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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA**

Da SILVA MARTINS, Victor Emmanuel)
(A ))
Petitioner,)
)
v.)
)
Kristi NOEM, Secretary, Department)
of Homeland Security; Pam BONDI,)
Attorney General of the United States;)
Todd LYONS, Acting Director of)
Immigration and Customs Enforcement;)
Kristen Sullivan Immigration and Customs)

Civil Case No.:

**PETITION FOR WRIT
OF HABEAS CORPUS
AND COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Enforcement Acting Field Office Director)
for Georgia; Warden, Folkston ICE)
Processing Centre (Annex), Folkston,)
Georgia.)
Respondents.)

INTRODUCTION

1. Petitioner, Victor Emmanuel Da SILVA MARTINS (“Mr. Martins”), has been residing in the United States for thirty-one years since 1994 when he was six (6) years old. He was apprehended by immigration authorities on Monday, October 27, 2025 in Irvington, NJ and redetained due to the interceding new DHS interpretation of their detention authority under 8 USC §§ 1225 and 1226. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (“*Matter of Hurtado*”).
2. Mr. Martins is currently detained at the Folkston ICE Processing Center /aka/ Folkston Annex Detention Center by immigration authorities and is the subject of an on-going removal hearing.
3. Petitioner is charged with having entered the United States without inspection and being present without being admitted or paroled. 8 U.S.C. § 1182(a)(6)(A)(i).

4. Petitioners has been denied release by the Department of Homeland Security (“DHS”) following this most recent apprehension. It is futile to request a bond redetermination hearing with the Immigration Court because the immigration judge is bound by *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025) finding that the court lacks jurisdiction under 8 U.S.C. § 1225(b)(2)(A) to grant bond to noncitizens who are “present . . . without admission.” *Id.*

5. Section 1225(b)(2)(A) states that an applicant for admission shall be detained for a removal proceeding. It is the position of the Executive Office for Immigration Review (“EOIR”), which houses both the BIA and immigration judges, that 8 U.S.C. § 1225(b)(2)(A) applies to all individuals who arrived in the United States without documents, regardless of how long they have lived in the United States and regardless of how far they were from the border when they were apprehended. *See Matter of Hurtado* at 216.

6. However, § 1225(b)(2)(A) does not apply to individuals, like Petitioner, who are present long-term in the United States. Instead, such individuals are subject to detention under a different statute, 8 U.S.C. § 1226(a), and eligible for release on bond. Moreover, Mr. Martins should not have been re-detained without a change in circumstance. There was none.

7. Instead, earlier in July 2025, ICE released a memorandum instructing its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject bond redetermination hearings for applicants who had arrived in the United States without documents. See *ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, AILA (July 8, 2025), <https://shorturl.at/XF71Y> (“Lyons Memo”).¹

8. EOIR has already applied the amended reasoning in a May 15, 2025 BIA decision, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), finding that a noncitizen who had entered the United States without documents was ineligible for bond, despite not being placed in expedited removal proceedings. *Matter of Hurtado* followed. Nonetheless, virtually all courts throughout the country have rejected the government’s unlawful reversal of nearly three decades of settled immigration practice regarding the scope of mandatory detention pursuant to 8 U.S.C. §§ 1225 and 1226.²

¹ “ICE Says Many In Immigration Detention No Longer Qualify For Bond Hearings,” *CBS News* (Jul. 15, 2025) <https://www.cbsnews.com/news/ice-immigration-detention-bond-hearings/>; “ICE declares millions of undocumented immigrants ineligible for bond hearings,” *The Washington Post* (Jul. 15, 2025) <https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/>

² Notable recent decisions of the approximately 177 decisions rejecting the government’s position on detention for uninspected entrants to the United States include: *Ruiz Mejia v. Noem*, No. 1:25-cv-1227, 2025 WL 3041827 (W.D. Mich. Oct. 31, 2025); *Hernandez Lopez v. Hardin*, No. 2:25-CV- 830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *J.G.O. v. Francis*, No. 25-CV-7233, 2025 WL 3040142 (S.D.N.Y. Oct. 28, 2025); *Puerto-Hernandez v. Lynch*, No. 1:25-cv-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *J.A.C.P. v. Wofford*, No. 1:25-cv-01345, 2025 WL 3013328 (E.D. Cal. Oct. 27, 2025); *Nava Hernandez v. Baltazar*, No. 1:25-CV-03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Rodriguez Carmona v. Noem*, No. 1:25-cv-1131, 2025 WL

9. Nonetheless, Respondents continue to maintain that noncitizens who entered the United States without inspection, even many years prior such as Mr. Martins and were previously released from immigration custody pursuant to 8 U.S.C. § 1226, are subject to mandatory detention, because they are deemed to be applicants for admission within the meaning of 8 U.S.C. § 1225(b)(2)(A).

10. This interpretation of the relevant law is a violation of the statute and due process. As such, Petitioner seeks an order of declaratory and injunctive relief and to set aside relief under the Administrative Procedure Act requiring that he be released from ICE custody.

JURISDICTION AND VENUE

11. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory judgment); United States Constitution Article I, Section 9 (Suspension Clause).

12. Venue properly lies within the Southern District of Georgia 28 U.S.C.

2992222 (W.D. Mich. Oct. 24, 2025); *De Fatima Lomeu v. Soto*, No. 25cv16589, 2025 WL 2981296 (D.N.J. Oct. 23, 2025); *Del Cid v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025); *Bethancourt Soto v. Soto*, No. 25-CV-16200, --- F. Supp. 3d ---, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 WL 2968042 (D. Md. Oct. 21, 2025); *Contreras-Cervantes v. Raycraft*, No. 2:25-CV-13073, 2025 WL 2952796 (E.D. Mich. Oct. 17, 2025); *Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP,--- F. Supp. 3d ---, 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025); *Alejandro v. Olson*, No. 1:25-CV-02027, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *Rico-Tapia v. Smith*, --- F. Supp. 3d ---, 2025 WL 2950089 (D. Haw. Oct. 10, 2025); *Padron Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Giron Reyes v. Lyons*, --- F. Supp. 3d ---, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025).

§ 1391, because this is a civil action in which Respondents are agencies of the United States, Petitioner is detained in this District, and a substantial part of the events or omissions giving rise to this action occurred in the District.

PARTIES

10. Petitioner, Victor Emmanuel Da Silva Martins, resides primarily in Scotch Plains, New Jersey and is currently detained at the Folkston ICE Processing Center (Annex) in Folkston, Georgia by Immigration and Customs Enforcement (“ICE”) under contract with the Geo Group.

11. Respondent, Kristi Noem, is the Secretary of the Department of Homeland Security (DHS) and is sued in her official capacity. The Secretary of Homeland Security is charged with the administration and enforcement of immigration laws. 8 U.S.C. § 1103(a).

12. Respondent, Pam Bondi, is the Attorney General of the United States and is sued in her official capacity as the head of the Department of Justice. The Attorney General is responsible for the fair administration of the laws of the United States.

13. Respondent Todd Lyons is the Acting Director of ICE and is sued in his official capacity. ICE is responsible for the detention of Petitioners.

14. Respondent, Kristen Sullivan, is the Immigration and Customs Enforcement Acting Field Office Director in Georgia and is sued in her official capacity.

Respondent, Kristen Sullivan, is responsible for the detention of Petitioners.

15. Respondent, Warden of the Folkston ICE Processing Center (Annex) in Folkston, Georgia, is the immediate custodian of Mr. Martins and is sued in their official capacity.

LEGAL BACKGROUND

16. The Immigration and Nationality Act (INA) prescribes three basic forms of detention for noncitizens in removal proceedings.

17. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, 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, 8 U.S.C. § 1226(c).

18. 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 at a port of entry referred to under § 1225(b)(2).

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

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

21. 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).

22. Following enactment of the IIRIRA, EOIR drafted new regulations establishing 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).

23. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings to reconsider their detention when ICE declined to release them from custody unilaterally. 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 IJ or other hearing officer. 8 U.S.C. § 1252(a) (1994); *see* 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)).

24. Respondents’ new 2025 policy turns this well-established understanding on its head and violates the long-standing statutory scheme that has been followed for almost thirty years.

25. Indeed, the government’s legal theory that noncitizens who entered the United States without admission or parole are ineligible for bond hearings was rejected as early as April 2025, prior to the issuance of either the ICE Memorandum in July 2025 or the more recent BIA decision *Matter of Hurtado* in September 2025 by District Court judges across the country, including a District Court in the Western District of Washington, finding that such individuals are entitled to bond redetermination hearings before immigration judges, and rejecting the application of § 1225(b)(2) to such cases. *Rodriguez v. Bostock*, No. 3:25-CV-05240- TMC, 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025).

26. The memorandum issued by ICE in July 2025 instructing its prosecuting attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject bond redetermination hearings for applicants who arrived in the United

States without documents even many years prior such as Mr. Martins. *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, AILA (July 8, 2025), <https://shorturl.at/XF71Y> (“Lyons Memo”).³

27. The September 5, 2025 decision by the BIA, *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025) confirms that EOIR is taking this same position that noncitizens who entered the United States without admission or parole are ineligible for immigration judge bond hearings.

28. These legal interpretations by ICE and EOIR defy the INA as numerous federal courts around the United States have determined. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner, Mr. Martins.

29. 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, which “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

³ “ICE Says Many In Immigration Detention No Longer Qualify For Bond Hearings,” *CBS News* (Jul. 15, 2025) <https://www.cbsnews.com/news/ice-immigration-detention-bond-hearings/>; “ICE declares millions of undocumented immigrants ineligible for bond hearings,” *The Washington Post* (Jul. 15, 2025) <https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/>

30. The text of § 1226 also explicitly applies to people charged as inadmissible, including those who entered without inspection (“EWI”). 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to EWIs makes clear that, by default, such people are afforded a bond hearing under subsection (a). 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.

31. 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 actively “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A).

32. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner who are alleged to have entered the United States without admission or parole.

FACTS

37. Petitioner Victor Emmanuel Da Silva Martins, is a 31-year-old national and citizen of Portugal. He entered the United States without inspection when he was six (6) years old, in 1994, more than thirty years ago. He has never left the United States since that day. Mr. Martins is the main provider for his United States Citizen (“USC”) wife Paula, and their two USC daughters, A [REDACTED] (“[REDACTED]”), and

A [REDACTED] ("A [REDACTED]"). In addition, Mr. Martins helps provide for Mrs. Martins' father, who resides with them.

38. Mr. and Mrs. Martins have been together since June 2012. A [REDACTED] and A [REDACTED] were born from their relationship. The couple were legally married on July 28, 2016. Mr. Martins is the economic pillar of his family and has worked in the United States his entire adult life. Before his recent detention, Mr. Martins was working at Citizen Logistics, LLC (Amazon) as a Driver/Delivery Person.

39. Together, Mr. and Mrs. Martins were able to provide for their family's everyday needs, including rent, utilities, food, clothing, and supplies. Additionally, Mr. Martins supported his father-in-law who currently lives with them.

40. Mr. Martins was placed into removal proceedings with a Notice to Appear dated February 8, 2016 to appear before an immigration judge ("IJ"), and was charged with having entered the United States without inspection and being present without valid immigration documents. 8 U.S.C. § 1182(a)(6)(A)(i).

41. During his removal process, Mr. Martins applied for non-Permanent Resident Cancellation of Removal pursuant to 8 U.S.C. § 1229b(b) with the Immigration Court. Following his hearing, the immigration judge indicated a likelihood of granting his case by continuing his case until a visa number would be available to qualify for lawful permanent resident status.

42. Mr. Martins' case before the immigration court is currently on-going and therefore, he is not subject to removal by DHS. There have been no changes in circumstances that would support a change in his custody status. None the less, he was detained by ICE on Monday, October 27, 2025 without explanation or a legal basis in violation of Mr. Martins' due process, the INA and the APA.

CAUSES OF ACTION COUNT ONE

*Violation of 8 U.S.C. § 1226(a)
Unlawful Detention*

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

34. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to grounds of inadmissibility because they previously entered the country without being admitted or paroled such as Mr. Martins. Such noncitizens are detained under § 1226(a), as evidenced by his prior release from DHS custody, unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.

35. The application of § 1225(b)(2) to Petitioner to trigger his re-detention violates the Immigration and Nationality Act.

COUNT TWO

Violation of the Administrative Procedure Act

***Unlawful Arrest,
Detention and Denial of Bond***

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

37. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted or paroled such as Mr. Martins. Such noncitizens are detained under § 1226(a), as evidenced by his prior release from DHS custody, unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.

38. The application of § 1225(b)(2) to permit the redetention of Mr. Martins is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. 5 U.S.C. § 706(2).

COUNT THREE

Violation of Procedural Due Process

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

40. 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).

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

42. The government’s unlawful redetention of Petitioner without justification or authority violates his Due Process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Declare that the redetention of Petitioner is unlawful and violates the INA, APA, and Due Process;
- (3) Issue a writ of habeas corpus requiring that Defendants release Mr. Martins;
- (4) Set aside Respondents’ unlawful detention policy under the APA, 5 U.S.C. § 706(2);
- (5) Award reasonable attorneys’ fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and
- (6) Order further relief as this Court deems just and appropriate.

Dated: November, 14, 2025

Respectfully Submitted,

/s/ Alexis Ruiz

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Counsel for Petitioner

**Pro hac vice motion forthcoming*

CERTIFICATE OF SERVICE

I, Alexis Ruiz, hereby certify that this document, Complaint, filed through the ECF system will be sent electronically on this day to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: November 14, 2025

/s/ Alexis Ruiz

Alexis Ruiz