

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON**

Isidro Calleja Sebastian,

Petitioner,

v.

Civil No.:

Sam Olson, in his official capacity as Deputy
Director, Chicago Field Office, Immigration and
Customs Enforcement;

Kristi Noem, in her official capacity as Secretary
Of the U.S. Department of Homeland Security;

Todd M. Lyons, in his official capacity as Acting
Director of U.S. Immigration and Customs
Enforcement;

Pamela Bondi, in her official capacity as Attorney
General of the United States;

James A. Daley, in his official capacity as Jailer
Of the Campbell County Detention Center.

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS

1. Petitioner, Isidro Calleja Sebastian (“Mr. Calleja Sebastian”), petitions this Court to issue a Writ of Habeas Corpus or order Respondents to show cause for his continued detention within 3 days, or no later than 20 days, in accordance with 28 U.S.C. § 2241.

STATEMENT OF THE CASE

1. Mr. Calleja Sebastian is in the physical custody of Respondents at the Campbell County Detention Center. He now faces unlawful detention because the Department of Homeland

Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded he is subject to mandatory detention.

2. Mr. Calleja Sebastian is charged with, inter alia, having entered the United States without inspection. 8 U.S.C. § 1182 (a)(6)(A)(i).
3. Respondents' detention of Mr. Calleja Sebastian is based solely on a Board of Immigration Appeals decision issued on September 5, 2025, which holds 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 therefore ineligible to be released on bond.
4. Mr. Calleja Sebastian's detention on this basis violates the plain language of the Immigration and Nationality Act (INA). 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like Mr. Calleja Sebastian who entered decades ago 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 Mr. Calleja Sebastian, are charged as inadmissible for having entered the United States without inspection.
5. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to Mr. Calleja Sebastian and others like him.
6. Moreover, Respondents' interpretation renders obsolete the INA's mandatory detention statute, 8 U.S.C. § 1226(c), including the very recent amendments implemented by the Laken Riley Act. These provisions require mandatory detention without bond for certain

classes of aliens, namely aliens charged or convicted of certain crimes. If all aliens who entered without inspection are subject to mandatory detention, which Respondents assert as their basis for detaining Mr. Calleja Sebastian and others like him, there would be no need for the mandatory detention provisions of the statute.

7. Mr. Calleja Sebastian has been detained in ICE custody since approximately June 25, 2025. He is currently detained at the Campbell County Detention Center in Newport, Kentucky.
8. Accordingly, Mr. Calleja Sebastian asks this Court to order his immediate release from detention via a writ of habeas corpus.

JURISDICTION AND VENUE

9. This Court has jurisdiction under Art. I, § 9, cl. 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 2241 (the general grant of habeas authority to the district courts); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).
10. The district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *See Zadvydas*, 533 U.S. at 687; *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Diaz- Calderon v. Barr*, No. 2:20-CV-11235-TGB, 2020 WL 5645191 (E.D. Mich. Sept. 22, 2020).
11. This action also arises under the Due Process Clause of the Fifth Amendment to the United States Constitution.
12. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 2241(a); and Fed. R. Civ. P. 57 and 65.

13. Venue is proper under 28 U.S.C. § 1391(e) because Petitioner is presently detained at the Campbell County Detention Center in Newport, Kentucky, within the jurisdiction of the Eastern District of Kentucky. *See* 28 U.S.C. § 2241(d).

THE PARTIES

14. Mr. Calleja Sebastian is a 58-year-old native and citizen of Mexico who entered the United States more than 20 years ago. He has been in DHS custody in conditions indistinguishable from penal confinement since approximately June 24, 2025.
15. Respondent Sam Olson is sued in his official capacity as Deputy Director, Chicago Field Director of U.S. Immigration and Customs Enforcement (ICE), which has administrative jurisdiction over Mr. Calleja Sebastian's detention and which contracts with the Campbell County Detention Center where Mr. Calleja Sebastian is held. Mr. Olson is the legal custodian of Mr. Calleja Sebastian with authority to authorize his release.
16. Respondent Kristi Noem is the Secretary of Homeland Security (DHS). She is sued in her official capacity. In that capacity, Defendant Noem is responsible for overseeing the enforcement of federal immigration policies, including those that resulted in the detention of Mr. Calleja Sebastian.
17. Respondent Todd Lyons is named in his official capacity as Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Mr. Calleja Sebastian. As such, he is also a legal custodian of Mr. Calleja Sebastian.
18. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States, which has executive authority over the Executive Office for Immigration Review (EOIR), pursuant to 8 U.S.C. § 1103(g). She is legally responsible for

administering removal and bond proceedings as well as the procedural standards used in those proceedings. She is therefore a legal custodian of Mr. Calleja Sebastian.

19. Respondent James A. Daley is sued in his official capacity as Jailer of the Campbell County Detention Center, where Mr. Calleja Sebastian is detained. Mr. Daley is the immediate custodian of Mr. Calleja Sebastian.

FACTS AND PROCEDURAL HISTORY

20. Mr. Calleja Sebastian is a native and citizen of Mexico, who has resided in the United States for more than twenty years. Prior to his detention, he resided in Indiana with his family.
21. Mr. Calleja Sebastian was arrested on or about June 21, 2025 at a police checkpoint. He was transferred to ICE custody and is now detained at the Campbell County Detention Center.
22. DHS placed Mr. Calleja Sebastian in removal proceedings before the Indianapolis Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Mr. Calleja Sebastian with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without being admitted or paroled.
23. Mr. Calleja Sebastian has lived in Indiana for more than 20 years. He lives with his wife, and they have 5 adult children who also live in the area. Mr. Calleja is a proud grandfather of 9 U.S. citizen children.
24. Mr. Calleja Sebastian has no criminal history, only two citations for minor traffic violations prior to the police checkpoint at which he was stopped in June 2025. Mr. Calleja Sebastian is neither a flight risk nor a danger to the community.

25. Subsequent to his transfer to ICE custody, Mr. Calleja Sebastian requested a bond redetermination hearing before an immigration judge in Indianapolis, Indiana.
26. On July 12, 2025, the IJ held a bond redetermination hearing, granted Mr. Calleja Sebastian's bond redetermination request, and ordered him to be released from custody under a bond of \$3,000.00. DHS appealed the IJ's decision to the Board of Immigration Appeals (BIA) and Mr. Calleja Sebastian remained detained pending appeal.
27. On October 9, 2025, the BIA sustained DHS's appeal, vacated the IJ's order, and ordered Mr. Calleja Sebastian detained without bond.
28. The Board's decision in this case is based solely on its September 5, 2025 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which reversed nearly three decades of statutory interpretation and bond precedent.
29. As a result, the government continues to detain Mr. Calleja Sebastian in conditions that are indistinguishable from penal confinement. Without relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.
30. Mr. Calleja Sebastian filed an application for asylum and withholding of removal as a defense from removal.
31. He is scheduled for a final merits hearing on that application on November 12, 2025.
32. Mr. Calleja Sebastian is detained two hours from where his family resides and where his attorney's office is located in Indianapolis, Indiana, which significantly deprives him of a meaningful opportunity to confer with counsel, gather the necessary evidence to support his application (as required by the Real ID Act of 2005), and prepare for his hearing.

24. Upon release, Mr. Calleja Sebastian will reunite with his family, including his wife, adult children, and grandchildren, in Indianapolis.

LEGAL FRAMEWORK

25. The Immigration and Nationality Act (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 immigration judge (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, for almost three decades, most people who entered without inspection and were placed in standard removal proceedings received bond hearings (and were widely granted bond), 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. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework, reversed decades of practice, and renders obsolete the mandatory provisions of 8 U.S.C. § 1226(c), including the Laken Riley Act.
34. 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.

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

35. On September 5, 2025, the BIA adopted the 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 arriving aliens subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.
36. However, *Yajure Hurtado* should not be applied so broadly to *all* aliens who entered the United States without inspection, as Respondents' policy intends to do.
37. First, the respondent in *Yajure Hurtado* conceded that he was an applicant for admission under 8 U.S.C. § 1225, so the Board's arduous opinion describing who is an applicant for admission is mere dicta. *See* 28 I&N Dec. 216 at 221. Mr. Calleja Sebastian has never conceded that he is an applicant for admission under § 1225, and the DHS's own charging document (the Notice to Appear dated June 24, 2025) explicitly states he is an alien present who has not been admitted or paroled, *not* an arriving alien.
38. Second, Mr. Calleja Sebastian applied for asylum and withholding of removal before the immigration court, which means he is an applicant for asylum and withholding of removal. Neither asylum nor withholding of removal is an admission. *See Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013). As such, Mr. Calleja Sebastian is not applying for admission and cannot be treated as an applicant for admission.
39. 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.
40. Even before ICE or 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 § 1226(a), not § 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).

41. Subsequently, court after court has 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).

42. 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 § 1226(a), not § 1225(b), applies to people like Mr. Calleja Sebastian.
43. 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].”
44. 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.

45. 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.
46. 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).
47. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Mr. Calleja Sebastian, who entered many years ago and were residing in the United States at the time they were detained.

CLAIMS FOR RELIEF

COUNT I Violation of the INA

24. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
25. 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.

26. The application of § 1225(b)(2) to Mr. Calleja Sebastian unlawfully mandates his continued detention and violates the plain language of the INA.

COUNT II
Violation of the Bond Regulations

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

25. 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 [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 IJs under 8 U.S.C. § 1226 and its implementing regulations.

26. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has adopted a policy and practice of applying § 1225(b)(2) to individuals like Mr. Calleja Sebastian.

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

COUNT III

Violation of Due Process

28. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
29. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V.
30. “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).
31. Mr. Calleja Sebastian has a fundamental interest in liberty and being free from official restraint.
32. The government’s detention of Mr. Calleja Sebastian— after an immigration judge ordered him released on bond, necessarily finding that he is not a flight risk or danger to others— violates his right to due process.
33. 8 U.S.C. §1229a(b)(4) provides rights to aliens in removal proceedings: “(a) the alien *shall* have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceedings, (b) the alien *shall* have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien’s own behalf, and to cross-examine witnesses presented by the Government [...]” (emphasis added).
33. The government’s detention of Mr. Calleja Sebastian, two hours away from his family and attorney, deprives him of a meaningful opportunity to confer with counsel, gather the necessary evidence to support his application (as required by the Real ID Act of 2005), and prepare for his hearing, in violation of 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 Mr. Calleja Sebastian shall not be transferred outside the Eastern District of Kentucky 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 Mr. Calleja Sebastian;
- e. Declare that Mr. Calleja Sebastian's detention is unlawful;
- f. Order the removal hearing for Mr. Calleja Sebastian scheduled to take place on November 12, 2025 be vacated and removal proceedings stayed to maintain the status quo while this habeas petition is pending; and
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 21st day of October, 2025.

s/ Sarah C. Larcade
Sarah C. Larcade (KY 97506)
Larcade, Ficker, & Khubunaia, LLC
8190 Beechmont Avenue, Suite 334
Cincinnati, Ohio 45255
(513) 587-8765
sarah@larcadelaw.com

Counsel for Petitioner

VERIFICATION

I, Sarah C. Larcade, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 2242 that, on information and belief, the factual statements in the foregoing Petition for Habeas Corpus are true and correct.

s/ Sarah C. Larcade

Dated: October 21, 2025