JUDGE KATHLEEN CARDONE

FILED

2025 OCT 15 AM 11:39

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

EP 25CV0470

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Carlos Arnulfo ORDONEZ-LOPEZ,

Petitioner,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; Mary DE ANDA-YBARRA, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Warden of EL PASO CAMP EAST MONTANA,

Respondents.

Case No. _____

VERIFIED PETITION FOR WRIT OF

HABEAS CORPUS

INTRODUCTION

1. Petitioner, Carlos Arnulfo ORDONEZ-LOPEZ, has been in the physical custody of Respondents since August 19, 2025, and is currently detained at the EL PASO CAMP EAST MONTANA Detention Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner is charged with being present in the United States without being admitted or paroled. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on this allegation, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on 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 detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

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 detention under 8 U.S.C. § 1225(b)(2)(A) and are therefore ineligible to be released on bond.

5. An Immigration Judge (IJ) granted Petitioner a bond on September 5, 2025, after determining that he was neither a danger to the community nor a flight risk. DHS then filed a Notice of Intent to Appeal, which automatically stayed Petitioner's release on bond.

Thereafter, DHS moved the IJ to reconsider the September 5th order granting Petitioner's bond in light of the BIA decision in *Matter of Yajure Hurtado*. The IJ amended the prior order and denied Petitioner bond on September 30, 2025 for lack of jurisdiction under *Matter of Yajure Hurtado*.

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 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, § 1226(a), that allows for 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 and are arrested on a warrant issued by the Attorney General.

7. 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.

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a new bond hearing under § 1226(a) within seven days.

JURISDICTION

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the ICE Detention Facility at Fort Bliss, known as CAMP EAST MONTANA, located at 6920 Digital Road El Paso, Texas.

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 Western 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 Western District of Texas.

PRUDENTIAL EXHAUSTION

14. "Where Congress specifically mandates, exhaustion is required." *McCarthy v. Madigan*, 503 U.S. 140 (1992). Conversely, only "the []prudential doctrine of exhaustion controls" where "a statute does not textually require exhaustion" *Taylor v. U.S. Treasury Dep't*, 127 F.3d 470, 475 (5th Cir. 1997).

15. No statute applicable to Petitioner's claim requires administrative exhaustion, thus Petitioner has no statutory obligation requiring him to exhaust other administrative remedies prior to filing this petition. *See Linares v. Collins*, 1:25-CV-00584-RP, slip op. at 6 n.3 (W.D. Tex. Aug 12, 2025) (citing *Miranda v. Garland*, 34 F. 4th 338 (4th Cir. 2022)).

REQUIREMENTS OF 28 U.S.C. § 2243

16. 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, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

17. 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

18. Petitioner Carlos Arnulfo ORDONEZ-LOPEZ is a citizen of Guatemala who has been living in the United States since 2007 and in immigration detention since August 19, 2025.

19. Respondent Mary DE ANDA-YBARRA is the Director of the El Paso Field Office of ICE's Enforcement and Removal Operations division. As such, Mary DE ANDA-YBARRA is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in her official capacity.

20. 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.

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

22. 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.

23. Respondent the 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.

24. Respondent Warden of the EL PASO CAMP EAST MONTANA has immediate physical custody of Petitioner where he is being detained, and is being sued in their official capacity.

LEGAL FRAMEWORK

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

26. 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).

27. 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).

28. 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).

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

30. 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).

31. 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).

32. 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 pursuant to 8 U.S.C. § 1226(c). 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)).

33. The Supreme Court has also explained that the mandatory detention scheme of § 1225 applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Conversely, "Section 1226 generally governs the

process of arresting and detaining that group of aliens [already in the country]." *Id.* at 288 (emphasis added).

34. 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.

35. 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 subject to 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.

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

37. 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.

38. Even before the BIA introduced *Matter of Yajure Hurtado*, District Courts in the 5th and 9th Circuit had held that such a reading of the INA is likely erroneous and that § 1226(a), not § 1225(b), applies "to aliens already present in the United States". *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136, at *6 (W.D. La. Aug. 27, 2025); *see also Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. April 24, 2025

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

2025). In *Kostak* the District Court relied on the reasoning in *Jennings* to differentiate "between the detention of arriving aliens who are seeking entry into the United States under Section 1225 and the detention of those who are already present in the United States under Section 1226." *Id.* at *6.

39. Overwhelmingly, courts have rejected ICE and EOIR's new interpretation of the INA's detention authorities and have adopted the same reading as the courts in *Kostak* and *Rodriguez Vazquez. See, e.g.*, *Belsai D.S. v. Bondi*, No. 25-cv-3682 (KMM/EMB) (D. Minn. Oct 01, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR (N.D. Iowa Sep 23, 2025); *Singh v. Lewis*, Civil Action No. 4:25-cv-96-RGJ (W.D. Ky. Sep 22, 2025); *CHOGLLO CHAFLA v. SCOTT*, No. 2:2025-CV-00437-SDN 2025 WL 2688541 (D. Me. September 21, 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); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-00326, ECF No. 16 (D.N.H. Sept. 8, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Francisco T. v. Bondi*, No. 25-CV-03219, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Diaz Diaz v. Mattivelo*, No. 1:25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 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); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025).

40. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Kostak* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

41. Section 1226(a) applies by default to all persons arrested "on a warrant issued by the Attorney General [...] and detained pending a decision on whether the alien is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of an alien."

42. 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). 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.

43. 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.

44. 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).

45. 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.

FACTS

46. Petitioner has resided in the United States since October of 2007 and lives in Stuart, Florida.

47. On October 8, 2021, Petitioner applied for Asylum, Withholding of Removal and protection under the Convention Against Torture ("CAT") with Respondent, DHS.

48. On November 20, 2023, Respondent, DHS issued a Form I-862 Notice to Appear, charging Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone present in the United States without being admitted or paroled. *See* Form I-862 Notice to Appear dated November 20, 2023, attached hereto as **Exhibit 1**.

49. On August 19, 2025, Petitioner reported to the ICE field office in Stuart, Florida for a routine check-in and was arrested by ICE pursuant to a DHS arrest warrant. *See* DHS Form I-213 Record of Deportable/Inadmissible Alien at 2-3, attached hereto as **Exhibit 2**.

50. Following Petitioner's arrest, he was transferred to Alligator Alcatraz in Miami, Florida, and later to the El Paso Camp East Montana, in El Paso, Texas, without the opportunity to post bond or be released on other conditions. *See* ICE Detainee Locator search with Petitioner's location, attached hereto as **Exhibit 3**.

51. Petitioner requested a bond hearing before an Immigration Judge on August 26, 2025.

52. A bond hearing was held before IJ Michael Pleters at the El Paso Immigration Court on September 5, 2025. IJ Pleters conducted a thorough review of Petitioner's record and granted Petitioner a bond for $2,000 after finding that he is not a danger to the community nor a flight risk. *See* Order of the Immigration Judge dated September 5, 2025, attached hereto as **Exhibit 4**.

53. ICE filed a Notice of Intent to Appeal the Custody Redetermination on September 5, 2025, staying Petitioner's release on bond.

54. ICE then moved the IJ to reconsider his order granting Petitioner's bond, based on the BIA precedential decision in *Matter of Yajure*, and filed an appeal with the BIA.

55. While Respondent's appeal was pending, IJ Pleters issued two amended orders on September 30, 2025 and October 8, 2025 denying Petitioner's bond, because "[t]he Court lacks jurisdiction to consider bond [under] *Matter of Yajure Hurtado*" (emphasis added). *See* Amended Order of the Immigration Judge dated September 30, 2025, attached hereto as **Exhibit 5A**; Amended Order of the Immigration Judge dated October 8, 2025, attached hereto as **Exhibit 5B**.

56. *Matter of Yajure Hurtado* effectively precludes any appeal of the IJ's amended decision denying bond to Petitioner on the grounds of lack of jurisdiction due to him being an "applicant for admission," and makes it futile.

57. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

58. Petitioner is not a threat to national security nor a danger to the community. Petitioner had prior arrests for driving without a driver's license, a misdemeanor traffic offense in Florida, but he currently has a valid Florida driver's license.

59. Petitioner is not a flight risk. Petitioner has a pending application for Asylum, Withholding of Removal and Protection under CAT, and he routinely reports to the ICE Field Office in Stuart, Florida for scheduled check-ins.

60. Petitioner also has a valid Employment Authorization Document and works as a painter in Stuart, Florida. Petitioner is the main provider to his minor U.S. citizen son.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

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

62. 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.

63. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II

Violation of the Bond Regulations

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

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

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

67. 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 III

Violation of Due Process

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

69. 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).

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

71. 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. Order that Petitioner shall not be transferred outside the Western District of Texas while this habeas petition is pending;

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

d. 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;

e. Declare that Petitioner's detention is unlawful;

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

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

DATED: October 9, 2025

Respectfully submitted,

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**Pro hac vice* application pending

ATTORNEY FOR PETITIONER

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner, because I am Petitioner's attorney. I have discussed with the Petitioner the facts described in this petition. Based on those discussions, I hereby verify that the factual statements in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed this 9th day of October, 2025.

Rolando Grillo
Attorney for Petitioner