

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

SOUTHERN DISTRICT OF MISSISSIPPI
FILED

NOV 21 2025

BY **ARTHUR JOHNSTON**
DEPUTY

MIGUEL VENTURA CHAY CHAY,

A 

Petitioner/Plaintiff,

v.

**PAM BONDI, Attorney General of the
United States; KRISTI NOEM, Secretary,
Department of Homeland Security (DHS);
TODD LYONS, Acting Director of
Immigration and Customs Enforcement (ICE);
BRIAN ACUNA, New Orleans Acting Field
Office Director, Immigration and Customs.
Enforcement (ICE/ERO); RAPHAEL
VERGARA, Warden, Adams County
Correctional Center,**

Respondents/Defendants

Civil Action No. 5:25cv136-DCB-RPM

**ORAL ARGUMENT
REQUESTED**

**PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C. §
2241, BY A PERSON SUBJECT TO
INDEFINITE IMMIGRATION
DETENTION, AND
PETITION FOR AN
INJUNCTION PURSUANT TO
28 U.S.C. § 1331**

BACKGROUND

Petitioner, Mr. Miguel Chay Chay, hereby petitions this Court for a writ of habeas corpus as well as for an injunction to remedy Petitioner's unlawful detention and to enjoin Petitioner's continued unlawful detention by the Respondents. Due to the government's change in policy, Petitioner will be held without the possibility of a bond hearing. Mr. Chay asks this Court to order his release or, in the alternative, order immigration officials to set a bond amount. Mr. Chay also hereby requests that a hearing be set on this matter. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

PARTIES

1. Petitioner, Mr. Chay, is a native and citizen of Guatemala who entered the United States between 2004 and 2005, without inspection. He has maintained continuous presence in the United States since entering. Recently, Petitioner was detained by immigration officials and is currently being held at the Adams County Correctional Center in Natchez, MS. Petitioner will seek Cancellation of Removal for Certain Non-Permanent Residents. Because of how he entered the United States, the immigration judge will claim no jurisdiction over a request for a bond hearing.
2. Respondent Pam Bondi is sued in her official capacity as the United States Attorney General. As Attorney General, Ms. Bondi is responsible for the administration and enforcement of the immigration laws of the United States.
3. Respondent Kristi Noem is sued in her official capacity as Secretary of the Department of Homeland Security ("DHS"). As Secretary of DHS, Ms. Noem is responsible for the administration and enforcement of the immigration laws of the United States.
4. Respondent Todd Lyons is sued in his official capacity as Acting Director of Immigration and Customs Enforcement ("ICE"). As the Acting Director of ICE, Mr. Lyons is responsible for the administration and enforcement of the policies and procedures for ICE's detention of Petitioner at Adams County Correctional Center ("Adams").
5. Respondent Brian Acuna is sued in his official capacity as Acting Field Office Director of ICE and Enforcement and Removal ("ERO") for the New Orleans office. As the Acting Field Office Director of ICE/ERO, Mr. Acuna is responsible for the administration and enforcement of the policies and procedures for ICE's detention of Petitioner at Adams County Correctional Center.

6. Respondent, Raphael Vergara, is the Warden of Adams County Correctional Center. As such, Mr. Vergara is responsible for the operation of the Correctional Center where Mr. Chay is detained. Because ICE contracts with detention centers such as Adams to house immigration detainees such as Mr. Chay, Respondent has immediate physical custody of the Petitioner.

JURISDICTION

7. This action arises under the Constitution of the United States, 28 U.S.C. § 2241(c)(1), and the Immigration and Nationality Act, as amended (“INA”), 8 U.S.C. § 1101 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution (“Suspension Clause”), and 28 U.S.C. § 1331, as the Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (“We conclude that § 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.”); *see also, Demore v. Kim*, 538 U.S. 510 (2003) (evaluating mandatory detention for pre-removal detainees for the “brief period necessary” to complete removal proceedings); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest.”); *Clark v. Martinez*, 543 U.S. 371 (2005) (holding that *Zadvydas* applies to aliens found inadmissible as well as removable).
8. Further, this action also arises pursuant to 28 U.S.C. § 1331, federal question jurisdiction, as this Court has power to issue a federal injunction to force the ICE and the Correctional

Center to release Mr. Chay so that he will not have to endure the continued burden of unreasonable detention.

VENUE

9. Venue lies in the Southern District of Mississippi, because Mr. Chay is currently detained in the territorial jurisdiction of this Court, at the Adams County Correctional Center. 28 U.S.C. § 1391.

LEGAL BACKGROUND

10. The Immigration and Nationality Act (“INA”) prescribes three basic forms of detention for noncitizens in removal proceedings.
11. 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, *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).
12. 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).
13. 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).
14. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

15. 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).
16. Following enactment of the IIRIRA, EOIR 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).
17. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. 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. *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)).
18. Respondents’ new policy turns this well-established understanding on its head and violates the statutory scheme.
19. Overwhelmingly, courts have rejected the interpretation offered by Respondents that § 1225(b)(2) requires the detention of all noncitizens living in the country who are “inadmissible” because they entered the United States without inspection.¹

¹ *See, e.g.,* Trejo v. Warden of ERO El Paso E. Montana, No. EP-25-CV-401-KC, 2025 WL 2992187, at *10 (W.D. Tex. Oct. 24, 2025); Vicira v. De Anda-Ybarra, No. EP-25-CV-00432-DB, 2025 WL 2937880, (W.D. Tex. Oct. 16, 2025); Buenrostro-Mendez

20. Despite these findings from federal courts, 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 arrived in the United States without documents.

21. A May 22, 2025, unpublished BIA decision confirms that the Executive Office for Immigration Review (EOIR) is taking this same position that noncitizens who entered the United States without admission or parole are ineligible for immigration judge bond hearings.

v. Bondi, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); Santiago v. Noem, No. EP-25-CV-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025); Lopez Santos v. Noem, No. 3:25-CV-01193, 2025 WL 2642278, (W.D. La. Sept. 11, 2025); Padron Covarrubias v. Vergara, No. 5:25-CV-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); Kostak v. Trump, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); Lopez-Arevelo v. Ripa, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); Jose J.O.E., 2025 WL 2466670; Maldonado, 2025 WL 2374411; Ferrera Bejarano v. Bondi, 25-cv-03236 (D. Minn. Aug. 18, 2025); Aguilar Vazquez v. Bondi, 25-cv-03162 (D. Minn. Aug. 19, 2025); Tiburcio Garcia v. Bondi, 25-CV-03219 (D. Minn. Aug. 29, 2025); Carmona-Lorenzo v. Trump, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); Cortes Fernandez v. Lyons, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); Palma Perez v. Berg, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); Jacinto v. Trump, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); Garcia Jimenez v. Kramer, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); Anicasio v. Kramer, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); Arce v. Trump, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); Giron Reyes v. Lyons, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); Campos Leon v. Forestal, No. 1:25-CV-01774 (S.D. Ind. Sept. 22, 2025); Sampiao v. Hyde, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (addressing Matter of Hurtado and finding that the Board's analysis is incorrect); Jimenez v. FCI Berlin, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); Doe v. Moniz, No. 1:25-CV-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); Romero, 2025 WL 2403827; Martinez, 2025 WL 2084238; Dos Santos v. Noem, No. 1:25-CV-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); Choglio Chafra v. Scott, 2025 WL 2688541 (D. Me. Sept. 21, 2025); Chiliquinga Yumbillo v. Stamper, No. 2:25-CV-00479-SDN, 2025 WL 2688160 (D. Me. Sept. 19, 2025); Lopez Benitez, 2025 WL 2371588; Samb v. Joyce, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); Leal-Hernandez v. Noem, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); Hasan v. Crawford, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); Beltran Barrera v. Tindall, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); Singh v. Lewis, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); Pizarro Reyes v. Raycraft, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); Lopez-Campos v. Raycraft, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); Rodriguez v. Bostock, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); Cuevas Guzman v. Andrews, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); Caicedo Hinestroza v. Kaiser, No. 25-CV-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); Zaragoza Mosqueda v. Noem, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); Hernandez Nieves v. Kaiser, No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); Garcia v. Noem, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); Arrazola-Gonzalez v. Noem, No. 5:25-CV-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); Lepe v. Andrews, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); Jabara Oliveros v. Kaiser, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025); Castellanos v. Kaiser, No. 25-CV-07962, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025); Leon Espinoza v. Kaiser, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); Rosado, 2025 WL 2337099; Alvarez Martinez v. Noem, et al., 5:25-CV-01007-JKP (W.D. TX Sept. 8, 2025) (finding section 1225 does not apply); see also Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that “[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination”); Ochoa Ochoa v. Noem, 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025); Sanchez Alvarez v. Noem, No. 1:25-cv-1090 (W.D. Mich. Oct. 17, 2025); Rodriguez Carmona v. Noem, No. 1:25-cv-1131 (W.D. Mich. Oct. 24, 2025); and Patel v. Noem, No. 1:25-cv-11180 (N.D. Ill. Oct. 24, 2025).

22. This is now a widespread position adopted by EOIR applying across the United States.
23. This interpretation defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.
24. 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].”
25. 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). 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.
26. 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).
27. 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

28. Petitioner Chay has resided in the United States since around 2004 or 2005 and lived in New Jersey before being detained and transported to Natchez, MS.
29. Mr. Chay is the proud father of three (3) children all of which are United States citizens.

30. Mr. Chay has no known criminal history and would not be a danger to the community.
31. In the last month or so, Petitioner was arrested by immigration authorities as part of a widescale immigration enforcement action.
32. He will be placed into removal proceedings to appear before an immigration judge (IJ) and will be 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).
33. As a result of this designation, an immigration judge will find no jurisdiction over a bond proceeding, leaving Mr. Chay with no opportunity for release.

CAUSES OF ACTION

COUNT 1

Violation of 8 U.S.C. § 1226(a)

Unlawful Denial of a Bond Hearing

34. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
35. 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 noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.
36. The application of § 1225(b)(2) to bar Petitioner from receiving a bond redetermination hearing before an immigration judge is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT 2

Violation of Procedural Due Process

37. Petitioner repeats, re-alleges, and incorporates by reference paragraphs 1 to 33 as if fully set forth herein.
38. 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).
39. Petitioner has a fundamental interest in liberty and being free from official restraint.
40. The government’s detention of Petitioner without the possibility for a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

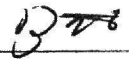
PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Declare that the Petitioner’s inability to seek a bond redetermination hearing before an immigration judge violates the INA, APA, and Due Process;
- c. Issue a writ of habeas corpus requiring that Defendants release Petitioner;
- d. Set aside Respondents’ unlawful detention policy under the APA, 5 U.S.C. § 706(2);
- e. Award reasonable attorneys’ fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 241(d), 5 U.S.C. § 504, or any other applicable law; and
- f. Order further relief as this court deems just and appropriate.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this the 17th day of November, 2025.



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