UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

David Alberto PEREZ SANCHEZ,

Petitioner,

v.

Michael BERNACKE, Field Office Director of Enforcement and Removal Operations, Salt Lake City 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; John MATTOS, Warden of Nevada Southern Detention Center,

Respondents.

Case No. 25-1921

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2241

INTRODUCTION

1. Petitioner David Alberto Perez Sanchez has lived in the United States since 1997, when he was brought here as a young child. He is the father of five U.S. citizen children, and until recently was protected from removal under the Deferred Action for Childhood Arrivals (DACA) program. Indeed, his most recent DACA renewal was approved and remains valid until July 21, 2027.

2. Despite his deep ties and lawful deferred action, Petitioner has been held in immigration detention since May 2025.

3. Petitioner is charged with, inter alia, having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

4. On July 10, 2025, an Immigration Judge granted him bond in the amount of $3,000, finding that he was not a flight risk or danger to the community. The Department of Homeland Security, however, invoked the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) (Form EOIR-43), nullifying the IJ's bond order without judicial review. DHS then filed an appeal to the Board of Immigration Appeals (BIA), which remains pending.

5. Petitioner's continued detention violates both statutory and constitutional law. By statute, his custody is governed by INA § 236(a), (8 U.S.C. § 1226(a)), which authorizes discretionary release on bond during removal proceedings. DHS's assertion that Petitioner is subject to mandatory detention under INA § 235(b)(2), (8 U.S.C. § 1225(b)(2)), represents an abrupt and unlawful reinterpretation of the statute—one that has been rejected by multiple federal courts and is currently the subject of nationwide litigation. Moreover, the use of the EOIR-43 automatic stay to override a favorable bond order, leaving Petitioner confined solely due to DHS's unilateral filing, deprives him of liberty without due process of law.

6. This case exemplifies the convergence of two unlawful practices: first, DHS's attempt to expand mandatory detention under INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) far beyond Congress's intent; and second, EOIR's unconstitutional automatic stay regulation, 8 C.F.R. § 1003.19(i)(2). Each practice independently violates law and due process, and together they have resulted in Petitioner's prolonged and unjustified detention despite an Immigration Judge's finding under INA § 236(a) (8 U.S.C. § 1226(a)) that he merits release on bond.

7. Respondents' newly asserted interpretation is plainly contrary to the statutory framework and irreconcilable with decades of agency practice, which have consistently applied § 1226(a) and its implementing regulation, 8 C.F.R. § 236.1, to individuals like Petitioner—long-term residents arrested in the interior and placed in removal proceedings under § 240.

8. Accordingly, Petitioner seeks a writ of habeas corpus ordering his immediate release, or in the alternative, directing that he receive a new, constitutionally adequate bond hearing under § 1226(a) within fourteen (14) days. Petitioner further seeks an order enjoining Respondents from invoking the automatic stay provision, 8 C.F.R. § 1003.19(i)(2), to override an Immigration Judge's bond determination.

JURISDICTION

9. Petitioner is in the physical custody of Respondents and detained at the Nevada Southern Detention Center in Pahrump, Nevada.

10. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

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 District of Nevada, 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 District of Nevada.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. Habeas corpus is "perhaps the most important writ known to the 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

16. Petitioner David Alberto Perez Sanchez is a citizen of Mexico who has lived in the United States since 1997, when he was brought here as a child. He has five U.S. citizen children and previously held Deferred Action for Childhood Arrivals (DACA), which was most recently renewed and remains valid until July 21, 2027. Petitioner has been detained by Immigration and

Customs Enforcement (ICE) since May 2025. On July 10, 2025, an Immigration Judge of the Las Vegas Immigration Court granted Petitioner release on bond in the amount of $3,000. That order was automatically stayed when DHS invoked Form EOIR-43 under 8 C.F.R. § 1003.19(i)(2), and Petitioner remains detained while DHS's appeal is pending before the Board of Immigration Appeals.

17. Respondent Michael Bernacke is the Director of the Salt Lake City Field Office of ICE's Enforcement and Removal Operations division. As such, Michael Bernacke is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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

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

20. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, 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.

21. 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.

22. Respondent John Mattos is employed by as Warden of the Nevada Southern Detention Center in Pahrump, Nevada, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

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

24. 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).

25. 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).

26. 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).

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

28. 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).

29. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

30. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

31. 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.

32. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to the mandatory detention provision under § 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.

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

33. In a May 22, 2025, unpublished decision from the Board of Immigration Appeals (BIA), EOIR adopts this same position.[2] That decision holds that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bond hearings.

34. That position was formalized in Matter of Hurtado, 29 I&N Dec. 216 (BIA 2025), which rejected decades of contrary practice and held that § 1225(b)(2), not § 1226(a), governs detention of EWIs.

35. Federal courts have rejected this exact conclusion. In *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025) the court held that § 1226(a) applies to long-settled residents arrested in the interior; *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

36. Most recently, this court, District of Nevada in *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 9, 2025), held that EOIR's automatic stay regulation, 8 C.F.R. § 1003.19(i)(2) (Form EOIR-43), is unconstitutional because it deprives noncitizens of liberty without due process. The court ordered same-day release of the petitioner and noted that DHS's reliance on § 1225(b)(2) to detain long-settled residents raises serious statutory and constitutional concerns.

37. As *Rodriguez Vazquez*, *Gomes*, and *Maldonado* demonstrate, the text and structure of the INA make clear that **§ 1226(a)** applies to noncitizens apprehended in the interior, including those charged as inadmissible for entry without inspection.

[2] *Available at* https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf.

38. 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]."

39. 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).

40. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

FACTS

41. Petitioner David Alberto Perez Sanchez has resided in the United States since 1997 and lives in Taylorsville, Utah. He is the father of five U.S. citizen children and has deep family and community ties in the United States.

42. On or about May 8, 2025, Petitioner was taken into ICE custody. Petitioner is now detained at the Nevada Southern Detention Center, in Pahrump, Nevada.

43. DHS placed Petitioner in removal proceedings before the Las Vegas 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.

44. Petitioner is a long-time DACA recipient, and his most recent renewal was approved and remains valid until July 21, 2027. He has no disqualifying criminal convictions. His U.S. citizen children depend on him for support, and he has strong employment and community ties. Petitioner is neither a flight risk nor a danger to the community.

45. Following Petitioner's arrest and transfer to Nevada Southern Detention Center, in Pahrump, Nevada, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

46. Petitioner subsequently requested a bond redetermination hearing before an IJ.

47. On July 10, 2025, an Immigration Judge of the Las Vegas Immigration Court granted Petitioner release on bond in the amount of $3,000, expressly finding that Petitioner was not a danger to the community or flight risk.

48. The following day, DHS invoked the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) by filing Form EOIR-43. As a result, the IJ's bond order was automatically nullified, and Petitioner has remained in custody ever since.

49. On July 23, 2025, DHS filed a notice of appeal with the Board of Immigration Appeals (BIA), where the case remains pending. Petitioner has filed a responsive brief, but no decision has issued.

50. Petitioner's continued detention illustrates the convergence of two unlawful practices: (1) DHS's attempt to expand § 1225(b)(2) mandatory detention to individuals arrested in the interior after years of residence, and (2) EOIR's unconstitutional automatic stay regulation, which deprives noncitizens of liberty without judicial review.

51. Any further appeal within the administrative system is futile. On September 5, 2025, the BIA issued Matter of Hurtado, 29 I&N Dec. 216 (BIA 2025), adopting DHS's position that all

noncitizens who entered without inspection are "applicants for admission" subject to § 1225(b)(2) mandatory detention. The Department of Justice has repeatedly defended this interpretation in federal court, including in *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

52. Without relief from this Court, Petitioner faces months or even years of unlawful detention, separated from his U.S. citizen family, despite an IJ's finding that he merits release on bond and despite the protections afforded by his valid DACA status.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

54. The mandatory detention provision at **8 U.S.C. § 1225(b)(2)** does not apply to long-settled noncitizens apprehended in the interior of the United States. By its plain text, § 1225(b)(2) applies to individuals who are apprehended at the border or ports of entry as "applicants for admission." By contrast, § 1226(a) governs the detention of noncitizens, including those charged as inadmissible under **§ 1182(a)(6)(A)(i)**, who are placed in **§ 1229a removal proceedings** after residing in the country

55. Federal courts have repeatedly rejected DHS's recent attempt to apply § 1225(b)(2) to persons like Petitioner. See *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept.

9, 2025). These courts have confirmed that § 1226(a), not § 1225(b)(2), governs detention for noncitizens apprehended after residing in the United States.

56. The Board of Immigration Appeals' recent decision in Matter of Hurtado, 29 I&N Dec. 216 (BIA 2025), adopting DHS's contrary position, does not bind this Court. *Hurtado* represents an abrupt, unexplained reversal of decades of agency practice and is not entitled to deference.

57. Accordingly, Respondents' application of § 1225(b)(2) to Petitioner is contrary to the statutory framework of the INA, exceeds their lawful authority, and unlawfully mandates his continued detention.

COUNT II

Violation of Due Process

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

59. 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).

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

61. On July 10, 2025, an Immigration Judge found that Petitioner was neither a danger to the community nor a flight risk and granted him release on bond in the amount of $3,000.

62. The following day, DHS invoked the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2) (Form EOIR-43), which nullified the IJ's order and left Petitioner detained indefinitely without any individualized judicial determination.

63. The automatic stay regulation violates due process because it permits DHS to override an IJ's release order without judicial review, imposing continued detention based solely on DHS's unilateral filing. This creates a severe liberty deprivation with minimal government justification, contrary to the balancing test of *Mathews v. Eldridge*, 424 U.S. 319 (1976).

64. Federal courts have already held that the automatic stay provision is unconstitutional. See *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 9, 2025); *Herrera Torralba v. Feeley*, No. 2:25-cv-01366-RFB-DJA (D. Nev. Aug. 2025).

65. Petitioner's continued detention, despite an IJ's grant of bond, violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring Respondents to immediately release Petitioner pursuant to the Immigration Judge's July 10, 2025, bond order, or, in the alternative, to provide Petitioner with a constitutionally adequate bond hearing under 8 U.S.C. § 1226(a) within fourteen (14) days, before a neutral decisionmaker, without application of the automatic stay provision in 8 C.F.R. § 1003.19(i)(2);

c. Enjoin Respondents from invoking or applying the EOIR-43 automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), to override the Immigration Judge's custody determinations;

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

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

RESPECTFULLY SUBMITTED,

/s/Daniel F. Lippmann
BY: DANIEL F. LIPPMANN, ESQ.

Dated: October 7, 2025.