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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO-OAKLAND DIVISION**

11 CLENE COSTA DIAS,

12 *Petitioner,*

13 v.

14
15
16 Polly KAISER, Field Office Director of the Los
17 SAN FRANCISCO Field Office of U.S.
18 Immigration and Customs enforcement; Todd M.
19 LYONS, Acting Director of U.S. Immigration and
Customs Enforcement; U.S. IMMIGRATION
20 AND CUSTOMS ENFORCEMENT, Kristi
NOEM, Secretary of the U.S. Department of
Homeland Security, and Pamela BONDI, Attorney
21 General of the United States

22 *Respondents,*

17 Case No. 25-MC-80347

18 **PETITION FOR WRIT OF HABEAS**
CORPUS PURSUANT TO 28 U.S.C. §2241
(AMENDED)

19 **IMMIGRATION HABEAS CASE**

INTRODUCTION

1
2 1. Petitioner Clene Costa Dias is in the physical custody of Respondents at the San Francisco
3 ICE Field Office. She now faces unlawful detention because the Department of Homeland Security
4 (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to
5 mandatory detention.
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7 2. Petitioner is charged with, *inter alia*, having entered the United States without admission or
8 inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

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

15 4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued
16 a precedent decision, binding on all immigration judges, holding that an immigration judge has no
17 authority to consider bond requests for any person who entered the United States without admission. *See*
18 *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals
19 are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
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21 5. Petitioner's detention on this basis violates the plain language of the Immigration and
22 Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously
23 entered and are now residing in the United States. Instead, such individuals are subject to a different
24 statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to
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people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

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

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that she be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

JURISDICTION

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the ICE San Francisco Field Office, located at 630 Sansome Street, San Francisco, California.

9. 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).

10. 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

11. 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 Northern District of California, the judicial district in which Petitioner is currently detained.

12. 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 San Francisco, California, which is under the jurisdictional area of the Northern District.

REQUIREMENTS OF 28 U.S.C. § 2243

13. 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, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” (*Id.*)

14. 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

15. Petitioner Clene Costa Dias is a citizen of Brazil who has been in immigration detention since October 31, 2025. After arresting Petitioner at the ICE Field Office in San Francisco, ICE did not set bond and Petitioner is unable to obtain review of her custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

16. Respondent Polly Kaiser is the Director of the San Francisco Field Office of ICE's Enforcement and Removal Operations division. As such, Respondent Polly Kaiser is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in her official capacity.

17. 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.

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

19. 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.

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

LEGAL FRAMEWORK

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

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

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

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

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

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

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

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

1 29. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected
 2 well-established understanding of the statutory framework and reversed decades of practice.
 3

4 30. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants
 5 for Admission,"¹ claims that all persons who entered the United States without inspection shall now be
 6 subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when
 7 a person is apprehended, and affects those who have resided in the United States for months, years, and
 8 even decades.
 9

10 31. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter*
 11 *of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without
 12 admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond
 13 hearings.
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15 32. Since Respondents adopted their new policies, dozens of federal courts have rejected their
 16 new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure*
 17 *Hurtado*, which adopts the same reading of the statute as ICE.
 18

19 33. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma,
 20 Washington, immigration court stopped providing bond hearings for persons who entered the United
 21 States without inspection and who have since resided here. There, the U.S. District Court in the Western
 22 District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not §
 23 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. (*Rodriguez*
 24 *Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).)
 25
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27 28 ¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 34. Subsequently, court after court has adopted the same reading of the INA's detention
 2 authorities and rejected ICE and EOIR's new interpretation. (*See, e.g., Gomes v. Hyde*, No. 1:25-CV-
 3 11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-
 4 BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-
 5 02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation*
 6 *adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez*
 7 *Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado*
 8 *v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-*
 9 *Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025);
 10 *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No.
 11 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-
 12 CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-
 13 02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM,
 14 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F.
 15 Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-
 16 12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-
 17 02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-
 18 CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No.
 19 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-
 20 JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494,
 21 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a)
 22 and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL
 23 28

1 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025
 2 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).)

3 35. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the
 4 INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory
 5 provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.
 6

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

10 37. 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 (E)'s
 12 reference to such people makes clear that, by default, such people are afforded a bond hearing under
 13 subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific
 14 exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally
 15 applies." (*Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v.*
 16 *Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.)

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

22 39. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently
 23 entered the United States. The statute's entire framework is premised on inspections at the border of
 24 people who are "seeking admission" to the United States. 8 U.S.C.
 25 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies
 26 "at the Nation's borders and ports of entry, where the Government must determine whether a[]
 27

1 [noncitizen] seeking to enter the country is admissible.” (*Jennings v. Rodriguez*, 583 U.S. 281, 287
2 (2018).)

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

7 FACTS

8 41. Petitioner has resided in the United States since October 18, 2024 and lives in 

9  in the city of Richmond, California, 94805.
10

11 42. In or around October 26 or 17, 2025, Petitioner was instructed to present herself for a
12 check in at the San Francisco ICE Field Office, located at 630 Sansome Street, San Francisco,
13 California. In the morning of October 31, 2035, Petitioner appeared as instructed, accompanied by her
14 Immigration attorney, but she was promptly arrested by ICE officers, who alleged she had violated the
15 terms of her Supervision Appearance Program. When her attorney asked for the facts supporting the
16 allegation, the ICE officer failed to provide any information. Petitioner is now detained on the sixth floor
17 at the San Francisco Ice Field Office, where she is expected to be transferred to an unknown facility in
18 the next 24 hours.
19

20 43. In or around December 19, 2024, DHS placed Petitioner in removal proceedings before the
21 Concord Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*,
22 being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without
23 inspection. Since that date, Respondent has filed her asylum application declaration in support of the
24 application and a number of supporting documents. An Individual Hearing—the equivalent of a trial—
25 is scheduled for August 24, 2028.
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1 44. Under her detention, Petitioner had been working as a house cleaner since December 2024.
2 She is also married to Cleide Alexandre Soares Junior, who is also a party in her Removal case with the
3 Concord Immigration Court. She has many friends in the local community and is an avid churchgoer.
4 Petitioner is neither a flight risk nor a danger to the community.

5 45. Following Petitioner's arrest, ICE issued a custody determination to continue Petitioner's
6 detention without an opportunity to post bond or be released on other conditions.

8 46. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider
9 Petitioner's bond request. In combination with the fact that Petitioner was arrested on the same day this
10 Petition is being filed, Petitioner did not file a request for bond hearing with an Immigration Judge.

12 47. As a result, Petitioner remains in detention. Without relief from this court, she faces the
13 prospect of months, or even years, in immigration custody, separated from her spouse and community.

14 **CLAIMS FOR RELIEF**

15 **COUNT I**

17 **Violation of the INA**

18 48. Petitioner incorporates by reference the allegations of fact set forth in the preceding
19 paragraphs.

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

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

COUNT II

Violation of Due Process

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

52. 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 (2001).

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

54. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates her 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 Petitioner shall not be transferred outside the Northern District 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 Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

1 e. Declare that Petitioner's detention is unlawful;
2 f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
3 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
4 g. Grant any other and further relief that this Court deems just and proper.

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7 DATE: 10/17/2025

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