

legal opinion that overturns decades of settled law, Respondents now consider Petitioner to be detained under a different detention statute, 8 U.S.C. § 1225(b)(2), which applies to noncitizens apprehended at the border. That latter statute does not allow release on bond. Petitioner therefore brings this action seeking a declaration from this Court that he is properly detained (if at all) only pursuant to 8 U.S.C. § 1226(a); and seeking an order that Respondents schedule him for a bond hearing before an Immigration Judge within 15 days.

JURISDICTION AND VENUE

2. This action arises under the Immigration and Nationality Act of 1952 (“INA”), as amended, 8 U.S.C. § 1101 *et seq.*, and the Due Process Clause of the Fifth Amendment to the United States Constitution. This Court has jurisdiction pursuant to Art. I, § 9, cl. 2 of the United States Constitution; 28 U.S.C. § 2241 (general grant of habeas authority to the district courts); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. §§2201, 2202 (Declaratory Judgment Act); and 28 U.S.C. § 1651 (All Writs Act).

3. Venue is proper under 28 U.S.C. § 1391(e)(1)(A), (B) because Respondent Field Office Director, who has a principal place of business in Los Fresnos, TX., is the ICE official with immediate legal custody of Petitioner, and Petitioner is currently held in ICE custody within the territorial jurisdiction of this District.

PARTIES

4. Petitioner, Cesar Alexander Guerra Alarcon, is a native and citizen of Guatemala, currently detained by Respondents at the Port Isabel Service Detention Center in Texas.

5. Respondent Kristi Noem is the Secretary of Homeland Security, the cabinet department of which U.S. Immigration and Customs Enforcement is an agency. She is being sued in her official capacity.

6. Respondent Pamela Bondi is the Attorney General of the United States. The Immigration Judges who conduct bond hearings and the Board of Immigration Appeals members who decide bond order appeals do so as her designees. In addition, the automatic stay regulation challenged in this lawsuit was promulgated by her agency. She is sued in her official capacity.

7. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, the agency currently detaining Petitioner. He is the individual who issued an order to detain individuals like Petitioner, and also has legal custody over Petitioner. He is sued in his official capacity.

8. Respondent Miguel Vergara, Field Office Director of the Harlingen Field Office of U.S. Immigration and Customs Enforcement, located in Harlingen, TX, is the immediate custodian who is currently holding Petitioner in legal custody. He is sued in his official capacity.

9. Respondent Warden of the Port Isabel Service Detention Center, where Petitioner is currently detained, is the immediate custodian who is currently holding Petitioner in physical custody. He is sued in his official capacity.

LEGAL BACKGROUND

A. Immigration Detention Legal Framework

10. When a noncitizen is alleged to have violated immigration laws, they are generally placed into traditional removal proceedings, during which an immigration judge will determine whether they are removable and then whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.

11. Detention is authorized for “certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and 1126(c).” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The statute provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a) generally, or mandatory detention under 8 U.S.C. § 1226(c) if

they have been arrested or convicted of certain crimes. Discretionary detention under § 1226(a) has been described as the “default” provision for immigration detention for those subject to traditional removal proceedings. *Id.* at 288. Under § 1226(a), “[e]xcept as provided in subsection (c) of this section,’ the Attorney General ‘may release’ an alien detained under § 1226(a) ‘on ...bond’ or ‘conditional parole.’” *Id.*

12. Alternatively, mandatory detention is authorized for “certain aliens *seeking admission* into the country under §§ 1225(b)(1) and 1225(b)(2),” [emphasis added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and determined to be “applicants for admission” may be subject to mandatory detention under two separate subsections. Applicants for admission include someone:

“present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for the purposes of this chapter to be an applicant for admission.”

§ 1225(a)(1).

13. The first subset, under 8 U.S.C. § 1225(b)(1), may be subject to expedited removal and mandatory detention if they are determined to be an “arriving alien,” and if they have not been physically present in the United States continuously for a two-year period immediately prior.

Regulations define an “arriving alien” as:

“an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.”

8 C.F.R. § 1.2.

14. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of “applicant for admission” specifically when “the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title,” i.e. for traditional removal proceedings [emphasis added].

15. An “arriving alien” or an applicant for admission “seeking admission” may only be released from detention on parole (which is a form of release on recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no bond available to an arriving alien or applicant for admission seeking admission. *Id.* There is no such thing as a “parole bond” – a release must be either parole under § 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*

16. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE’s initial custody determination before the IJ (a “custody review hearing”), who has the authority to modify ICE’s custody determination and set bond in a case in which ICE has designated no bond, lower bond when ICE has set a cash bond amount, or deny bond completely. 8 C.F.R. § 1003.19.

17. Custody review hearings are separate from hearings in the underlying removal proceedings. 8 C.F.R. § 1003.19(d). If a noncitizen is granted bond by the IJ, she must still appear in immigration court for the IJ to determine her removability and hear any claim for relief from removal. At a custody review hearing, once jurisdiction over bond is established, the IJ’s inquiry is limited to whether the detainee is a danger to the community or a flight risk, and bond may only be granted when an IJ has determined that the detainee meets his burden of proof that he is neither. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

18. For decades, it has been Respondents' practice to afford § 1226(a) discretionary bond hearings and custody review hearings to those individuals who have been encountered neither at a point of entry nor seeking admission to the United States. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) ("Respondents' proposed application of § 1226 is also belied by the Department of Homeland Security's 'longstanding practice' of treating noncitizens taken into custody while living in the United States, including those detained and found inadmissible upon inspection and then released into the United States with the government's acquiescence, who have committed no crime after release, as detained under § 1226(a)." citing *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)).

B. New ICE memo reinterpreting 8 U.S.C. § 1225(b)(2)

19. On July 8, 2025, Respondent ICE issued new interim guidance that announced a breathtakingly broad interpretation of 8 U.S.C. § 1225(b)(2). *See* ICE memorandum "Interim Guidance Regarding Detention Authority for Applications for Admission."¹ This memo concerns the detention of "applicants for admission" as defined by § 1225(a)(1). "Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)]." *Id.* DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id.* ("For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated.")

¹ Available at: <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last visited October 23, 2025).

20. In addition to the announcement re-interpreting § 1225(b)(2), the memo further clarifies that “[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1227], with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].” *Id.*

21. Moreover, ICE maintains that “DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position.” *Id.* ICE fails to clarify under what legal authority, then, those prior releases were effectuated. Rather, ICE signals the resulting lack of “correct” paperwork is nonetheless permissible. *Id.* (“Accordingly, ERO and HIS are not required to ‘correct’ the release paperwork by issuing INA § 212(d)(5) parole paperwork.”)

22. Nationwide implementation of the ICE § 1225(b)(2) mass detention policy ensued.

C. Recent BIA decision *Matter of Yajure Hurtado*

23. On September 5, 2025, the Board of Immigration Appeals (BIA), which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE’s re-interpretation of § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

24. The BIA held that the respondent was an “applicant for admission” within the scope of § 1225(b), and therefore subject to mandatory detention.

25. The BIA characterized the issue before it as “one of statutory construction: Does the INA require that *all* applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings,

and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?” [emphasis added]. *Id.* at 220.

26. The BIA reasoned that individuals “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer.” *Id.* at 228.

27. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id.* at 225, FN6 (“We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled ‘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), reflects that the Immigration and Naturalization Service took the position at that time 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.’”)

28. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229.

29. The BIA decision is binding on all immigration judges nationwide.

30. Respondents’ new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). *Rosado*, 2025

WL 2337099, at *11 (“It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.”).

FACTS

31. Petitioner entered the United States as an unaccompanied alien child, without inspection between ports of entry, across the U.S.-Mexico border, in May 2003. He was not encountered by immigration officials nor issued a Notice to Appear upon entry.

32. Petitioner then made his way to Maryland, where he established a life.

33. Petitioner later married a U.S. citizen, with whom he had a U.S.-citizen child; he also has a stepdaughter that he considers as his own daughter. In October 2020, Petitioner’s U.S.-citizen wife filed an I-130 Petition for Alien Relative on Petitioner’s behalf, which was approved on October 4, 2021. *See* Ex. 1 (I-130 approval notice).

34. On October 18, 2022, Petitioner filed an I-601A Application for Provisional Unlawful Presence Waiver, pursuant to 8 C.F.R. § 212.7(e). *See* Ex. 2 (I-601 receipt notice). That application has not yet been adjudicated.

35. In July 2025, Petitioner received a Request for Evidence (“RFE”) indicating that he had previously affirmed that he had never been arrested. His attorney of record timely responded to the RFE before the September 2, 2025 deadline, and the case is currently pending a final decision.

36. Petitioner continued to live his life in Maryland as a father and husband, seeking to remain in the United States while awaiting the adjudication of his Form I-601A so that he could then depart the United States and return via consular processing at the U.S. consulate in Guatemala as a Lawful Permanent Resident.

37. Petitioner has pending removal proceedings (a Master Calendar Hearing set for October 28, 2025), and is not subject to a final order of removal. See EOIR Automated Case Information (available at <https://acis.eoir.justice.gov/> (last visited on October 23, 2025)):

Name: GUERRA-ALARCON, CESAR ALEXANDER | A-Number: 242-096-914 | Docket Date: 9/12/2025

Next Hearing Information Your upcoming MASTER hearing is on October 28, 2025 at 9:30 AM. JUDGE MacGregor, Margaret R. COURT ADDRESS 27991 BUENA VISTA BLVD LOS FRESNOS, TX 78566	Court Decision and Motion Information  This case is pending.
BIA Case Information No appeal was received for this case.	Court Contact Information If you require further information regarding your case, or wish to file additional documents, please contact the immigration court. COURT ADDRESS 27991 BUENA VISTA BLVD LOS FRESNOS, TX 78566 PHONE NUMBER (956) 254-5700

38. On September 9, 2025, Petitioner was stopped while driving home in Washington, D.C., during what appears to have been a random enforcement action conducted by ICE. He was taken into custody without prior notice or warrant and subsequently transferred to the Port Isabel Service Processing Center in Texas, where he remains detained. See ICE Detainee Locator information (available at <https://locator.ice.gov/> (last visited on October 23, 2025)):

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Facility Page

Detention Information For:
CESAR ALEXANDER GUERRA-ALARCON
Country of Birth: Guatemala
A-Number: 242096914



Current Detention Facility:
PORT ISABEL SERVICE DETENTION CENTER
27991 BUENA VISTA BLVD.
NA
LOS FRESNOS, TX 78566
Visitor Information: (956) 547-1700

MORE INFORMATION >

39. Petitioner's continued detention is causing immediate, severe, and irreparable harm to his U.S. citizen relatives. His wife, who suffers from hypertension and thyroid disease, has experienced a significant deterioration in her physical and psychological health due to the sudden loss of her husband's support. She is unable to sleep, is under extreme emotional distress, and has been forced to work excessive overtime in physically demanding conditions merely to meet basic household expenses, placing her at serious risk of medical crisis. Petitioner's 11-year-old U.S. citizen stepdaughter, who considers Petitioner to be her father, has been diagnosed with anxiety and depression and is undergoing therapy through Medicaid. Her symptoms have intensified since Petitioner's detention; she now experiences anxiety attacks and emotional instability due to the loss of her primary parental figure. Likewise, Petitioner's 17-year-old U.S. citizen son has been deprived of both financial support and critical paternal guidance during a formative period, resulting in emotional and financial hardship that cannot be remedied through delayed relief.

40. Additionally, Petitioner was the family's primary breadwinner and owned a small renovation business that is now inoperative, leaving ongoing client projects incomplete and placing the household in immediate economic jeopardy. His detention has resulted in loss of income, risk of housing instability, and inability to meet basic needs such as food, utilities, and medical care. These harms are not speculative; they are active, severe, and escalating. The cumulative psychological, medical, and financial damage to Petitioner's U.S. citizen family members far exceeds the ordinary consequences of detention and constitutes irreparable harm that rises to a constitutional level, warranting immediate judicial intervention.

41. At the time of filing this action, Petitioner is currently detained by Respondents at the Port Isabel Service Detention Center, under contract to ICE.

42. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b). See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Accordingly, it would be futile for Petitioner to request a bond from an Immigration Judge. Exhaustion of administrative remedies would therefore be futile.

**CAUSES OF ACTION
FIRST CLAIM FOR RELIEF:
Declaratory Judgment**

43. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-42.

44. The District Court in *Lopez Benitez v. Francis* explains why an individual like Petitioner is properly considered detained under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2): “[W]hile ‘U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2),’ ‘[i]t also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).’” 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025). “To be sure, the line between when a person is ‘seeking admission’ as opposed to being ‘already in the country’ is not necessarily obvious. . . . But there is no dispute that the provisions at issue here are mutually exclusive—a noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226[.] It therefore follows that if [a noncitizen] was detained pursuant to one provision, he cannot be subject to the other.” *Id.* Respondents’ construction of 8 U.S.C. § 1225(b)(2)(A) “render[s] the phrase ‘seeking admission’ in § 1225(b)(2)(A) mere surplusage.” *Id.* at *6, citing *Martinez v. Hyde*, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025).

45. Petitioner requests a declaration from this Court that he is not an applicant for admission “seeking admission” or “an arriving alien” subject to mandatory detention under 8 U.S.C. §§ 1225(b)(1) or (b)(2), and that his current detention by Respondents is proper, if at all,

only under 8 U.S.C. § 1226(a).

**SECOND CLAIM FOR RELIEF:
No-Bond Detention in Violation of 8 U.S.C. § 1226(a)**

46. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-42.

47. Since Petitioner is not applicants for admission “seeking admission” or “an arriving aliens” subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2), and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), he is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

48. Respondents’ actions, as set forth herein, violate Petitioner’s statutory right to a bond redetermination hearing in front of an immigration judge.

**THIRD CLAIM FOR RELIEF:
Detention in Violation of Due Process**

49. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-42.

50. Immigration detention is civil, not criminal, in nature. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community.

51. Petitioner has been lawfully permitted to develop ties to the community, as the husband of a U.S. citizen with an approved I-130 Petition for Alien Relative, and a clear path to becoming a Lawful Permanent Resident. He is therefore a “person” within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

52. Petitioner has a liberty interest in his freedom from physical restraint.

53. Respondents’ actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate deprive Petitioner of his liberty rights without due process of law.

PRAYER FOR RELIEF

54. WHEREFORE, Petitioner respectfully requests that this Court assume jurisdiction over this matter and enter an order:

- a) Enjoin Petitioner's transfer outside of this judicial district pending this litigation;
- b) Declare that Petitioner is neither an "arriving alien" nor an "applicant for admission . . . seeking admission";
- c) Declare that Respondents' actions, as set forth herein, violate Petitioner's due process rights;
- d) Declare that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a);
- e) Grant the writ of habeas corpus and order Respondents to schedule a bond hearing before an Immigration Judge within 15 days; and
- f) Grant any other relief that this Court deems just and proper.

Respectfully submitted,

Dated: October 23, 2025

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Counsel for Petitioner

LIST OF EXHIBITS

Ex. 1) I-130 Approval notice.

Ex. 2) I-601A Receipt Notice.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

Civil Process Clerk
U.S. Attorney's Office for the Southern
District of Texas
600 E. Harrison, Ste. 201
Brownsville, TX 78520-5106

Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW, Mail Stop 0485
Washington, DC 20528-0485

Pamela Bondi, Attorney General of the
United States
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street SW, Mail Stop 5902
Washington, DC 20536-5902

Warden, Port Isabel Detention Center
27991 Buena Vista Blvd,
Los Fresnos, TX 78566.

Respectfully submitted,

Dated: October 23, 2025

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