

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 SLAWOMIR JERZY TKACZYK,

5 Petitioner,

6 v.

7 Kristi NOEM, Secretary, U.S. Department of
8 Homeland Security; U.S. DEPARTMENT OF
9 HOMELAND SECURITY; SAMUEL OLSON,
10 Field Office Director, IMMIGRATION AND
11 Customs Enforcement; Pamela BONDI, U.S.
12 Attorney General;


13 Respondents.

Case No. 25-CV-13185

**PETITION FOR WRIT OF
HABEAS CORPUS**

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1 INTRODUCTION

2 1. Petitioner SLAWOMIR JERZY TKACZYK (A ) in the physical
3 custody of Respondents at the Broadview Detention Center in Broadview, Illinois. He now faces
4 unlawful detention because the Department of Homeland Security (DHS) and the Executive
5 Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory
6 detention.

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

9 3. Based on this allegation in Petitioner’s removal proceeding, DHS denied
10 Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8,
11 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone
12 inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without
13 inspection—to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore
14 subject to mandatory detention.

15 4. Petitioner seeks a bond redetermination hearing before an Immigration Judge of
16 the Executive Office for Immigration Review. However, following *Matter of Yajure Hurtado*, 29
17 I&N Dec. 216 (BIA 2025), EOIR now declines jurisdiction to consider bond for individuals
18 deemed “applicants for admission” under § 1225(b)(2)(A). As a result, despite Petitioner’s
19 twenty-five years of continuous residence in the United States, deep family ties, and lack of
20 danger or flight risk, she remains mandatorily detained without any opportunity for
21 individualized review. This categorical denial of bond authority results in indefinite detention
22 without administrative recourse, raising serious constitutional concerns that warrant this Court’s
23 intervention under 28 U.S.C. § 2241.

1 **VENUE**

2 11. Venue lies in the United States District Court for the Northern District of Illinois,
3 the judicial district in which the Petitioner is currently detained as of the moment of filing the
4 instant petition. 28 U.S.C. §1391(e).

5 12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
6 Respondents are employees, officers, and agencies of the United States, and because a
7 substantial part of the events or omissions giving rise to the claims occurred in the Northern
8 District of Illinois

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10 **REQUIREMENTS OF 28 U.S.C. § 2243**

11 13. The Court must grant the petition for writ of habeas corpus or order Respondents
12 to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an
13 order to show cause is issued, the Respondents must file a return “within three days unless for
14 good cause additional time, not exceeding twenty days, is allowed.” *Id.*

15 14. Habeas corpus is “perhaps the most important writ known to the constitutional
16 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
17 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
18 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
19 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
20 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

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22 **PARTIES**

1 while noncitizens who have been arrested, charged with, or convicted of certain crimes are
2 subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

3 21. Second, the INA provides for mandatory detention of noncitizens subject to
4 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission
5 referred to under § 1225(b)(2).

6 22. Lastly, the INA also provides for detention of noncitizens who have been ordered
7 removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

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

9 24. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
10 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
11 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section
12 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1,
13 139 Stat. 3 (2025).

14 25. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining
15 that, in general, people who entered the country without inspection were not considered detained
16 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
17 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
18 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

19 26. Thus, in the decades that followed, most people who entered without inspection
20 and were placed in standard removal proceedings received bond hearings, unless their criminal
21 history rendered them ineligible. That practice was consistent with many more decades of prior
22 practice, in which noncitizens who were not deemed “arriving” were entitled to a custody
23 hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep.
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1 No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority
2 previously found at § 1252(a)).

3 27. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
4 rejected well-established understanding of the statutory framework and reversed decades of
5 practice.

6 28. The new policy, entitled “Interim Guidance Regarding Detention Authority for
7 Applicants for Admission,”¹ claims that all persons who entered the United States without
8 inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore
9 are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies
10 regardless of when a person is apprehended, and affects those who have resided in the United
11 States for months, years, and even decades.

12 29. In a May 22, 2025, unpublished decision from the Board of Immigration Appeals
13 (BIA), EOIR adopts this same position.² That decision holds that all noncitizens who entered the
14 United States without admission or parole are considered applicants for admission and are
15 ineligible for immigration judge bond hearings.

16 30. ICE and EOIR have adopted this position even though federal courts have
17 rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration
18 court stopped providing bond hearings for persons who entered the United States without
19 inspection and who have since resided here, the U.S. District Court in the Western District of
20 Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not §
21 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States.

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

24 ² Available at <https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf>.

1 *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24,
2 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass.
3 July 7, 2025) (granting habeas petition based on same conclusion).

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

7 32. Section 1226(a) applies by default to all persons "pending a decision on whether
8 the [noncitizen] is to be removed from the United States." These removal hearings are held under
9 § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

10 33. The text of § 1226 also explicitly applies to people charged as being inadmissible,
11 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph
12 (E)'s reference to such people makes clear that, by default, such people are afforded a bond
13 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress
14 creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions,
15 the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove*
16 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

17 34. Section 1226 therefore leaves no doubt that it applies to people who face charges
18 of being inadmissible to the United States, including those who are present without admission or
19 parole.

20 35. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
21 recently entered the United States. The statute's entire framework is premised on inspections at
22 the border of people who are "seeking admission" to the United States. 8 U.S.C.
23 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
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1 applies “at the Nation’s borders and ports of entry, where the Government must determine
2 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583
3 U.S. 281, 287 (2018).

4 36. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to
5 people like Petitioner, who have already entered and were residing in the United States at the
6 time they were apprehended.

7 **FACTS**

8 37. Petitioner has resided in the United States for over 30 years and lives in Park
9 Ridge, Illinois with his lawful permanent resident wife and two U.S. citizen children.

10 38. On or about October 29, 2025, the Petitioner was unlawfully detained in Illinois
11 while he was commuting to work. He is currently being processed at the ICE correctional facility
12 in Broadview, Illinois.

13 39. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. §
14 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

15 40. Petitioner is the husband of a lawful permanent resident and father of two U.S.
16 citizen children, who depend on him for emotional and financial support. He last entered the
17 United States in June of 1994, and has lived continuously in this country for over thirty years.
18 During that time, he has built a stable family and meaningful ties within his community.
19 Petitioner has maintained consistent employment, paid taxes, and contributed positively to his
20 community and his child’s school activities. He has no criminal history, has complied with all
21 prior immigration requirements to the best of his ability, and poses neither a flight risk nor any
22 danger to the community.

1 relevant here, it does not apply to those who previously entered the country and have been
2 residing in the United States prior to being apprehended and placed in removal proceedings by
3 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to
4 § 1225(b)(1), § 1226(c), or § 1231.

5 47. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued
6 detention and violates the INA.

7 **COUNT II**

8 **Violation of Due Process**

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

11 49. The government may not deprive a person of life, liberty, or property without due
12 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government
13 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the
14 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653
15 (2001).

16 50. Petitioner has a fundamental interest in liberty and being free from official
17 restraint.

18 51. The government’s detention of Petitioner without a bond redetermination hearing
19 to determine whether he is a flight risk or danger to others violates his right to due process.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioner prays that this Court grant the following relief:
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- 23 a. Assume jurisdiction over this matter;
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- b. Issue a writ of habeas corpus requiring that Respondents release Petitioner or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14 days;
- c. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- d. Grant any other and further relief that this Court deems just and proper.

Dated: October 29, 2025

Respectfully Submitted by:

/s/ William A. Quiceno

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