

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

PABLO LOJA LEMA,)	
)	
Petitioner-Plaintiff,)	Case No. _____
)	
v.)	
)	
ANDREW ACKLEY, Warden of FCI Berlin)	PETITION FOR WRIT OF
PATRICIA HYDE, Acting Field Office Director;)	HABEAS CORPUS
TODD LYONS, Acting Director, U.S.)	PURSUANT TO 28 USC §2241
Immigrations and Customs Enforcement;)	
SIRCE OWEN, Acting Director, Executive Office)	
For Immigration Review;)	
PAMELA BONDI, U.S. Attorney General;)	
and KRISTI NOEM, U.S. Secretary)	
of Homeland Security,)	
)	
Respondents-Defendants.)	
_____)	

INTRODUCTION

This petition for a writ of habeas corpus is being filed on behalf of Mr. Pablo Loja Lema (hereinafter “Mr. Loja” or “Petitioner”) seeking relief to remedy his unlawful detention. Mr. Loja is currently detained at the FCI Berlin Facility in Berlin, New Hampshire. Mr. Loja is a citizen and national of Ecuador. He has lived in the United States since 2013. On or about September 2, 2025, Mr. Loja was detained outside of the Hopedale, Massachusetts Police Department after being released from an arrest for an outstanding warrant for operating a vehicle without insurance.

Recently, the U.S. Department of Homeland Security (“DHS”) and the U.S. Department of Justice (“DOJ”) reversed decades of settled immigration practice and denied all immigration bond hearings. Specifically, DHS and DOJ are misclassifying people arrested inside the United States. These people are generally subject to the detention provisions of 8 U.S.C. § 1226, which

usually allows for release on bond and conditions during the pendency of immigration proceedings. This misclassification is contrary to settled law and practice, and it is unlawfully premised solely upon the manner in which the person initially entered the country - in this case more than a decade ago. Accordingly, to vindicate Petitioner's constitutional rights, Petitioner requests that this Court grant the instant petition for a writ of habeas corpus.

Petitioner respectfully submits that his detention is unlawful for the following reasons:

(1) DHS and DOJ are improperly applying the mandatory detention provisions of 8 U.S.C. § 1225(b) to individuals like Petitioner who were apprehended well inside the United States, even more than a decade after entry, rather than applying 8 U.S.C. § 1226(a), which governs detention and release pending immigration proceedings; (2) this misclassification deprives Petitioner of his statutory right to a bond hearing before an Immigration Judge; (3) the government's policy represents an arbitrary and capricious departure from decades of settled law and practice without any rational basis, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2); and (4) Petitioner's prolonged detention without an individualized bond hearing violates the Due Process Clause of the Fifth Amendment.

Absent an order from this Court granting habeas relief, Petitioner will remain indefinitely detained without meaningful opportunity to secure release on bond, in violation of both statutory and constitutional protections.

Petitioner asks this Court to find that the Department of Homeland Security and Department of Justice are unlawfully detaining him under 8 U.S.C. § 1225(b), when the governing statute is 8 U.S.C. § 1226(a), and that such detention without a bond hearing violates his statutory and constitutional rights. Petitioner further asks this Court to order his immediate release or, in the alternative, to order the government to provide him with an individualized bond hearing before an Immigration Judge within seven (7) days of the Court's order.

JURISDICTION

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

2. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I § 9, cl. 2 of the U.S. Constitution (Suspension Clause).

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

VENUE

4. Venue is proper because Petitioner is presently detained by ICE at the FCI Berlin Facility, in Berlin, New Hampshire, which is within the jurisdiction of this District.

REQUIREMENTS OF 28 U.S.C. § 2243

5. The Court must grant a 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).

6. 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).

PARTIES

7. Petitioner is a citizen and national of Ecuador. Petitioner is currently detained by ICE at the FCI Berlin Facility, in Berlin, New Hampshire, which is within the jurisdiction of this District. He is in the custody, and under the direct control, of Respondents and their agents.

8. Respondent Andrew Ackley is the Acting Warden of FCI Berlin, and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.

9. Respondent Patricia Hyde is sued in her official capacity as the Acting Director of the New England Field Office of U.S. Immigration and Customs Enforcement. Respondent Hyde is a legal custodian of Petitioner and has authority to release him.

10. Respondent Todd Lyons is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, Respondent Lyons is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees the U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Lyons is a legal custodian of Petitioner.


11. Respondent Sirce Owen is the Acting Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond proceedings. Respondent Owen is a legal custodian of Petitioner.

12. 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 BIA. Respondent Bondi is a legal custodian of Petitioner.

13. Respondent Kristi Noem is the U.S. Secretary of Homeland Security and administers the Department of Homeland Security. In that capacity, she exercises ultimate authority over DHS, including U.S. Immigration and Customs Enforcement (“ICE”), which has responsibility for the detention and removal of noncitizens, and U.S. Citizenship and Immigration Services (“USCIS”), which adjudicates immigration benefits. Respondent Noem is also a legal custodian of Petitioner.

STATEMENT OF FACTS

14. Petitioner is a 46-year-old citizen of Ecuador. He originally fled repeated violent death threats and harm based upon  and upon entering the United States was found to have a credible fear of return to his country. He has maintained consistent employment in construction and has a United States citizen child who wholly depends on his financial support. Petitioner and his wife have strong community ties and are actively involved in their church. His only criminal history consists of a single driving-related violation.

15. Petitioner entered the United States on February 18, 2013, near McAllen, Texas, where he was encountered by Border Patrol and issued an Expedited Removal order. On March 29, 2013, however, an asylum officer determined that Petitioner had a credible fear of returning to Ecuador. He was issued a Notice to Appear¹ and released on his own recognizance pending immigration proceedings. On January 29, 2014, an immigration judge ordered Mr. Loja removed

¹ The Petitioner has been placed in removal proceedings and charged with being removable pursuant to INA §§ 212(a)(6)(A)(i) that is, an alien present in the United States without having been admitted and 212 (a)(7)(A)(i)(I), that is, an alien present in the United States without having been admitted or paroled and an immigrant who, at the time of application for admission, is not in possession of a paroled and an immigrant who, at the time of application for admission, is not in possession of a unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document EOIR required by the Act.

from the United States in absentia. On March 20, 2014, Mr. Loja's immigration case was reopened.

16. On September 2, 2025, Petitioner was arrested by the Hopedale, Massachusetts Police Department for an outstanding warrant related to operating a vehicle without insurance. After his release from local custody, immigration officials encountered Petitioner through interoperability between ICE/ERO and the Hopedale Police Department.²

17. Petitioner was scheduled for a bond hearing on September 23, 2025. At the outset of that hearing, however, the Immigration Judge declined jurisdiction, citing *Matter of Yajure Hurtado*³, 29 I&N Dec. 985 (BIA 2025), thereby denying Petitioner the opportunity for an individualized bond determination.

LEGAL FRAMEWORK

18. Petitioner is present in the United States and, on information and belief, the DHS has alleged or will allege that Petitioner was not previously admitted or paroled into the United States.

19. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), including because Petitioner does not meet the criteria for Expedited Removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

20. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2),

² The I-213 Record of Deportable/Inadmissible Alien prepared in connection with Petitioner's arrest is fatally flawed and should be deemed wholly unreliable. The document repeatedly identifies a different detainee by name in lieu of Mr. Loja's, raising serious questions as to the accuracy, reliability, and evidentiary value of the I-213. *See*, e.g., *Matter of Ponce-Hernandez*, 22 I&N Dec. 784, 785 (BIA 1999) (noting that while I-213s are generally admissible, they may be excluded if they are shown to be inaccurate or unreliable). These fundamental errors render both the I-213 untrustworthy and incapable of supporting Petitioner's detention classification.

³ The new BIA precedent, *Matter of Yajure Hurtado*, 29 I. & N. Dec 216 (B.I.A. 2025), adopted the position that noncitizens present in the United States without admission are "seeking admission" for purposes of § 1225(b)(2), and are therefore subject to the mandatory detention procedures set forth in § 1225. Under the facts and circumstances present here, this court should not defer to the BIA decision. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) ("[C]ourts must exercise independent judgment in determining the meaning of statutory provisions," and they "may not defer to an agency interpretation of the law simply because a statute is ambiguous.").

including because, as a person already present in the United States, Petitioner is not presently “seeking admission” to the United States. *See Aguiriano v. Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *1, 8-13 (D. Mass. Aug. 19, 2025).⁴

21. On information and belief, Petitioner was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Petitioner could not “be returned” under that provision to mandatory custody under 8 U.S.C. § 1225(b) or any other form of custody. Petitioner is not subject to mandatory detention under § 1225 for this reason, as well.

22. Instead, as a person arrested inside the United States and held in civil immigration detention, Petitioner is subject to detention, if at all, pursuant to 8 U.S.C. § 1226. *See Aguiriano*, 2025 WL 2403827, at *1, 8-13 (collecting cases).

23. Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).

⁴ Petitioner was given apparent notice, based on his warrant and Notice to Appear, that he was being detained under § 1226, not § 1225. That, and the abrupt change in the government’s longstanding detention policy under §§ 1225 and 1226, *see Carlos Augusto Chang Barrios v. Craig Shepley, et al.*, No. 1:25-CV-00406-JAW, 2025 WL 2772579, at *9 (D. Me. Sept. 29, 2025) (discussing longstanding government policy of applying § 1226(a) to noncitizens without documentation already present in the United States), should give this Court pause. Courts considering factually similar cases have found that aliens without criminal convictions, who are already in the country, have been taken into custody under 8 U.S.C. § 1226, are specifically described in charging documents as “alien[s] present in the United States who ha[ve] not been admitted or paroled,” and are in removal proceedings, are detained under 8 U.S.C. § 1226. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *dos Santos v. Noem*, No. 1:25-CV-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025) (McCafferty, C.J.); *see also Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025) (gathering cases). The interpretive reasoning of these cases, given the lack of Supreme Court or First Circuit authority on the basic question of whether aliens in the petitioner’s position are held under § 1225 or § 1226, should lead this Court to believe, that with an individual hearing in Immigration Court, a bond hearing on the merits of Mr. Loja’s request for release is the course of action most consistent with the requirements of due process.

24. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).

25. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a custody redetermination hearing (colloquially called a “bond hearing”) with strong procedural protections. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment); 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

26. Petitioner requests such a bond hearing.

27. However, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals issued a decision which purports to require the Immigration Court to unlawfully deny a bond hearing to all persons such as Petitioner.⁵

28. The responsible administrative agency has therefore predetermined that Petitioner will be denied a bond hearing.

29. Petitioner is being irreparably harmed by his ongoing unlawful detention without a bond hearing. *See Aguiriano*, 2025 WL 2403827, at *6-8 (no exhaustion required because “[o]bviously, the loss of liberty is a . . . severe form of irreparable injury” (internal quotation marks omitted)); *Flores Powell v. Chadbourne*, 677 F. Supp. 2d 455, 463 (D. Mass. 2010) (declining to require administrative exhaustion, including because “[a] loss of liberty may be an irreparable harm”); *cf. Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) (citing *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986), for proposition that “[e]xhaustion might not be required if [the petitioner] were challenging her incarceration . . . or the ongoing deprivation of some other liberty interest”).

⁵ The BIA’s reversal and newly revised interpretation of the statute are not entitled to any deference. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024).

30. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioner, and any attempt to raise such claims would be futile. *See Flores-Powell*, 677 F. Supp. 2d at 463 (holding “exhaustion is excused by the BIA’s lack of authority to adjudicate constitutional questions and its prior interpretation” of the relevant statute).

31. Accordingly, there is no requirement for Petitioner to further exhaust administrative remedies before pursuing this Petition. *See Portela-Gonzalez v. Sec’y of the Navy*, 109 F.3d 74, (1st Cir. 1997) (explaining that, where statutory exhaustion is not required, administrative exhaustion not required in situations of irreparable harm, futility, or predetermined outcome). *See Also Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, at *4 (D. Mass. July 7, 2025) (“[E]xhaustion is not required by statute in this context.”).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

32. Petitioner’s prolonged detention without an individualized custody redetermination violates the Due Process Clause of the Fifth Amendment. The First Circuit has held that detainees under § 1226(a) are entitled to robust procedural safeguards in custody redetermination hearings. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256–57 (1st Cir. 2021). By denying Petitioner any bond hearing, Respondents have deprived him of liberty without due process of law.

33. For these reasons, Petitioner’s detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Unlawful Detention Under the INA 8 U.S.C. §§ 1225, 1226 and Violation of the Administrative Procedure Act (5 U.S.C. § 706)

34. Petitioner’s continued detention is not authorized by statute. Petitioner cannot be lawfully detained under 8 U.S.C. § 1225(b)(1) because he does not meet the statutory criteria for

expedited removal, nor under § 1225(b)(2) because, as a person already present in the United States, he is not “seeking admission.” Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), as he has not been convicted of any removable crime. Instead, Petitioner is lawfully subject, if at all, only to detention under § 1226(a), which requires access to an individualized custody redetermination hearing. The refusal to provide such a hearing is ultra vires and unlawful.

35. The Department of Justice and Department of Homeland Security, through the *Matter of Yajure Hurtado*, 29 I&N Dec. 985 (BIA 2025), have arbitrarily and capriciously departed from decades of settled statutory practice by misclassifying persons like Petitioner under § 1225(b) rather than § 1226(a). This misclassification denies access to bond hearings without reasoned explanation, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

36. For these reasons, Petitioner’s detention violates 5 U.S.C. § 706.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- 1) Assume jurisdiction over this matter;
- 2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- 3) Declare that Petitioner’s detention under 8 U.S.C. § 1225(b) is unlawful and ultra vires, and that Petitioner is lawfully subject, if at all, only to detention under 8 U.S.C. § 1226(a);
- 4) Declare that Petitioner’s continued detention without an individualized custody redetermination hearing violates the Immigration and Nationality Act, the

Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment to the United States Constitution;

- 5) Enjoin Respondents from applying *Matter of Yajure Hurtado*, 29 I&N Dec. 985 (BIA 2025), to Petitioner or to other similarly situated individuals in this District, insofar as it deprives them of their statutory right to a bond hearing;
- 6) Order Respondents to provide Petitioner with an individualized custody redetermination (bond) hearing before an Immigration Judge within seven (7) days of this Court's order, with the procedural safeguards required by law, including the government's burden to justify detention by clear and convincing evidence;
- 7) Alternatively, Order Petitioner's immediate release from immigration custody under reasonable conditions of supervision; and
- 8) Grant any further relief this Court deems just and proper.

Respectfully submitted,

On behalf of the Petitioner
By His Attorney

Date: 10/7/2025

/s/ Kimberly Kirkland
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