UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Sedat Alkis,

Petitioner,

Case No.

v.

Immigration and Customs Enforcement Harlingen Field Office Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; David Cole, Warden of RIO GRANDE PROCESSING CENTER,

Respondents.

_____/

AMENDED
PETITION FOR WRIT OF
HABEAS CORPUS

I. INTRODUCTION

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

2. Petitioner is charged with, inter alia, having entered the United States on or around February 9, 2023 and at Tecate, California without admission or inspection. See 8 U.S.C. § 1182(a)(6)(A)(i).

3. Consistent with a new DHS policy issued on July 8, 2025, (July 8th ICE Guidance)(Ex. 1 - ICE Policy Guidance issued July 8, 2025) which instructs 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. Petitioner is being detained pursuant to 8 U.S.C. §1225(b)(2)(A).

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

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

5. 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 inspection.

6. 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.

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

II. JURISDICTION

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Rio Grande Processing Center in Laredo, Texas.

9. This Court has habeas corpus jurisdiction and jurisdiction over the injunctive relief 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.

10. This action arises under the Fifth Amendment of the United States Constitution; the Immigration and Nationality Act ("INA"); and the Administrative Procedure Act, 5 U.S.C. § 701 et seq. 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).

11. This Court has jurisdiction under the Suspension Clause, notwithstanding statutory provisions that otherwise deprive the Courts of jurisdiction over executions of removal orders, 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

12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Southern District of Texas, the judicial district in which Petitioner currently is detained.

13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of Texas.

IV. PARTIES

14. Petitioner is alleged to be a citizen of Turkey. He is detained at the Rio

Grande Processing Center - an immigration detention center run by the GEO Group under a contract with and controlled by the Respondents. The warden at the Rio Grande Processing Center is David Cole.

15. Respondent, Harlingen Field Office of Immigration and Customs Enforcement and Removal Operations division (ICE Harlingen) is the ICE Field Office that controls the facility at which the Petitioner is currently detained. As such, ICE Harlingen is the Petitioner's immediate custodian and is responsible for the Petitioner's detention and removal.

16. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA and oversees all components of Immigration and Customs Enforcement (ICE), which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

17. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

18. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice (DOJ), of which the Executive Office for Immigration Review and the immigration court

system it operates is a component agency. She is sued in her official capacity.

19. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

20. Respondent David Cole is Warden of the Rio Grande Processing Center, where Petitioner is detained. He has immediate physical custody of Petitioner.

V. LEGAL FRAMEWORK

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

22. 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).

23. 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).

24. 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).

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

26. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

27. 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 these cases, to remedy unlawful detention. "When a court, justice, or judge entertains an application for a writ of habeas corpus, they must promptly award the writ or issue an order to show cause unless the application clearly shows that the applicant is not entitled to it." 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within

three days unless, for good cause, additional time, not exceeding twenty days, is allowed." *Id.* Habeas corpus is "perhaps the most important writ known to constitutional law . . . 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).

28. 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. 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.

IV. FACTS

29. For decades, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with 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)).

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

31. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission, the July 8th ICE Guidance which states that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under 8 U.S.C. § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

32. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado* 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to mandatory detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

33. Petitioner has resided in the United States since February 9, 2023. He came fleeing persecution in his home country. He timely filed an asylum application and was waiting for his Individual Hearing in the

Immigration court so he could pursue his claim of asylum.

34. Petitioner is a truck driver and as part of his job he was in or about September 15, 2025 when he encountered an immigration check point. He provided the officers with his identification documents including a work authorization. He was detained by the Respondents at the checkpoint without being provided a reason. The petitioner is currently detained at the Rio Grande Processing Center in Laredo, Texas.

35. DHS placed Petitioner in removal proceedings before the Laredo, Texas Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, inter alia, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

36. Respondent has ties to the community and a reliable sponsor. If released, the Respondent already had stable housing which he will return to and will continue his employment as a truckdriver.

37. Respondent has no criminal history that would indicate dangerousness. While Respondent acknowledges having received speeding and reckless driving tickets on January 22, 2025, he paid his fines and has had no other encounters with law enforcement. He has never been convicted of any offense that would render him subject to mandatory detention.

38. Following Petitioner's arrest and transfer to Rio Grande Processing Center, Petitioner filed a motion for a bond redetermination though it is futile since immigration judges are ruling that they have no jurisdictions in matters such as this pursuant to *Matter of Yajure Hurtado* 29 I&N Dec. 216 (BIA 2025).

39. There is no statute or rule that requires administrative exhaustion in this case. Prudential exhaustion can be ordered by this Court, but we ask that it be excused since it would be futile and would unnecessarily prolong and already intolerable delay and be ultimately futile.

40. 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). The legal question in this case is fit for resolution. Petitioner is asking this Court to decide whether § 1226(a) or § 1225(b)(2)(A) applies to him. A determination on the interplay between the two sections must be made by the Court. This is a matter of statutory interpretation which has historically been within the province of the courts. *Loper Bright Enters v. Raimondo,* 603 U.S. 369, 385 (2024) (citing *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60 (1803)). Therefore the Petitioner requests that he be excused from exhausting administrative remedies since they

would be futile.

41. As a result of the Respondents' unlawful application, Petitioner remains in detention. Without relief from this court, he faces the prospect of months or even years in immigration custody.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

42. Petitioner incorporates by reference the allegations of fact outlined in the preceding paragraphs.

43. 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.

44. 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 8 U.S.C. § 1226(a), not 8 U.S.C.§ 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).

45. Subsequently, court after court adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. See, e.g., *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce,* No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-

JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); see also, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

46. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates

that 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), applies to people like Petitioner.

47. The text of 8 U.S.C.§ 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); see also *Gomes*, 2025 WL 1869299, at *7.

48. 8 U.S.C. §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.

49. By contrast, 8 U.S.C.§ 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).

50. Accordingly, the mandatory detention provision of 8 U.S.C. § 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.

51. 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 8 U.S.C.§ 1226(a), unless they are subject to 8 U.S.C. § 1225(b)(1), 8 U.S.C. § 1226(c), or 8 U.S.C. § 1231.

52. The application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA and the U.S. Constitution.

53. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

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

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

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

COUNT II

Violation of Due Process

57. Petitioner repeats, re-alleges, and incorporates by reference each and

every allegation in the preceding paragraphs as if fully set forth herein.

58. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

59. 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.

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

c. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

d. Declare that Petitioner's detention is unlawful;

e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

f. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted:

/S/ Caridad Pastor

Dated: October 7, 2025

Caridad Pastor C (P43551)
Pastor and Associates, P.C.
Attorneys for Petitioner
11 Broadway Suite 1005
New York, New York 10004
(248) 619-0065

carrie@pastorandassociates.com