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DETAINED

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6 **THE UNITED STATES DISTRICT COURT**
7 **FOR THE WESTERN DISTRICT OF WASHINGTON**
8 **SEATTLE, WASHINGTON**

8 VICTOR CRUZ-GAMEZ,

9 Petitioner,

10 v.

11 PAMELA BONDI, United States Attorney
General;
12 KRISTI NOEM, Secretary of U.S.
Department of Homeland Security;
13 TODD LYONS, Acting Director, U.S.
Immigration and Customs Enforcements;
14 CAMMILLA WAMSLEY, Seattle Field
Office Director, Immigration and Customs
15 Enforcement;
16 BRUCE SCOTT, Warden, Northwest ICE
Processing Center;

17 Respondents.

Case No.: 2:25-cv-2154

PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO
28 U.S.C. § 2241

18 **PETITION FOR WRIT OF HABEAS CORPUS**

19 **INTRODUCTION**

20
21 1. Petitioner Victor Cruz-Gamez is in the physical custody of Respondents at the Northwest
22 ICE Processing Center (NWIPC) in Tacoma, Washington. He is unlawfully detained pursuant

1 mandatory detention policies recently adopted by the Department of Homeland Security (DHS)
2 and the Executive Office for Immigration Review (EOIR).

3 2. Petitioner is charged with having entered the United States without admission or parole.
4 *See* 8 U.S.C. § 1182(a)(6)(A)(i). Based on this allegation, DHS and EOIR deem Petitioner
5 subject to mandatory detention as an “applicant for admission” who is “seeking admission”
6 under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

7 3. DHS and EOIR each have nationwide policies mandating the detention of all persons
8 who entered without admission or parole, regardless of whether that person was apprehended
9 upon arrival. Most recently, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec.
10 216 (BIA 2025), the Board of Immigration Appeals (BIA) held that all persons who have
11 entered the United States without admission or parole are now subject to mandatory detention
12 under § 1225(b)(2)(A).

13 4. Petitioner has sought bond under DHS’s and EOIR’s nationwide policy of denying bond
14 to persons like Petitioner.

15 5. In a certified class action pending before this Court, this Court has already declared
16 Respondents’ bond denial policy likely unlawful. *Rodriguez Vazquez v. Bostock*, 779 F. Supp.
17 3d 1239 (W.D. Wash. 2025). A motion for summary judgment is pending in that case. However,
18 because of the limitations on injunctive relief at 8 U.S.C. § 1252(f)(1), Petitioner—who is a
19 member of the Bond Denial Class in *Rodriguez Vazquez*—files this case to seek relief in his
20 individual capacity and to ensure that he receives benefit of any declaratory relief that may be
21 issued in *Rodriguez Vazquez*, should Defendants fail to implement such relief with respect to
22 them.

1 6. Petitioner's detention based on § 1225(b)(2) violates the plain language of the
2 Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like
3 Petitioner, who previously entered and are now residing in the United States. Instead, such
4 individuals are subject to a different statute, § 1226(a), that allows for release on conditional
5 parole or bond. Indeed, § 1226(a) expressly applies to people who, like Petitioner, are charged
6 as inadmissible for having entered the United States without admission or parole.

7 7. Respondents' new legal interpretation is also plainly contrary to the statutory framework
8 and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

9 8. Accordingly, Petitioner seeks a writ of habeas corpus. As Petitioner has already received
10 a bond hearing where the IJ denied bond under § 1225(b)(2) but set a bond amount in the
11 alternative, Petitioner seeks an order requiring DHS to immediately release him once bond is
12 posted.

13 **PARTIES**

14 9. Petitioner Victor Cruz-Gamez was arrested by ICE and is presently detained at the
15 Northwest ICE Processing Center in Tacoma, Washington. He has resided in the United States
16 since 1999.

17 10. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S.
18 Department of Homeland Security. She is the cabinet-level secretary responsible for all
19 immigration enforcement in the United States and has ultimate custodial authority over Petitioner.

20 11. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the
21 United States. The Immigration Judges who decide removal cases and applications for relief from
22 removal do so as her designees.

1 12. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S.
2 Immigration and Customs Enforcement (“ICE”). He is the head of the federal agency responsible
3 for all immigration enforcement in the United States.

4 13. Respondent Camilla Wamsley is sued in her official capacity as Field Office Director for
5 the Seattle office of Immigration and Customs Enforcement, an agency of the Department of
6 Homeland Security. She is responsible for overseeing ICE operations pertaining to noncitizens
7 within its territorial jurisdiction, such as Petitioner, including detentions, enforcement, and
8 removal operations. She is the immediate legal custodian of Petitioner for purposes of a federal
9 habeas petition.

10 14. Respondent, Bruce Scott, is sued in his official capacity as the Warden of the Northwest
11 ICE Processing Center, the privately-operated immigration detention center where the Petitioner
12 is being detained. Mr. Scott has immediate physical custody of Petitioner.

13
14 **JURISDICTION**

15 15. This Court has jurisdiction over this matter under 18 U.S.C. § 1331 (federal question
16 jurisdiction); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1651 (All Writs Act).

17 16. Further, this Court has jurisdiction under the Suspension Clause of Article I, § 9, cl. 2, of
18 the U.S. Constitution. *See INS v. St. Cyr*, 533 U.S. 289 (2001).

19 17. No other petitions, appeals, or motions regarding habeas corpus have been filed with any
20 other court.

21 **VENUE**

22 18. Venue in the Western District of Washington is appropriate under 28 U.S.C. § 1391(e)(1)
23 because the Petitioner is currently detained in this judicial district.

1 19. Venue is further appropriate under 28 U.S.C. § 1391(e)(1) because the Respondents live,
2 work, and/or operate within this judicial district and because the actions which gave rise to this
3 Petition took place in Tacoma, Washington, which falls within this judicial district.

4
5 **REQUIREMENTS OF 28 U.S.C. § 2243**

6 20. The Court must grant the petition for writ of habeas corpus or issue an order to show cause
7 (OSC) to the Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243.
8 If an OSC is issued, the Court must require Respondents to file a return “within three days unless
9 for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

10 21. Habeas corpus is “perhaps the most important writ known to the constitutional law . . .
11 affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.”
12 *Fay v. Noia*, 372 U.S. 391, 400 (1963). “The application for the writ usurps the attention and
13 displaces the calendar of the judge or justice who entertains it and receives prompt action from
14 him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir.
15 2000) (citation omitted); *see also Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954)
16 (Habeas corpus is “a speedy remedy, entitled by statute to special, preferential consideration to
17 insure expeditious hearing and determination.”).

18
19 **LEGAL FRAMEWORK**

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

22 23. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
23 proceedings before an Immigration Judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a)

1 detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§
2 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of
3 certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

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

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

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

10 27. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal
11 Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104—
12 208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226
13 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat.
14 3 (2025).

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

20 29. Thus, in the decades that followed, most people who entered without admission or parole
21 and were placed in standard removal proceedings received bond hearings, unless their criminal
22 history rendered them ineligible. That practice was consistent with many more decades of prior
23 practice, in which noncitizens who were not deemed “arriving” were entitled to a custody

1 hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep.
2 No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority
3 previously found at § 1252(a)).

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

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

13 32. On September 5, 2025, the BIA adopted this same position in Matter of Yajure Hurtado.
14 There, the Board held that all noncitizens who entered the United States without admission or
15 parole are considered applicants for admission who are seeking admission and are ineligible for
16 IJ bond hearings.

17 33. Dozens of federal courts have rejected Respondents’ new interpretation of the INA’s
18 detention authorities.

19 34. Notably, long before ICE or the BIA changed its position nationwide, IJs in the Tacoma,
20 Washington, immigration court stopped providing bond hearings for persons who entered the
21 United States without admission or parole and who have since resided here. This Court held that
22 such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to
23

1 noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v.*
2 *Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

3 35. Since the *Rodriguez Vazquez* preliminary injunction decision, court after court has
4 adopted the same reading of the INA's detention authorities and rejected ICE's new policy and
5 EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
6 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.
7 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157
8 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation
9 adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025);
10 *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13,
11 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug.
12 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285
13 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass.
14 Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug.
15 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal.
16 Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md.
17 Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La.
18 Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025
19 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-
20 EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-
21 02180- DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*,
22 No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v.*
23 *Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*,

1 No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma*
2 *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that
3 “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v.*
4 *Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same);
5 *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14,
6 2025) (same).

7 36. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies
8 the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the
9 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like
10 Petitioners.

11 37. Subsection 1226(a) applies by default to all persons “pending a decision on whether the
12 [noncitizen] is to be removed from the United States.” These removal hearings are held under §
13 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

14 38. The text of § 1226 also explicitly applies to people charged as being inadmissible,
15 including those who entered without admission or parole. See 8 U.S.C. § 1226(c)(1)(E).
16 Subparagraph (E)’s reference to such people makes clear that, by default, such people are
17 afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained,
18 “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent
19 those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257
20 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

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

1 40. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently
2 entered the United States. The statute's entire framework is premised on inspections at the
3 border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).
4 Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the
5 Nation's borders and ports of entry, where the Government must determine whether a[]
6 [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281,
7 287 (2018).

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

11 42. Petitioner is a class member of the certified Bond Denial Class in *Rodriguez Vazquez v.*
12 *Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash.). That class is defined as comprising: "All
13 noncitizens without lawful status detained at the Northwest ICE Processing Center who (1) have
14 entered or will enter the United States without inspection, (2) are not apprehended upon arrival,
15 (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231
16 at the time the noncitizen is scheduled for or requests a bond hearing." *Rodriguez Vazquez v.*
17 *Bostock*, 349 F.R.D. 333, 365 (W.D. Wash. 2025).

18 43. However, 8 U.S.C. § 1252(f)(1) precludes the class from obtaining classwide preliminary
19 or final injunctive relief in *Rodriguez Vazquez*. The parties in that case are awaiting the Court's
20 decision on the Bond Denial Class's motion for summary judgment and request for classwide
21 declaratory relief.

22 44. Petitioner therefore seeks individual habeas relief while that decision on final declaratory
23 relief on a classwide basis remains pending. In the alternative, should final declaratory relief

1 issue in *Rodriguez Vazquez*, and should Defendants fail to apply that ruling to Petitioner,
2 Petitioner seeks enforcement of that ruling through the instant petition.

3 **FACTUAL BACKGROUND**

4 45. Due to the emergency nature of this petition, the relevant factual background is included
5 in the Declaration of Hilary Smith submitted with this petition. *See* Declaration of Hilary Smith.

6 46. This Petition has been verified by Petitioner. *See* Verification of Petitioner.

7
8 **CLAIMS FOR RELIEF**

9 **COUNT I**
10 **Violation of the INA**

11 47. Petitioner incorporates by reference the allegations of fact set forth in the preceding
12 paragraphs.

13 48. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
14 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
15 relevant here, it does not apply to those who previously entered the country and have been
16 residing in the United States prior to being apprehended and placed in removal proceedings by
17 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to §
18 1225(b)(1), § 1226(c), or § 1231.

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

21 **COUNT II**
22 **Request for Relief Pursuant to Declaratory Relief in *Rodriguez Vazquez***

23 50. Petitioner incorporates by reference the allegations of fact set forth above.

1 51. In the alternative, should the Court in *Rodriguez Vazquez* issue final declaratory relief on
2 behalf of the Bond Denial Class prior to a decision in this case, that ruling applies to Petitioner.

3 52. Accordingly, consistent with any *Rodriguez Vazquez* declaratory relief on behalf of the
4 Bond Denial Class, the application of § 1225(b)(2) to Petitioner unlawfully mandates their
5 continued detention and violates the INA. Defendants are accordingly prohibited from
6 considering Petitioner detained under that section and must consider Petitioner subject to
7 detention under § 1226(a).

8 **COUNT III**
9 **Violation of Due Process**

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

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

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

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

19 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20 57. Petitioner has exhausted all available administrative remedies that can provide the relief
21 he seeks. He requested a custody redetermination hearing and was denied bond, but given an
22 alternative order.
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IRREPARABLE INJURY

58. Mr. Cruz-Gamez has suffered irreparable injury as a result of his detention. He remains in custody and was denied a bond, despite living in the United States for over twenty-five years. His physical liberty continues to be restrained, and no just cause for doing so can be specified. “It is well established that the deprivation of constitutional rights’ unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). His physical liberty continues to be restrained, and no just cause for doing so can be specified. Additionally, Mr. Cruz-Gamez’ daughter informed his counsel that her father’s commissary account had been drained and will likely be removed to another detention center out of state, despite having a master calendar hearing scheduled.

Declaration of Hilary Smith.

PRAAYER FOR RELIEF

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

- (1) Issue an order immediately releasing Mr. Cruz-Gamez from detention;
- (2) Immediately issue an order preventing Mr. Cruz-Gamez from being transferred to another facility while this petition is being litigated;
- (3) Issue an order providing for an award of attorney’s fees and costs; and
- (4) Grant such other relief as may be just and reasonable.

Dated: October 30, 2025.

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/s/ Hilary Smith
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