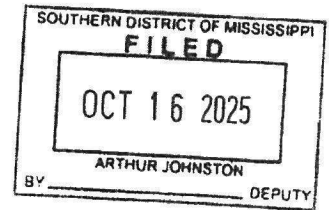


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION- NATCHEZ, MS**



MARVIN BERNARDINO CUN CHITAY,

A 

Petitioner/Plaintiff,

v.

**PAM BONDI, Attorney General of the
United States; KRISTI NOEM, Secretary,
Department of Homeland Security (DHS);
TODD LYONS, Acting Director of
Immigration and Customs Enforcement (ICE);
BRIAN ACUNA, New Orleans Acting Field
Office Director, Immigration and Customs
Enforcement (ICE/ERO); RAPHAEL
VERGARA, Warden, Adams County
Correctional Center,**

Respondents/Defendants

Civil Action No. 5:25-cv-113-DCB-1454

**ORAL ARGUMENT
REQUESTED**

**PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C. §
2241, BY A PERSON SUBJECT TO
INDEFINITE IMMIGRATION
DETENTION, AND
PETITION FOR FEDERAL
INJUNCTION PURSUANT TO
28 U.S.C. § 1331**

BACKGROUND

Petitioner, Mr. Marvin Bernadino Cun Chitay, hereby petitions this Court for a writ of habeas corpus as well as for a federal injunction to remedy Petitioner's unlawful detention and to enjoin Petitioner's continued unlawful detention by the Respondents. Due to the government's change in policy, Petitioner will be held without the possibility of a bond hearing. Mr. Cun Chitay asks this Court to order his release or in the alternative order immigration officials to set a bond amount. Mr. Cun Chitay also hereby requests that a hearing be set on this matter. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

PARTIES

1. Petitioner, Mr. Cun Chitay, is a native and citizen of Guatemala who entered the United States on or about 2008 without inspection. He has maintained continuous presence in the United States since entering. On or about July 14, 2025, Petitioner was detained by immigration officials and is currently being held at the Adams County Correctional Center in Natchez, MS. Petitioner is the beneficiary of an approved I-130 petition with the United States Citizenship and Immigration Services (USCIS), evidencing his marriage to a United States citizen, Julia Vasquez Argueta. Mr. Cun Chitay was previously in removal proceedings, but these proceedings were terminated on or about July 28, 2025.
2. Respondent Pam Bondi is sued in her official capacity as the United States Attorney General. As Attorney General, Ms. Bondi is responsible for the administration and enforcement of the immigration laws of the United States.
3. Respondent Kristi Noem is sued in her official capacity as Secretary of the Department of Homeland Security ("DHS"). As Secretary of DHS, Ms. Noem is responsible for the administration and enforcement of the immigration laws of the United States.
4. Respondent Todd Lyons is sued in his official capacity as Acting Director of Immigration and Customs Enforcement (ICE). As the Acting Director of ICE, Mr. Lyons is responsible for the administration and enforcement of the policies and procedures for ICE's detention of Petitioner at Adams County Correctional Center (Adams).
5. Respondent Brian Acuna is sued in his official capacity as Acting Field Office Director of ICE and Enforcement and Removal (ERO) for the New Orleans office. As the Acting Field Office Director of ICE/ERO, Mr. Acuna is responsible for the administration and

enforcement of the policies and procedures for ICE's detention of Petitioner at Adams County Correctional Center (Adams).

6. Respondent, Raphael Vergara, is the Warden of Adams County Correctional Center. As such, Mr. Vergara is responsible for the operation of the Correctional Center where Mr. Cun Chitay is detained. Because ICE contracts with detention centers such as Adams to house immigration detainees such as Mr. Cun Chitay, Respondent has immediate physical custody of the Petitioner.

JURISDICTION

7. This action arises under the Constitution of the United States, 28 U.S.C. § 2241(c)(1), and the Immigration and Nationality Act, as amended ("INA"), 8 U.S.C. § 1101 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution ("Suspension Clause"), and 28 U.S.C. § 1331, as the Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) ("We conclude that § 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention."); *see also, Demore v. Kim*, 538 U.S. 510 (2003) (evaluating mandatory detention for pre-removal detainees for the "brief period necessary" to complete removal proceedings); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest."); *Clark v. Martinez*, 543 U.S.

371 (2005) (holding that Zadvydas applies to aliens found inadmissible as well as removable).

8. Further, this action also arises pursuant to 28 U.S.C. § 1331, federal question jurisdiction, as this Court has power to issue a federal injunction to force the ICE and the Correctional Center to release Mr. Cun Chitay so that he will not have to endure the continued burden of unreasonable detention.

VENUE

9. Venue lies in the Southern District of Mississippi, because Mr. Cun Chitay is currently detained in the territorial jurisdiction of this Court, at the Adams County Correctional Center. 28 U.S.C. § 1391.

LEGAL BACKGROUND

10. The Immigration and Nationality Act (INA) prescribes three basic forms of detention for noncitizens in removal proceedings.
11. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge (IJ). *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are 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).
12. 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).

13. Last, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).
14. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
15. 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).
16. Following 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).
17. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. 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)).

18. Respondents' new policy turns this well-established understanding on its head and violates the statutory scheme.
19. Overwhelmingly, courts have rejected the interpretation offered by Respondents that § 1225(b)(2) requires the detention of all noncitizens living in the country who are "inadmissible" because they entered the United States without inspection.¹
20. Despite these findings from federal courts, ICE released a memorandum instructing its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject bond redetermination hearings for applicants who arrived in the United States without documents.
21. A May 22, 2025, unpublished BIA decision confirms that the Executive Office for Immigration Review (EOIR) is taking this same position that noncitizens who entered the United States without admission or parole are ineligible for immigration judge bond hearings.
22. This is now a widespread position adopted by EOIR applying across the United States.
23. This interpretation defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

¹ See, e.g., *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2371588, *9 (S.D.N.Y. Aug. 13, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *6 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, Doc. 20 at 7 (W.D. La. Aug. 27, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS, Doc. 11 at 5 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025, at *10 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827, at *13 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285, at *2 (C.D. Cal. Aug. 15, 2025); *Maldonado*, 2025 WL 2374411, at *13; *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988, at *8 (D. Mass. Aug. 14, 2025).

24. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, which “decid[e] the inadmissibility or deportability of a[] [noncitizen].”
25. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.
26. 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).
27. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner who are alleged to have entered the United States without admission or parole.

FACTS

28. Petitioner Cun Chitay has resided in the United States since around 2008 and lived in New Jersey before being detained and transported to Natchez, MS.
29. On or about July 14, 2025, Petitioner was arrested by immigration authorities as part of a widescale immigration enforcement action.

30. He was placed into removal proceedings to appear before an immigration judge (IJ) and was charged with having entered the United States without inspection and being present without valid immigration documents. 8 U.S.C. § 1182(a)(6)(A)(i).
31. On or about July 28, 2025, an IJ terminated proceedings after finding this case was not a priority and based on Petitioner's pending case with United States Citizenship and Immigration Services (USCIS) and the Department of State's National Visa Center (NVC).²
32. On or about August 22, 2025, the Department of Homeland Security filed an appeal of the IJ's decision. This case remains pending before the Board of Immigration Appeals (BIA).
33. ICE has not granted release or set a bond amount for the Petitioner. Due to his manner of entry, the termination of court proceedings, and the government's new policy, seeking a bond redetermination hearing with the immigration court is impossible.
34. Petitioner Cun Chitay is married to a United States citizen, Julia Vasquez Argueta, and has four children with her, one of which has a serious health issue. He and Julia managed the family business and provided financially for the children.
35. Petitioner Cun Chitay has no criminal history beyond his unlawful entry into the United States, almost twenty years ago. He is neither a flight risk nor a danger to the community.

² Petitioner has an approved I-130 Petition and an approved I-601A provisional waiver. Following the approval of the I-130, the case for an immigrant visa was initiated with the Department of State's National Visa Center or NVC. The Petitioner has completed all the prerequisites and is simply waiting for an interview to be scheduled at the Embassy in Guatemala City, Guatemala.

CAUSES OF ACTION

COUNT 1

Violation of 8 U.S.C. § 1226(a)

Unlawful Denial of a Bond Hearing

36. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
37. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted or paroled. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.
38. The application of § 1225(b)(2) to bar Petitioner from receiving a bond redetermination hearing before an immigration judge is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT 2

Violation of Procedural Due Process

39. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
40. 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).
41. Petitioner has a fundamental interest in liberty and being free from official restraint.

42. The government's detention of Petitioner without the possibility for 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 respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Declare that the Petitioner's inability to seek a bond redetermination hearing before an immigration judge violates the INA, APA, and Due Process;
- c. Issue a writ of habeas corpus requiring that Defendants release Petitioner;
- d. Set aside Respondents' unlawful detention policy under the APA, 5 U.S.C. § 706(2);
- e. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 241(d), 5 U.S.C. § 504, or any other applicable law; and
- f. Order further relief as this court deems just and appropriate.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this the 14th day of October, 2025.



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CERTIFICATE OF SERVICE

This is to certify that on this 14th day of October, 2025, the foregoing **PETITION FOR A WRIT OF HABEAS CORPUS AND PETITION FOR FEDERAL INJUNCTION** and its accompanying Exhibits were served by First Class Mail, postage pre-paid, on:

Pam Bondi, Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Kristi Noem, Secretary
Department of Homeland Security
425 I Street
Washington, D.C. 20536

Todd Lyons, Acting Director
Immigration and Customs Enforcement
500 12th Street, SW
Washington, D.C. 20536

Brian Acuna, Field Office Director
U.S. Immigration and Customs Enforcement
1250 Poydras Street, Suite #325
New Orleans, Louisiana 70113

Raphael Vergara, Warden
Adams County Correctional Center
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Natchez, Mississippi 39120

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Federal District Court, Southern District of Mississippi
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