

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

NELSON ISAIAS RIVAS ALONSO

Petitioner,

Case No. _____

v.

SAM OLSON, Field Office Director of Enforcement and Removal Operations, Chicago Field Office, Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary, U.S. Department of Homeland Security; **PAMELA BONDI**, U.S. Attorney General; U.S. **DEPARTMENT OF HOMELAND SECURITY; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**; and **SCOTT SMITH**, Jail Administrator of Dodge County Jail,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Nelson Isaias Rivas Alonso is in the physical custody of the Respondents at the Dodge County Jail in Juneau, Wisconsin. Despite an immigration judge making findings that should render him eligible for release on bond, he remains in unlawful detention because Respondents have radically and wrongly reinterpreted a provision of the Immigration and Naturalization Act (INA)

to deprive immigration judges of jurisdiction to issue bond to persons like Petitioner.

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

3. Prior to July 8, 2025, individuals like Petitioner, present in the United States and charged with having entered without inspection, were eligible under 8 U.S.C. § 1226(a) for release on bond pending a decision on removal.

4. On July 8, 2025, Respondent U.S Department of Homeland Security (DHS) issued a new policy instructing all Immigration and Customs Enforcement (ICE) employees to consider persons like Petitioner, present in the United States and charged with having entered without inspection, to be an subject to a different statute, 8 U.S.C. § 1225(b)(2), and therefore ineligible for release on bond. This change in position has since been approved by Respondent Executive Office for Immigration Review (EOIR) in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. Sept. 5, 2025).

5. Respondents' new legal interpretation is plainly contrary to the plain language of § 1225(b), the underlying statutory framework, and decades of agency practice applying § 1226(a) to people like Petitioner. District courts across the country have rejected Respondents' new interpretation of § 1225(b).

6. On October 21, 2025, an immigration judge heard Petitioner's request to be released on bond. The immigration judge found that Petitioner was not a danger to

the community and was not a flight risk and indicated that, but for *Yajure Hurtado*, he would have granted Petitioner release on bond of between \$3,000 and \$5,000.

7. However, the immigration judge determined that under *Yajure Hurtado*, he lacked jurisdiction to issue bond and therefore denied Petitioner's request.

8. Respondents' erroneous reinterpretation of §1225(b) is the but-for cause of Petitioner's continuing detention. Petitioner's continuing detention is unlawful.

9. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released on bond consistent with findings at the October 21 hearing.

JURISDICTION

10. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Dodge County Jail, 216 W. Center St., Juneau, Wisconsin 53039.

11. 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).

12. 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

13. 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 Eastern District of Wisconsin, the judicial district in which Petitioner currently is detained.

14. 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 Eastern District of Wisconsin.

REQUIREMENTS OF 28 U.S.C. § 2243

15. 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.*

16. 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

17. Petitioner Nelson Isaias Rivas Alonso is a citizen of Honduras who entered the United States as a minor in 2013. He has been in immigration detention since August 12, 2025. On October 21, 2025, an immigration judge made findings that Mr. Rivas Alonso is neither a flight risk nor a threat to the community.

18. Respondent Sam Olson is the Director of the Chicago Field Office of ICE’s Enforcement and Removal Operations division. As such, Sam Olson is Petitioner’s

immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

19. 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.

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

21. 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.

22. Respondent Executive Office for Immigration Review is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

23. Upon information and belief, Respondent Scott Smith is employed by Dodge County, Wisconsin. Respondent Smith is Jail Administrator of the Dodge County Jail, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

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

25. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *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).

26. 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).

27. 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).

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

29. 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).

30. Following the enactment of the IIRIRA, Immigration Court 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).

31. 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 immigration judge 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)).

32. 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.

33. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” 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 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.

34. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision adopting this same position. See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). 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.

35. Since the *Yajure Hurtado* decision, federal district courts across the country have rejected DHS's new interpretation of § 1225(b). See, e.g., *Luna Quispe v. Crawford*, 25-cv-1471, 2025 WL 2783799, at *5 (E.D. Va. Sept. 29, 2025); *Guerrero Orellana v. Moniz*, 25-cv-12664, 2025 WL 2809996, at *6 (D. Mass. Oct. 3, 2025); *Chanaguano Caiza v. Scott*, 25-cv-00500, 2025 WL 2806416, at *3 (D. Me. Oct. 2, 2025); *Rodriguez Vazquez v. Bostock*, No. 25-cv-05240, 2025 WL 2782499, at *27 (W.D. Wash. Sept. 30, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J. Sept. 26, 2025); *Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025); *Lepe v. Andrews*, No. 25-cv-01163, 2025 WL 2716910, at *9 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. C25-4048, 2025 WL 2712427, at *5 (N.D. Iowa Sept. 23, 2025); *Singh v. Lewis*, No. 25-cv-96, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025); *Pablo Sequen v. Kaiser*, No. 25-cv-06487, 2025 WL 2650637, at *7-8 (N.D. Cal. Sept. 16, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326, 2025 WL 2639390, at *10 (D.N.H. Sept. 8, 2025).

36. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

37. 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].”

38. 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*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

39. 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.

40. 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).

41. 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

42. Petitioner, a citizen of Honduras, entered the United States as an unaccompanied minor on February 20, 2013. (Dec. of Mignon, Ex. B).

43. He was taken into custody by the Department of Homeland Security (DHS) on February 22, 2013. (Dec of Layde, Ex. A, at *8).

44. On February 22, 2013, DHS issued him a warrant under INA § 236 [CITE]. INA § 236 is codified at 8 U.S.C. § 1226. (*Id.*, *13).

45. Also on February 22, 2013, DHS issued him a Notice to Appear charging him with being “an alien present in the United States who has not been admitted or paroled,” consistent with 8 U.S.C. § 1226. (*Id.*, *14)

46. The February 22, 2013 Notice to Appear did not identify a date or location for Petitioner’s hearing; instead it simply indicated that those details would be set later. (*Id.*).

47. Because he was a minor, Petitioner was transferred to the jurisdiction of the Office for Refugee Resettlement, a component agency of the Department of

Health and Human Services, where he remained in juvenile custody for three months. (*Id.*, *3-5)

48. ORR released him and he went to live with a cousin (*Id.*).

49. Petitioner's cousin subjected Petitioner to verbal abuse and threats. [Dec. of Mignon, Ex. B].

50. Petitioner went to live with his brother. [*Id.*].

51. After moving in with his brother, Petitioner attempted to communicate with his cousin about obtaining his legal documents. [*Id.*]

52. The cousin indicated that Petitioner needed to pay him, and then he would send the documents. (*Id.*)

53. Petitioner sent the requested money to his cousin, but the cousin never sent the documents. (*Id.*)

54. As a result, Petitioner never received notice of the time and location of his immigration hearing. (*Id.*)

55. Petitioner was ordered removed from the United States *in absentia* on January 27, 2015. (Dec. of Layde, Ex. A, *2).

56. In the summer of 2025, upon discovering this removal order and realizing he was eligible for relief, Petitioner filed a motion asking the EOIR to reopen his removal proceedings and rescind the *in absentia* removal order. That motion was granted on September 8, 2025. (Dec. of Mignon).

57. Petitioner's only encounters with law enforcement in the United States have been traffic violations. (Dec. of Mignon, Ex. B)

58. Petitioner has complied with all requirements for these citations and paid all associated fines. (*Id.*)

59. Petitioner was attending his traffic court hearing on August 12, 2025 when he was detained by ICE. He has been in detention since that date. (*Id.*)

60. Petitioner attended a hearing with the immigration court on October 21, 2025, where he requested a custody determination to allow him to be released on bond. (Dec. of Mignon).

61. During that hearing, the immigration judge found that Petitioner was not a danger to the community and was not a flight risk. (*Id.*)

62. The judge indicated that but for the current case law from the board of immigration appeals, he would have granted a bond between \$3000 and \$5000. (*Id.*)

63. The judge's decision indicated that bond was denied under *Matter of Yajure Hurtado*. (Dec. of Mignon, Ex. H).

64. As a result, Petitioner will remain detained until at least December 15, 2025, the date of his final merits hearing with the immigration court.

65. Petitioner is married to Viviana Carbajal, with whom he has three-year-old daughter. Both Viviana and the child are U.S. citizens. (Dec. of Mignon, Ex. F)

66. Petitioner plans to apply for Cancellation of Removal for Certain Non-Permanent Residents (EOIR-42B) based on the extreme and exceptionally unusual hardship his absence would cause his U.S. citizen wife and daughter. (Dec. of Parra, Ex. B)

67. In addition, Petitioner's wife plans to file a marriage petition on his behalf. (Dec. of Mignon, Ex. F)

68. Both these forms of relief would give Petitioner a path to remain in the country legally; however, his ability to prepare his case is impeded by his detention.

69. On October 25, 2025, Petitioner underwent psychological evaluation which identified that he is suffering from depressive disorder and generalized anxiety disorder exacerbated by his detention. (Dec. of Parra, Ex. C).

70. The evaluator states, "It is my professional opinion that the extended detention of Mr. Rivas Alonso is taking an extreme toll on Mr. Rivas Alonso and that prolonging it any further is risky to his emotional wellbeing and could jeopardize his ability to effectively participate in his immigration court defense." (*Id.*).

71. Petitioner has suffered severe insomnia during his detention, sleeping only two to three hours per night. (Dec. of Parra, Ex. B)

72. At night, he experiences involuntary tremors, heart palpitations, and thoughts that cause extreme anxiety. (Dec. of Parra, Ex. B)

73. His mental distress is negatively affecting his ability to work with his attorney to prepare his immigration case. (Dec. of Parra, Ex. B)

74. Petitioner's continuing detention is also causing hardship for his wife and daughter, as Petitioner is the primary income earner for the household. (Dec. of Mignon, Ex. F).

75. Petitioner's wife has had to start seeking alternatives leaving their daughter in the care of other people while she looks for work. (Dec. of Mignon, Ex. F).

76. Petitioner's wife and daughter are experiencing significant emotional distress because of Petitioner's detention. (Dec. of Mignon, Ex. F).

77. Absent relief from this court, Petitioner faces continued detention, which is virtually certain to have ruinous impact both on his mental health and on his family's livelihood.

CLAIMS FOR RELIEF

Count I: Violation of the INA

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

79. 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 have been residing in the country and were apprehended in the interior of the country pursuant to a warrant under § 1226(a). Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

Count 2: Violation of Fifth Amendment Due Process.

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

82. 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).

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

84. The government’s detention of Petitioner despite the immigration judge finding that he is neither a flight risk nor a danger to others violates his right to due process. The government has not demonstrated that Petitioner needs to be detained. There is no credible argument that Petitioner cannot be safely released.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Order Respondents to show cause why this petition should not be granted within three days;

- c. Issue a writ of habeas corpus requiring that Respondents release Petitioner upon the payment of bond of \$3000 as indicated by the immigration judge;
- d. Award Petitioner attorneys fees and costs under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- e. Grant any other and further relief that the Court deems proper.

Dated this 28 day of October, 2025.

Respectfully submitted,

/s/ Elisabeth Lambert

Elisabeth Lambert

State Bar No. 1114507

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