

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

1. Ricardo AGUAYO-RODRIGUEZ)
)
Petitioner,)

Case No. _____

v.)

Immigration File No.

A 

- 1. Kristi NOEM, in her official)
capacity as Secretary, U.S)
DEPARTMENT OF HOMELAND)
SECURITY;)
- 2. Pamela BONDI, in her official)
capacity as U.S. Attorney)
General;)
- 3. Todd Lyons, in his official capacity)
as Acting Director, U.S. Immigration)
and Customs Enforcement (ICE))
- 4. Sam OLSEN, in his official)
capacity as Field Office Director)
of Enforcement and Removal)
Operations, ICE Chicago)
Field Office, Immigration and)
Customs Enforcement;)
- 5. Steve KELLEY, in his official)
capacity Warden of)
Kay County Detention Facility)
)
Respondents.)

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Ricardo Aguayo-Rodriguez, ("Petitioner"), by and through his undersigned counsel, hereby submits this Petition for Writ of Habeas Corpus to review the lawfulness of his detention. Petitioner is currently being held in detention by

Immigration and Customs Enforcement (“ICE”), a part of the U.S. Department of Homeland Security. Petitioner challenges his unlawful and indefinite detention, which is the result of a new and erroneous interpretation of the Immigration and Nationality Act (“INA”) by the U.S. Department of Homeland Security (“DHS”) and the U.S. Department of Justice (“DOJ”). Petitioner has resided in the United States for over three decades. Petitioner has been held without the possibility of bond due to the misapplication of 8 U.S.C. § 1225(b)(2)(A) and the Board of Immigration Appeals’ (“BIA”) recent decision in *Matter of Yajure Hurtado*, 26 I&N Dec. 216 (BIA 2025). Petitioner and countless of similarly situated individuals have been stripped of their ability for bond hearings guaranteed by 8 U.S.C. § 1226. As a result, Petitioner remains detained at the Kay County Correctional Facility in Newkirk, Oklahoma, without judicial oversight, in violation of both the INA and the Due Process Clause of the Fifth Amendment.

3. Petitioner is charged with, *inter alia*, entered the United States without admission or inspection. See 8 U.S.C. § 1182(a)(6)(A)(i).

4. DHS has denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all ICE employees to consider anyone inadmissible under § 1182(a)(6)(A)(i), i.e., those who entered the United States without admission or inspection, subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. On September 5, 2025, the BIA issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of*

Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

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

7. 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.

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

JURISDICTION

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Kay County Correctional Facility in Newkirk, Oklahoma.

10. 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).

11. 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.

12. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court held that habeas corpus

may be used to bring a constitutional challenge to pre-removal order detention.

VENUE

13. 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 Western District of Oklahoma, the judicial district in which Petitioner currently is detained.

14. 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 the United States District Court for Western District of Oklahoma.

REQUIREMENTS OF 28 U.S.C. § 2243

15. 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.*

16. 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

17. Petitioner, Ricardo Aguayo-Rodriguez, is alleged to be a citizen of Mexico who has been transferred through various immigration detention facilities since about November 3, 2025. After detaining Petitioner, ICE did not set bond and Petitioner is unable to obtain review of his custody by an immigration judge, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

18. Respondent, Kristi Noem, is sued in her official capacity as 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.

19. Respondent, Pamela Bondi, is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee EOIR, which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

20. Respondent, Todd Lyons, is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. In his capacity, he has authority to charge Petitioner in removal proceedings and is a legal custodian with authority to release Petitioner.

21. Respondent, Sam Olson, is sued in his official capacity as the Director of the Chicago Field Office of U.S. Immigration and Customs Enforcement (ICE). Respondent

Olsen is a legal custodian of Petitioner and has authority to release him, as head of the Kay County Detention Facility.

22. Respondent, Steve Kelley, is the Sheriff and Warden of Kay County Detention Facility, and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement. Respondent Kelley is a legal custodian of Petitioner.

STATEMENT OF FACTS

23. Petitioner has resided continuously in the United States where he was residing in Chicago, IL prior to his transfer to Kay County, Oklahoma.

24. On November 3, 2025, On November 3, 2025, he was ripped off his bike in Chicago by Customs and Border Patrol agents and turned over to ICE after requiring hospitalization due to the officers' brutality. He was then transferred to ICE detention and is now in Kay County, Oklahoma.

25. DHS placed Petitioner in removal proceedings before the El Paso, TX Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. §1182(a)(6)(A)(i) as someone who entered the United States without inspection.

26. Petitioner has resided in the United States for over 30 years. He is currently injured in custody, and reports that he has been denied medical attention despite numerous requests.

27. Without intervention from this Court, Petitioner faces the prospect of indefinite detention lasting months or even years, separated from his family and community.

LEGAL FRAMEWORK

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

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

30. 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).

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

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

33. 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).

34. Following the 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).

35. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). 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)).

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

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

38. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the

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

United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

39. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

40. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

41. Subsequently, courts have adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation, including our sister courts in the Tenth Circuit. *See, Garcia Cortes v. Noem*, No. 1:25-cv-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, No. 1:25-cv-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); and *Gamez Lira v. Noem*, No. 1:25-cv-00855 (D.N.M. Sept. 24, 2025).

42. Other District Courts across the country, including this district, have also rejected ICE's erroneous interpretation. *See, e.g., Escarcega v. Jones*, 5:25-CV-1129-J (W.D.Okla, Nov. 20, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR

(CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025)

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

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

44. 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, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

45. 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). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also* *Gomes*, 2025 WL 1869299, at *7.

46. 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.

47. 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). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

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

CLAIMS FOR RELIEF

COUNT ONE

Violation of the INA

49. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

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

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

COUNT TWO

Violation of Due Process

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

53. 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).

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

55. The government’s detention of Petitioner without 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 this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be transferred outside the Western District of Oklahoma while this habeas petition is pending;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (4) 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; Declare that Petitioner’s detention is unlawful;
- (5) 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

(6) Grant any further relief this Court deems just and proper.

DATED this 25th of November 2025.

Respectfully submitted,

s/Kelli J. Stump
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Counsel for Petitioner

Dated: November 25, 2025

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I or my co-counsel have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 25th day of November, in Oklahoma City, Oklahoma.

Respectfully submitted,

s/Kelli J. Stump
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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2025, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Robert J. Troester, U.S. Attorney
Western District of Oklahoma
210 W. Park Avenue, Suite 400
Oklahoma City, OK 73102

s/Kelli J. Stump
Kelli Stump, OBA No. 21374