

INTRODUCTION

1. Homero Garcia (hereinafter, “Petitioner”) has been residing in the United States since on or about the year 2000. He was apprehended by Immigration and Customs Enforcement (hereinafter, “ICE”) in September of this year.
2. Petitioner is currently detained at the ICE Adelanto Detention Center, has been placed in removal proceedings, and is not scheduled for his next hearing until October 8, 2025.
3. He is only charged with having entered the United States without inspection (hereinafter, “EWI”). 8 U.S.C. § 1182(a)(6)(A)(i).
4. Petitioner was denied release by the Department of Homeland Security (DHS) and has sought a bond redetermination hearing before an Immigration Judge (hereinafter, “IJ”).
5. Petitioner is scheduled for a bond redetermination hearing before an IJ on October 8, 2025. Based on new agency policy that all persons who entered the United States EWI are deemed applicants for admission to the U.S. and are ineligible for release in bond redetermination hearings based on the immigration statute, 8 U.S.C. § 1225(b)(2)(A), it is virtually certain that he will be denied release on bond.
6. Section 1225(b)(2)(A) states that an applicant for admission seeking admission shall be detained for a removal proceeding. It is the position of

1 the Executive Office for Immigration Review (hereinafter, “EOIR”), which
2 includes both the Board of Immigration Appeals (hereinafter, “Board” or
3 “BIA”) and Immigration Judges, that 8 U.S.C. § 1225(b)(2)(A) applies to all
4 individuals who arrived in the United States without inspection, regardless
5 of how long they have lived in the United States and regardless of how far
6 they were apprehended from the border.
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10 7. Section 1225(b)(2)(A), however, does not apply to individuals, like
11 Petitioner, who are present in the United States. Instead, such individuals are
12 subject to detention under a different statute, § 1226(a), and are eligible for
13 release on bond.
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16 8. Nevertheless, in July of 2025, ICE released a memorandum instructing its
17 attorneys to coordinate with the U.S. Department of Justice (hereinafter,
18 “DOJ”), the agency housing EOIR, to reject bond redetermination hearings
19 for applicants who arrived in the United States without documents.¹
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22 9. EOIR has already applied this reasoning in a May 22, 2025 BIA decision,
23 finding that a noncitizen who had been residing in the United States for
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25 ¹ “ICE Says Many In Immigration Detention No Longer Qualify For Bond
26 Hearings,” CBS News (Jul. 15, 2025),
<https://www.cbsnews.com/news/ice-immigration-detention-bond-hearings/>;
27 “ICE declares millions of undocumented immigrants ineligible for bond hearings,”
28 The Washington Post (Jul. 15, 2025)
<https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/>

1 almost ten (10) years and had entered into the United States without
2 inspection was ineligible for bond.
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4 10. Further, despite a legal ruling in *Rodriguez v. Bostock*, 2025 WL 1193850
5 (W.D. Wa. Apr. 24, 2025), rejecting this position, Respondents continue to
6 maintain that noncitizens who entered the United States without documents
7 are not eligible for bond redetermination hearings because they are
8 applicants for admission within the meaning of 8 U.S.C. § 1225(b)(2)(A).
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10 11. This reading is a violation of the statute and due process.
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13 12. As such, Petitioner seeks an order of declaratory and injunctive relief and set
14 aside relief under the Administrative Procedure Act (hereinafter, “APA”)
15 requiring that he be provided an IJ bond redetermination hearing and that he
16 not be denied such hearing due to an alleged lack of jurisdiction.
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18 **JURISDICTION AND VENUE**
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20 13. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute);
21 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory
22 judgment); United States Constitution Article I, Section 9 (Suspension
23 Clause).
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25 14. Venue properly lies within the Central District of California under 28 U.S.C.
26 § 1391, because this is a civil action in which Respondents are agencies of
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1 the United States, Petitioner is detained in this District, and a substantial part
2 of the events or omissions giving rise to this action occurred in the District.
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4 **PARTIES**
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6 15.Petitioner resides in Burbank, California and is currently detained at the
7 Adelanto Detention Center.
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9 16.Respondent Kristi Noem is the Secretary of the Department of Homeland
10 Security (“DHS”), and is sued in her official capacity. The Secretary of
11 Homeland Security is charged with the administration and enforcement of
12 immigration laws. 8 U.S.C. § 1103(a).
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14 17.Respondent Pam Bondi is the Attorney General (hereinafter, “AG”) of the
15 United States and is sued in her official capacity as the head of the
16 Department of Justice (hereinafter, “DOJ”). The AG is responsible for the
17 fair administration of the laws of the United States.
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19 18.Respondent EOIR is a component agency of the DOJ responsible for
20 conducting removal and bond hearings of noncitizens. EOIR is comprised of
21 a lower adjudicatory body administered by Immigration Judges and an
22 appellate body known as the BIA.
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24 19.IJs issue bond redetermination hearing decisions, which are then subject to
25 appeal to the Board.
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2 20.18. Respondent Todd Lyons is the Acting Director of ICE and is sued in his
3 official capacity. ICE is responsible for the Petitioner's detention.

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5 21. David A. Marin is the ICE Field Office Director at the Adelanto Detention
6 Center and is sued in his official capacity. Respondent Marin is also
7 responsible for the detention of Petitioner.

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9 **LEGAL BACKGROUND**

10 22. The Immigration and Nationality Act (INA) prescribes three (3) basic forms
11 of detention for noncitizens in removal proceedings.

12 23. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard
13 non-expedited removal proceedings before an Immigration Judge. *See* 8
14 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond
15 hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a),
16 1236.1(d), while noncitizens who have been arrested, charged with, or
17 convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C.
18 § 1226(c).

22 24. Second, the INA provides for mandatory detention of noncitizens subject to
23 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals
24 seeking admission referred to under § 1225(b)(2).

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2 25. Last, the Act also provides for detention of noncitizens who have been
3 previously ordered removed, including individuals in withholding-only
4 proceedings, *see 8 U.S.C. § 1231(a)–(b)*.
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6 26. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
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8 27. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part
9 of the Illegal Immigration Reform and Immigrant Responsibility Act
10 (hereinafter, “IIRIRA”) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03,
11 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was
12 most recently amended earlier this year by the Laken Riley Act, Pub. L.
13 No. 119–1, 139 Stat. 3 (2025).
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15 28. Following the enactment of IIRIRA, EOIR drafted new regulations
16 explaining that, in general, people who entered the country without
17 inspection were not considered detained under § 1225 and that they were
18 instead detained under § 1226(a). *See Inspection and Expedited Removal of*
19 *Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;*
20 *Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).*
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22 29. Thus, in the decades that followed, most people who entered without
23 inspection—unless they were subject to some other detention
24 authority—received bond hearings. That practice was consistent with many
25 more decades of prior practice, in which noncitizens who were not deemed
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1 “arriving” were entitled to a custody hearing before an IJ or other hearing
2 officer. See 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt.
3 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention
4 authority previously found at § 1252(a)).

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7 30. Respondents’ new policy turns this well-established understanding on its
8 heads and violates the statutory scheme.
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10 31. Indeed, this legal theory that noncitizens who entered the United States
11 without admission or parole are ineligible for bond hearings was already
12 rejected by a District Court in the Western District of Washington, finding
13 that such individuals are entitled to bond redetermination hearings before
14 IJs, and rejecting the application of § 1225(b)(2) to such cases. *Rodriguez v.*
15 *Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *12 (W.D. Wash.
16 Apr. 24, 2025).

17 32. Despite this finding from a federal court, in July 2025, ICE released a
18 memorandum instructing its attorneys to coordinate with the Department of
19 Justice, the agency housing EOIR, to reject bond redetermination hearings
20 for applicants who arrived in the United States without documents.
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22 33. A May 22, 2025 unpublished BIA decision confirms that EOIR is taking this
23 same position that noncitizens who entered the United States without
24 admission or parole are ineligible for immigration judge bond hearings.
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34. This is now a widespread position applying across the United States.
35. This interpretation defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.
36. 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].”
37. 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.
38. 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).

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

7 40. Petitioner has resided in the United States since 2000 and lives in Burbank,
8 California.
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10 41. In September 2025, he was arrested by immigration authorities as part of a
11 widespread immigration enforcement action in Los Angeles.
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13 42. He was placed into removal proceedings to appear before an IJ, and was
14 charged with having entered the United States without inspection and being
15 present without valid immigration documents. 8 U.S.C. § 1182(a)(6)(A)(i), §
16 1182(a)(7)(A)(i).
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18 43. ICE denied Petitioner's request for release, and he requested a bond
19 redetermination hearing before an immigration judge.
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21 44. Petitioner has no criminal history whatsoever. He has been steadily
22 employed throughout his tenure in this country and is a member of his local
23 church. Petitioner is neither a danger to others nor a flight risk.
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25 45. It is anticipated that the Immigration Judge will deny Petitioner release on
26 bond on October 8, 2005 because he is considered an "applicant for
27 admission."
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2 46. Any appeal to the BIA would be futile.
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5 **CAUSES OF ACTION**
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8 **COUNT I**
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11 **Violation of 8 U.S.C. § 1226(a)**
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14 **Unlawful Denial of Bond Hearing**
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17 47. Petitioner repeats, re-alleges, and incorporates by reference each and every
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19 allegation in the preceding paragraphs as if fully set forth herein.
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22 48. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply
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24 to noncitizens residing in the United States who are subject to the grounds of
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26 inadmissibility because they previously entered the country without being
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28 admitted or paroled. Such noncitizens are detained under § 1226(a), unless
they are subject to another detention provision, such as § 1225(b)(1), §
1226(c), or § 1231.
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21 49. The application of § 1225(b)(2) to bar Petitioner from receiving a bond
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23 redetermination hearing before an immigration judge violates the
Immigration and Nationality Act.
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COUNT II

Violation of the Administrative Procedure Act

Unlawful Denial of Bond

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

51. 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 originally entered the United States without inspection or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

52. The application of § 1225(b)(2) to bar Petitioner from receiving a bond redetermination hearing before an immigration judge is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT III

Violation of Procedural Due Process

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

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2 54. The government may not deprive a person of life, liberty, or property
3 without due process of law. U.S. Const. amend. V “Freedom from
4 imprisonment—from government custody, detention, or other forms of
5 physical restraint—lies at the heart of the liberty that the Clause protects.”

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7 *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653
8
9 (2001).

10 55. Petitioner has a fundamental interest in liberty and being free from official
11 restraint.

12 56. The government’s detention of Petitioner without a *bona fide* bond
13 redetermination hearing to determine whether he is a flight risk or danger to
14 others violates his right to due process.

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16 **PRAYER FOR RELIEF**

17 WHEREFORE, Petitioner respectfully requests that this Court:

- 18 a. Assume jurisdiction over this matter;
- 19 b. Declare that the refusal to allow Petitioner a bond redetermination
20 hearing before an Immigration Judge violates the INA, APA, and Due
21 Process;
- 22 c. Issue a writ of habeas corpus requiring that Defendants release him or
23 provide the bond hearing to which he is entitled within fourteen (14)
24 days;

- 1 d. Set aside Respondents' unlawful detention policy under the APA, 5
- 2
- 3 U.S.C. § 706(2);
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- 5 e. Award reasonable attorneys' fees and costs pursuant to the Equal
- 6 Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any
- 7 other applicable law; and
- 8
- 9 f. Order further relief as this Court deems just and appropriate.

10 Dated: October 3, 2025

11 Respectfully Submitted,

12
13 /s/Jose R. Jordan, Esq.

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