

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
DETROIT, MICHIGAN**

Yanier Hernandez Capote,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; KEVIN RAYCRAFT, Acting Field Office Director, Detroit Immigration and Customs Enforcement; PAM BONDI, U.S. Attorney General, U.S. Department of Justice, SIRCE E. OWEN, Acting Director of the Executive Office of Immigration Review, and ANNA C. LITTLE, Acting EOIR Chief Immigration Judge,

Case No. 25-cv-13128
Hon. Judge: Shalima D. Kumar
Mag. Judge: Anthony P. Patti

Respondents.

**AMENDED PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner, Yanier Hernandez Capote (Yanier), through counsel files this Amended Petition for Writ of Habeas Corpus pursuant to the FRCP 15(a)(1) and respectfully requests that this Court issue a Writ of Habeas Corpus. In support, the Petitioner states:

I. INTRODUCTION

1. The Petitioner, by and through undersigned counsel, hereby files this Petition for a Writ of Habeas Corpus in order to secure his release from unlawful detention. The Respondents have flipped flopped on the statutory basis for detention and release of the Petitioner. The Respondents state that the Petitioner's initial detention at the southern border was under 8 U.S.C. § 1226 which is contrary to law. The Respondents now claim that Yanier's second detention is pursuant to 8 U.S.C. § 1225 which requires mandatory detention, but this is also contrary to law. Due to these violations of law, Yanier is unable to apply for permanent residency under the Cuban Adjustment Act since his first release, according to the Respondents, was a parole because it was not a release under 8 U.S.C. § 1225.3.

2. The Respondents have redetained Yanier without prior notice or cause as he was attending a marriage petition interview at the Detroit Offices of U.S. Citizenship and Immigration Services (USCIS - Detroit) on August 12, 2025.

3. Redetaining Yanier after he was released is not only unlawful but punitive.

ICE detention is indistinguishable from prison,” and “[a] majority of people in ICE detention have no criminal record.” Tom Dreisbach, Government’s Own Experts Found “Barbaric” and “Negligent” Conditions in ICE Detention, NPR News (Aug. 16, 2023), <https://www.npr.org/2023/08/16/1190767610/icedetention-immigration-government-inspectors-barbaric-negligent-conditions#:~:text=In%20examining%20more%20than%20two,problems%20that%2C%20in%20some%20cases>

4. For detained asylum seekers, like Yanier, these prison-like conditions compound the trauma from which they fled and poses serious barriers to the tools necessary for presenting an effective asylum claim or obtaining other forms or relief such as adjustment of status to permanent resident. Access to counsel is also negatively impacted when a person is detained.

5. Consistent with a new DHS policy issued on July 8, 2025, (July 8th ICE Guidance)(Ex. 1 - ICE Policy Guidance issued 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 admission or inspection—to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for a bond reconsideration before an immigration judge. 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.

6. 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 mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and, therefore, ineligible to be released on bond by an immigration judge.

7. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act of 1952 (INA). INA § 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, INA § 1226(a), that allows for review by an immigration judge who can decide whether to release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without admitted or paroled. (Ex. 2 – Notice to Appear)

8. Yanier is not challenging the execution of a removal order before this Court. He is challenging his unconstitutional redetention under 8 U.S.C. § 1225.

9. The Respondents' actions are not only contrary to law and Unconstitutional but have also inflicted extreme emotional distress on Yanier, his U.S. citizen wife, his U.S. citizen stepdaughters, his son, and his lawful permanent resident siblings. This illegal redetention has also caused him to lose his job at

Amazon.

10. 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.

11. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released within three days.

II. JURISDICTION

12. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction) 28 U.S.C. §2201, 28 U.S.C. §2241 et seq., Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause), 28 U.S.C. § 1343; 28 U.S.C. § 1361; and 5 U.S.C. § 702, and common law.

13. This action arises under the Fourth and Fifth Amendments of the United States Constitution and the Immigration and Nationality Act (INA).

14. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of DHS conduct. Federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

15. This Court has jurisdiction under the Suspension Clause to review the actions of the executive branch's enforcement of the immigration laws if those

actions violate the Constitution by depriving Petitioner of due process or other constitutional rights. Compare Suspension Clause with 8 U.S.C. § 1252(g); see also *Reno v. Am.-Arab Anti Discrimination Comm.*, 525 U.S. 471, 482 (1999). The Suspension Clause protects the right to the writ of habeas corpus where, as here, no adequate or effective alternative remedy exists. See *Boumediene v. Bush*, 553 U.S. 723 (2008).

III. VENUE

16. Venue lies in the Eastern District of Michigan, the judicial district in which the ICE Field Office Director is located. See *Roman v. Ashcroft*, 340 F.3d 314, 319-21 (6th Cir. 2003).

17. The Petitioner is in the custody of Respondent, Detroit Immigration and Customs Enforcement, (ICE – Detroit) The Petitioner is under the direct control of the Respondents and their agents.

IV. PARTIES

18. Yanier Hernandez Capote is a citizen of the Cuba who is married to a U.S. citizen. He fled Cuba, a country who the U.S. recognizes has a long history of human rights abuses and is run by a Communist dictatorship that suppresses any form of freedom. He arrived in the United States on January 16, 2022 and has been in immigration court proceedings since March 4, 2022. He is currently

detained by Respondent ICE – Det in the North Lakes Detention facility in Baldwin, Michigan.

19. Defendant, Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). She is generally charged with enforcement of the Immigration and Nationality Act and is further authorized to delegate such powers and authority to subordinate employees of the DHS and its various divisions. 8 USC §1103(a). She is being sued in her official capacity.

20. Defendant Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE) and is responsible for the administration of the detention and removal of aliens in the United States. He is being sued in his official capacity.

21. Defendant Kevin Raycraft is the Acting Director of the Detroit Field Office of the Immigration and Customs Enforcement (ICE - Det) He is responsible for the detention and removal of aliens within the Detroit District. He is being sued in his official capacity.

22. Pam Bondi is the Attorney General of the United States. She is Responsible for the enforcement of the immigration laws which include the immigration courts. She is being sued in her official capacity.

23. Sirce E. Owen is the Acting Director of the Executive Office of Immigration Review. (EOIR) His responsibilities include overseeing immigration court proceedings, appellate reviews, and administrative hearings, as well as

supervising Immigration Judges and members of the Board of Immigration Appeals. He is being sued in his official capacity.

24. Anna C. Little is the Acting EOIR Chief Immigration Judge. Her responsibilities include managing the nation's immigration courts and supervising all immigration judges. She is being sued in her official capacity.

V. FACTS

25. Yanier is a citizen of Cuba who fled to the United States seeking refuge and protection from a communist dictatorship. He arrived in the United States on January 16, 2022, more than three years ago. He has continuously resided in the U.S. for more than three years. After crossing the border, he presented himself to Respondent DHS one mile north of the U.S. border with Mexico. (Ex. 3 – I-213) The Respondent DHS found that Yanier was not a “threat to national security or public safety “ and decided to release him the following day on an Order of Release on Recognizance so he could apply for asylum. (Ex. 4 – Release on Recognizance)

26. Yanier filed a timely application for relief. Subsequently the Respondent filed the Notice To Appear with the immigration court in Detroit, Michigan and the immigration court sent out a hearing notice. Yanier did not attend that court date because, though he had notified ICE Det of his change of address, ICE Det failed to notify the immigration court of the Plaintiff’s new address. When Yanier

discovered that he had been ordered deported because he missed that first hearing, he filed a Motion to Reopen which was granted by the Immigration Judge. He also filed a copy of his application for relief with the immigration court. At the time he was appearing pro se.

27. Yanier retained counsel and has appeared at all of the Immigration Court hearings from that time as well as complied with all requirements that ICE has given him. Yanier has no criminal record anywhere in the world.

28. Yanier married Magela (a U.S. citizen born in Cuba) on November 18, 2024 and she filed an I-130 Alien Relative Petition (Petition) with U.S. citizen and Immigration Services.

29. Yanier notified the immigration court of the marriage, and the Immigration Judge (IJ) continued the case until USCIS makes a decision on the Petition. The next status conference in Immigration Court was scheduled for April 6, 2026.

30. In the interim, USCIS scheduled Yanier and Magela for an interview on the Petition on August 12, 2025. The couple went to that interview with their immigration counsel. However, unbeknownst to them and their counsel, this was not an interview but rather a trap by USCIS and ICE – Det to detain Yanier.

31. USCIS Officer Harrison told Magela to remain in the waiting room since she was just going to interview Yanier. After asking Yanier a few questions, without saying a word to Yanier or Yanier's counsel and upon information and

belief, Officer Harrison informed ICE-Det that Yanier was in the office so they could now arrest him. Two ICE-Det officers handcuffed Yanier and took him away. These officers told his counsel that Yanier was being taken to the ICE Detroit offices for processing but told counsel they would allow Yanier to call her after and did not allow her to accompany them or to meet them at the ICE – Det offices.

32. Yanier was taken to the ICE-Det offices to be processed. He requested to call his wife which they allowed him to do. At the time Magela was in counsel's office and when counsel asked Yanier if his ICE-Det officer was there he said yes but the officer told him he would not talk to his attorney.

33. Afterwards, counsel attempted numerous times to contact ICE-Det but was never given any information as to why Yanier was detained; simply being told by ICE – Det supervisors that they had no information and they were just following orders.

34. There is no reason to detain Yanier again since the circumstances upon which he was released in 2022 had not changed. In fact, Yanier had more equities now.

35. Yanier is still detained by ICE – Detroit at North Lake Processing Center in Baldwin, Michigan. This ICE Processing Center is managed by GEO, a private prison company. <https://www.geogroup.com/about-us/who-we-are/>

36. Yanier filed a Motion for Bond Reconsideration, and a hearing was held

on August 29, 2025. At the time Respondent DHS, through counsel stated that Yanier was detained pursuant to 8. U.S.C. §1225 and therefore his detention was mandatory. This was the first time Respondent DHS had made the argument that Yanier was detained under this section. For the last three years prior to this detention, Respondent DHS had argued that Yanier had been released from detention at the southern border pursuant to 8 U.S.C. §1226 and therefore not eligible for permanent residency under the Cuban Adjustment Act. On both occasions, Respondent EOIR agreed with Respondent DHS, at first denying the permanent residency application and now finding it had no jurisdiction to decide a bond. (Ex. 4 – Bond Redetermination Order)

37. On September 3, 2025, Yanier along with other Cuban Petitioners, filed a Petition for Writ of Habeas Corpus Case No. 2:25-cv-12782-SDK-APP. At the time of filing, Yanier believed he was being detained pursuant to INA §235 the Respondents had represented during the bond proceedings on August 29, 2025.

38. As part of the proceedings, the Respondents submitted a declaration from ICE – Det Officer Michael Pinson that an arrest warrant pursuant to INA §236 had been issued in the recent detention of Yanier. This was the first time that INA §236 (8 U.S.C. §1226) was mentioned as the statutory authority for Yanier’s recent detention. (Ex. 5 – Warrant for Arrest of Alien)

39. Upon learning of this, the Petitioner and the Respondents stipulated to dismiss the Petition for Writ of Habeas Corpus Case No. 2:25 cv-12782-SDK-APP

without prejudice as there was no longer an issue about mandatory redetention.

This stipulation was filed with the Court on September 24, 2025.

40. The following day, Yanier filed a subsequent request for a bond with the Immigration Court in Detroit, Michigan on September 25, 2025. However, the Respondents still insist, despite the law and documentary evidence otherwise that Yanier is detained pursuant to 8 U.S.C. §1225 and therefore not entitled to bond. Therefore, Yanier filed this instant habeas action.

41. Yanier has been unlawfully detained for 53 days to date without an opportunity to be released due to the arbitrary and unlawful actions of the Respondents.

VI. APPLICABLE LAW

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

43. 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).

44. 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).

45. 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).

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

47. 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) and was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

48. 8 U.S.C. §1225(a)] Inspection.-- 235(a)(1) [1225(a)(1)] Aliens treated as applicants for admission.--An alien present in the United States who has not been admitted or **who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this Act an applicant for admission.** (Emphasis added). See also, *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (explaining that 8 U.S.C. § 1225(b)(2)’s mandatory detention scheme applies to noncitizens “seeking admission into the United States.”)

49. 8 U.S.C. §1225(b)(1) applies only to certain aliens who are inadmissible

into the United States because they either lack valid entry documents or have attempted to procure their admission through fraud or misrepresentation. The statute generally permits the government to summarily remove those aliens if they are arriving in the United States. This is otherwise known as expedited removal. The statute also authorizes, but does not require, the government to apply this procedure to aliens who are inadmissible on the same grounds if they have been physically present in the country for less than two years.

50. A warrant is not required for an arrest pursuant to 8 U.S.C. §1225. This section grants immigration officers the power to detain aliens who do not appear clearly entitled to admission, allowing for their examination and detention for further inquiry without a warrant. The detention authority under 8 U.S.C. §1225 is automatic and mandatory and therefore no warrant exists for this type of detention. “An applicant for admission who is arrested and **detained without a warrant** while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1225(b) (2018)” *Matter of Q-Li*, 29 I&N Dec. 66 (BIA 2025) (Emphasis added).

51. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. See 8 U.S.C. § 1229(a). Individuals in Section 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).

52. This section requires a warrant because once the person has been in the U.S. for over two years, the government must have some probable cause to arrest that person and this must be spelled out in the warrant. See, 8 U.S.C. § 1226(a).

53. The Court has broad, equitable authority under the habeas statute, 28 USC 2241, 2243 and the common law, to dispose of Petitioner's case as law and justice require, based on the facts and circumstances of this case, in order to remedy Petitioner's unlawful detention.

54. The Court should exercise this authority to grant Petitioner's habeas Corpus petition and to fashion any and all additional relief, necessary to effectuate Petitioner's Yanier's expeditious release from unlawful detention. In the absence of such relief, Petitioner Yanier is suffering and will continue to suffer irreparable harm.

55. The Due Process Clause provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. In this case there has been absolutely no due process of law. Consistent with the Due Process clause of the Fifth Amendment to the U.S. Constitution, ICE must release detainees where civil detention has become punitive and where release is the only remedy to prevent this impermissible punishment. Due to the circumstances of this case, the deception involved in Yanier's arrest and detention, one can only surmise

that Yanier's detention is punitive in nature.

VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

56. There is no applicable statute or rule that mandates administrative exhaustion. Whether to require exhaustion is thus within the district court's "sound judicial discretion." *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013) (citation omitted). *Island Creek Coal Co. v. Bryan*, 937 F.3d 738, 746 (6th Cir. 2009) The Sixth Circuit has not decided whether courts should impose administrative exhaustion in the context of a noncitizen's habeas petition for unlawful mandatory detention. But even if a court would ordinarily enforce prudential exhaustion, it may still choose to waive such exhaustion. *Lopez-Campos*, 2025 WL 2496379, (E.D. Mich. Aug. 29, 2025) at *4. For example, when the "legal question is fit for resolution and delay means hardship," a court may choose to decide the issues itself. *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000) (citation omitted). A court may also excuse exhaustion if the "pursuit of administrative remedies would be a futile gesture." *Shearson*, 725 F.3d at 594 (citation omitted).

57. In this case, there are no administrative remedies to exhaust since the Respondents have already stated that mandatory detention applies in this case, and the Board has issued a precedent decision stating that people like the Petitioner are subject to mandatory detention. See, *Matter of Yajure Hurtado*, 29 I&N Dec. 216

(BIA 2025).

58. Yanier faces significant hardship should the Court refrain from deciding the issue. Courts may waive exhaustion requirements when an administrative remedy is subject to “an unreasonable or indefinite timeline.” *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992).

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF VIOLATION OF DUE PROCESS FIFTH AMENDMENT OF THE US CONSTITUTION

59. Petitioners reallege the foregoing paragraphs as if set forth fully herein.

60. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The federal government also violates substantive due process when it subjects civil detainees to cruel treatment and conditions of confinement that amount to punishment.

61. 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)

62. The Supreme Court has long made clear that when the government

seeks to deprive an individual of a “particularly important individual interest[],” it must bear the burden of justifying this deprivation by clear and convincing evidence. *Addington v. Texas*, 441 U.S. 418, 424 (1979). Yanier was suddenly detained without explanation. He has a significant interest at stake, and a “clear and convincing” evidence standard provides the appropriate level of procedural protection. *Id.* at 423.

63. To comport with substantive due process, civil immigration detention must bear a reasonable relationship with its two regulatory purposes— (1) to ensure the appearance of noncitizens at future hearings and (2) to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690-91.

64. The Respondents, without affording Yanier due process, through their actions believe that they can detain Yanier without access to request a bond from a court. His detention has no reasonable relationship to the regulatory purposes of civil detention. Yanier has attended all of his immigration court hearings after hiring counsel. Yanier is not a danger to the community. He has no criminal record as he was already determined not to pose a danger to society.

SECOND CLAIM FOR RELIEF VIOLATION OF FOURTH AMENDMENT

65. Petitioner realleges the foregoing paragraphs as if set forth fully herein.

66. The Fourth Amendment protection against “unreasonable searches and

seizures” is a protection against “arrest without probable cause.” *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *U.S. v. Avery*, 128 F.3d 974 (6th Cir. 1997)

67. When Yanier was arrested at USCIS Detroit, the Respondents lacked any information of changed or exigent circumstances that would justify such sudden detention. Nothing had changed since he was released at the border by the Respondents over 3 years ago. Rather, his equities for release have increased since that time.

**THIRD CLAIM FOR RELIEF
VIOLATION OF THE
IMMIGRATION AND NATIONALITY ACT**

68. Petitioner realleges the foregoing paragraphs as if set forth fully herein.

69. 8 U.S.C. § 1226(a) mandates that a person be provided a bond redetermination hearing before an immigration court.

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

71. Even before ICE and the BIA introduced these nationwide policies, 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. There, 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).

72. Subsequently, court after court, including in this district, has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. See, e.g., *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *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); *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); *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).

73. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies the INA. As the *Rodríguez 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.

74. 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].”

75. The text of § 1226(a) 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.

76. 8 U.S.C. §1226(a), 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.

77. 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).

78. 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.

79. 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.

80. The application of § 1225(b)(2) to Petitioner mandates his continued unlawful detention and violates the INA and the U.S. Constitution. The Respondents have continuously deprived Yanier of a bond hearing to which he is entitled to under the INA.

VIII. CONCLUSION

THEREFORE, the Petitioner respectfully requests that this Court:

- a. Issue a Writ of Habeas Corpus on the ground that the continued detention of Yanier violates the Due Process Clause and order Yanier's immediate release;
- b. In the alternative order that Respondent EOIR hold a bond hearing

within 3 days;

c. Find that the Respondents have acted in bad faith in violating the U.S. Constitution and the INA;

d. Award Plaintiffs their costs and reasonable attorneys' fees in this action.

e. Any other relief the Court deems appropriate.

Respectfully submitted:

s/Caridad Pastor
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Dated: October 9, 2025

CERTIFICATE OF SERVICE

I, hereby certify that today I filed the Amended Petition for Habeas Corpus by the ECMF system which will automatically serve:

AUSA Jennifer Newby
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Respectfully submitted:

/S/Caridad Pastor
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Dated: October 9, 2025