declaratory relief).

8. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 2241 because Petitioner is detained at the Krome North Service Processing Center in Miami, Florida under the jurisdiction of the ICE Miami Field Office.

REQUIREMENTS OF 28 U.S.C. § 2243

9. 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).

10. 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).

PARTIES

11. Petitioner VICTOR ALVAREZ-PUGA is a native and citizen of Mexico who last entered the United States in July 2021 and has a pending application for asylum from Mexico. He is currently detained in ICE custody at the Krome North Service Processing Center in Miami, Florida.

12. Respondent ASSISTANT FIELD OFFICE DIRECTOR, KROME NORTH SERVICE PROCESSING CENTER, U.S. Immigration and Customs Enforcement, is the official responsible for overseeing Krome North Service Processing Center, the facility where Petitioner is currently detained. The individual who occupies this position is not publicly disclosed. This Respondent is a legal custodian of Petitioner and is sued in his or her official capacity.

13. Respondent GARRET RIPA is sued in his official capacity as the ICE Field Office Director for the Miami Office of Enforcement and Removal Operations. The Miami Field Office

is the Field Office that oversees the Krome North Service Processing Center in Miami, Florida, where Petitioner is currently detained. Respondent Ripa is a legal custodian of Petitioner.

14. Respondent KRISTI NOEM is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

15. Respondent PAMELA BONDI is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals. Respondent Bondi is a legal custodian of Petitioner.

LEGAL FRAMEWORK FOR IMMIGRATION DETENTION

16. The Immigration and Nationality Act ("INA") prescribes two statutory sections that govern a noncitizen's detention prior to a final order of removal: 8 U.S.C. §§ 1225 and 1226.

17. The detention provisions at 8 U.S.C. § 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.

18. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals detained under the authority of § 1226(a) are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d).

19. 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).

20. Following 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) ("Despite 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 . . . The effect of this change is that inadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge, while arriving [noncitizens] do not. This procedure maintains the *status quo* . . .").

21. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. 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)).

22. Respondents' new policy turns this well-established understanding on its head and violates the statutory scheme.

23. Indeed, this legal theory that noncitizens who entered the United States without admission or parole are ineligible for bond hearings was already rejected by a District Court in the

Western District of Washington, finding that such individuals are entitled to bond redetermination hearings before immigration judges, and rejecting the application of § 1225(b)(2) to such cases. *Rodriguez v. Bostock*, No. 3:25-CV-05240 TMC, 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025).

24. Despite this finding from a federal court, on July 8, 2025, ICE released a memorandum instructing its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject bond redetermination hearings for applicants who arrived in the United States without documents.

25. On September 5, 2025, the BIA issued an opinion adopting this approach to the detention statutes, *see Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025), further entrenching the government's interpretation of the governing detention statutes. Because this decision is precedential, it is binding on immigration judges (absent contrary instructions from a federal court sitting in habeas).

26. This interpretation defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

27. 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, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

28. 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). 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.

29. 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).

30. The government's interpretation subjects all inadmissible noncitizens to 8 U.S.C. § 1225 and its mandatory detention provisions. But such a reading renders superfluous significant portions of 8 U.S.C. § 1226(c) that reference inadmissible noncitizens, including 8 U.S.C. § 1226(c)(1)(E) that Congress enacted just months ago by passing the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

31. The new subsection makes a noncitizen subject to mandatory detention if he (i) is inadmissible under 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7) (the "inadmissibility criterion"); "and" (ii) is charged with, arrested for, convicted of, or admits to committing certain crimes (the "criminal conduct criterion"). 8 U.S.C. § 1226(c)(1)(E) (emphasis added). By using the conjunction "and," the provision mandates detention only where the inadmissibility criterion and the criminal conduct criterion are both satisfied.

32. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner who are alleged to have entered the United States without admission or parole.

FACTUAL ALLEGATIONS AND RELEVANT BACKGROUND

33. Mr. Alvarez is a well-established businessman and entrepreneur from Mexico. He last entered the United States by boat on or about July 10, 2021.

34. Although he was in possession of a valid border-crossing card, he was not inspected

by an immigration officer when he last entered the United States.

35. Mr. Alvarez and his wife, and six children/step-children, have resided in the United States since their departure from Mexico in 2021.

36. Mr. Alvarez has no criminal history in the United States.

37. While there is an ongoing criminal investigation in Mexico which Mr. Alvarez is contesting, the investigation is politically motivated, and serves as evidence of the Mexican government's persecution of Mr. Alvarez for his political beliefs.

38. On account of his well-founded fear of persecution in Mexico, Mr. Alvarez filed an affirmative application for asylum with United States Citizenship and Immigration Services on July 11, 2022. The application sets forth the persecution he and his family faced in Mexico for their conservative political beliefs, and a well-founded fear of returning to Mexico on account of on his political opinion and membership in a particular social group.

39. USCIS has not interviewed Mr. Alvarez in connection with his asylum application—much less decided his asylum application.

40. Despite the pending application for asylum, ICE arrested and detained Mr. Alvarez on or about September 24, 2025.

41. He was transferred to the Krome Service Processing Center, where he remains detained.

42. As of October 1, 2025, Mr. Alvarez was not been provided any written explanation of the basis for his detention, nor any other documents from ICE regarding his detention or immigration proceedings.

43. In the afternoon of October 2, 2025, the Immigration Court system's online case status information was updated to show that ICE lodged a Notice to Appear with the Immigration Court to commence removal proceeding against Mr. Alvarez.

CAUSES OF ACTION

COUNT ONE

Violation of 8 U.S.C. § 1226(a)

Unlawful Denial of Bond Hearing

44. Petitioner incorporates paragraphs 1 to 43 as if fully stated herein.

45. ICE continued detention of Mr. Alvarez without the opportunity for him to obtain a bond hearing on the theory that he is subject to mandatory detention under 8 U.S.C. § 1225 contravenes the Immigration and Nationality Act and Due Process.

46. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted or paroled.

47. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231. The application of § 1225(b)(2) to bar Petitioner from receiving a custody redetermination hearing before an immigration judge violates the INA.

48. Rather, § 1225 applies to noncitizens actively "seeking admission" at the border or its immediate functional equivalent. By contrast, § 1226 governs the arrest and detention of those "already in the country" pursuant to a warrant issued by the Attorney General. The two provisions are mutually exclusive. *See Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018).

49. Even if Petitioner requests a custody redetermination hearing, the denial of such a request is virtually guaranteed in light of the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220.

50. In *Matter of Yajure Hurtado*, the BIA held that all noncitizens who entered the United States without admission or parole, like Petitioner, are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and are ineligible for bond hearings. It constitutes the BIA's affirmation of Respondents' faulty reimagining of the governing detention statutes.

51. Federal courts have ruled that the BIA's decision is not entitled to any deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), and have rejected the BIA's decision as contrary to law. *See, e.g.*, *Chogllo Chafla v. Scott*, No. 25-437, 2025 WL 2688541, at *7 (D. Me. Sept. 21, 2025) ("I find *Yajure Hurtado* to be unavailing . . . ."); *Sampiao*, No. 25-11981, 2025 WL 2607924, at *8 n.11 ("[T]he Court disagrees with the BIA for the reasons given herein."); *Pizarro Reyes*, 2025 WL 2609425, at *7 ("[T]he BIA's decision to pivot from three decades of consistent statutory interpretation and call for [petitioner's] detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation."); *Jimenez v. FCI Berlin, Warden*, 1:25-cv-00326, 2025 WL 2639390, at *10 n.9 (D.N.H. Sept. 8, 2025) ("For the reasons explained in this decision, the court is not persuaded by the B.I.A.'s analysis in [M*atter of Yajure Hurtado*]".).

52. Thus, as *Matter of Yajure Hurtado* is binding on immigration judges, Petitioner will be denied a custody redetermination hearing to which he is entitled as an individual subject to detention under 8 U.S.C. § 1226(a).

53. Petitioner was not "seeking admission" within the meaning of § 1225(b) but was "already in the country" within the meaning of *Jennings*, 583 U.S. at 288–89. His custody is governed by § 1226(a), under which detention is discretionary and subject to individualized bond hearings.

54. The Court, should at a minimum, order Respondents to grant individualized bond hearing consistent with long-standing practice.

COUNT TWO

Due Process Violation

55. Additionally, the Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

56. The Fifth Amendment forbids deprivation of liberty without notice and a meaningful opportunity to be heard before a neutral decision-maker.

57. To determine whether civil detention violates a detainee's Fifth Amendment procedural due process rights, courts apply the three-part test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under that test, courts must weigh (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

58. Applying the *Mathews* test, Petitioner's liberty interest is paramount, and the risk of erroneous deprivation is extreme considering that Petitioner, who has no criminal history in the United States, is not subject to mandatory detention under 8 U.S.C. § 1226(c), is not a flight risk, and does not pose a danger to the community. Likewise, the risk of erroneous deprivation of liberty is great due to the lack of a non-independent adjudicator. *Marcello v. Bonds*, 349 U.S. 302, 305-06 (1955).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

(a) Assume jurisdiction over this matter;

(b) Grant the writ of habeas corpus and order that Respondents release Petitioner from immigration detention, or at minimum order a custody redetermination hearing consistent with 8 U.S.C. § 1226(a);

(c) Enjoin the Respondents from transferring Petitioner outside the jurisdiction of the U.S. District Court for the Southern District of Florida;

(d) Award petitioner costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

(d) Grant any additional relief that this Court deems just and proper.

Dated: October 2, 2025

Respectfully submitted,

/s/ John P. Pratt

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

I represent Petitioner, VICTOR MANUEL ALVAREZ PUGA, 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 and belief.

Dated this 2nd day of October, 2025.

/s/ John P. Pratt
JOHN P. PRATT