

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Jose Mario Silva Cueva,
(Alien No. ~~XXXXXXXXXX~~)
Petitioner,

v.

Warden, Miami Federal Detention Center;
Field Office Director, Enforcement and
Removal Operations, Miami Field Office,
Immigration and Customs Enforcement;
Kristi Noem, *in her official capacity as*
Secretary, U.S. Department of Homeland
Security;
Pamela Bondi, *in her official capacity as* U.S.
Attorney General;

Respondents.

Case No. _____

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2241 AND EMERGENCY RELIEF

INTRODUCTION

1. Petitioner Jose Mario Silva Cueva is in the physical custody of Respondents at the Miami Federal Detention Center (FDC). He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

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

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

4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) 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.

5. 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.

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. Petitioner is a member of the "Bond Eligible Class" as certified by the U.S. District Court in the Central District of California on November 25, 2025. *See Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. November 25, 2025).

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he may 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 Miami Federal Detention Center (FDC) in Miami, Florida, within this judicial district.

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.

VENUE

12. 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 Southern District of Florida, the judicial district in which Petitioner currently is detained.

13. 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 Southern District of Florida.

PRUDENTIAL EXHAUSTION

14. “Generally ‘exhaustion is not required where no genuine opportunity for adequate relief exists . . . or an administrative appeal would be futile[.]’” *Puga v. Assistant Field Office Director, Krome North Service Processing Center*, No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025) (quoting *Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982)).

15. It would be futile for Petitioner to seek a custody redetermination hearing before an Immigration Judge (IJ) because a recent BIA decision held that anyone, like Petitioner, who has entered the U.S. without inspection is now considered an “applicant for admission” who is “seeking admission” and therefore subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

REQUIREMENTS OF 28 U.S.C. § 2243

16. 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.*

17. 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

18. Petitioner Jose Mario Silva Cueva is a citizen of Honduras who has been in immigration detention since August 22, 2025. After arresting Petitioner in Bay City, Florida, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

19. Respondent Field Office Director of the Miami Office of ICE’s Enforcement and Removal Operations division is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal.

20. 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.

21. 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.

22. Respondent Warden of the Miami Federal Detention Center has immediate physical custody of Petitioner.

LEGAL FRAMEWORK

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

24. 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).

25. 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).

26. 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).

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

28. 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).

29. 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).

30. 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)).

31. The Supreme Court has also explained that the mandatory detention scheme of § 1225 applies “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Conversely, “[s]ection 1226 generally governs the process of arresting and detaining that group of aliens [already in the country].” *Id.* at 288.

32. 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.

33. 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.

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

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

35. 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. *See, e.g., Boffil v. Field Off. Dir., Mia. Field Off.*, 25-cv-25179, 2025 WL 2938369 (S.D. Fla. Nov. 20, 2025); *Hinojosa Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); *Patel v. Almodovar*, No. CV 25-15345 (SDW), 2025 WL 3012323 (D.N.J. Oct. 28, 2025); *Puga v. Assistant Field Off. Dir, Krome North Processing Ctr.*, 25-cv-24535, 2025 WL 2938369 (S.D. Fla. Oct. 15, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-3682 (KMM/EMB) (D. Minn. Oct 01, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR (N.D. Iowa Sep 23, 2025); *Singh v. Lewis*, Civil Action No. 4:25-cv-96-RGJ (W.D. Ky. Sep 22, 2025); *CHOGLLO CHAFLA v. SCOTT*, No. 2:2025-CV-00437-SDN 2025 WL 2688541 (D. Me. September 21, 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) *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).

36. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Boffil* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner. *See Boffil v. Field Off. Dir., Mia. Field Off.*, 2025 WL 2938369 (S.D. Fla. Nov. 20, 2025).

37. Petitioner is also a member of the Bond Eligible Class certified in *Maldonado Bautista*, which consists of "noncitizens without lawful status who entered without inspection, were not apprehended upon arrival, and are not subject to detention under §§ 1226(c), 1225(b)(1), or 1231 at the time DHS makes an initial custody determination." *Maldonado Bautista v. Ernesto*

Santacruz Jr., 5:25-cv-01873, ECF No. 82 (C.D. Cal. Jul. 28, 2025). As the *Maldonado Bautista* court explained, treating such individuals as arriving non-citizens subject to mandatory detention under § 1225(b)(2)(A) is “at odds with the plain language of the INA.” *Id.* at ECF No. 81. The court further held that § 1226(a) governs the detention of individuals who, like Petitioner, entered without inspection and were later arrested in the interior, because applicants for admission “do not include noncitizens already inside the United States” who were never processed under § 1225(b) at the time of their encounter. *Id.* In certifying the class, the court extended this ruling to all class members and barred the Government from relying on § 1225(b) to deny them a bond hearing under § 1226(b). *Id.* ECF No. 82.

38. 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.

FACTS

39. Petitioner has resided in the United States since 2008 and lives in Doraville, Georgia.

40. On August 22, 2025, Petitioner was arrested while working at the Tyndall Air Force base in Bay City, Florida. Petitioner is now detained at the Miami Federal Detention Center. *See* ICE Online Detainee Locator System search results from November 27, 2025, attached hereto as Exhibit 1.

41. DHS placed Petitioner in removal proceedings before the Krome 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. *See* Petitioner’s Notice to Appear, attached hereto as Exhibit 2.

42. Petitioner has lived and worked in the United States for the past sixteen years. During that time, he has established strong ties to his community. He has worked as a welder for a company that contracted with the Department of Defense. His employment required reliability, skill, and the ability to pass workplace vetting. At the time of his arrest, Petitioner had a pending asylum application and was awaiting the renewal of his employment authorization document. Petitioner is neither a flight risk nor a danger to the community.

43. Petitioner is also a certified member of the *Maldonado Bautista* Bond Eligible Class. As a class member, Petitioner was not subject to detention under § 1225(b) at the time of his initial custody determination and should have been treated as detained under § 1226(a).

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

45. Petitioner subsequently requested a bond redetermination hearing before an immigration judge.

46. On October 8, 2025, the immigration judge denied Petitioner's bond motion indicating that she did not have jurisdiction because of *Matter of Yajure Hurtado*. See Order of the Immigration Judge dated October 8, 2025, attached hereto as Exhibit 3.

47. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from their family and community.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

49. 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.

50. Moreover, Petitioner is a member of the *Maldonado Bautista* Bond Eligible Class and is subject to § 1226(a) and not § 1225(b)(2).

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

COUNT II

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, 121 S.Ct. 2491, 150 L.Ed.2d 653 (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 prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the Southern District of Florida 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, where the Government bears the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a flight risk;
- e. Declare that Petitioner's detention is unlawful;
- f. 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
- g. Grant any other and further relief that this Court deems just and proper.

DATED: November 28, 2025

Respectfully submitted,

/s/ Themistoklis E. Aliferis

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ATTORNEYS FOR PETITIONER

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner, because I am Petitioner's attorney. I have discussed with the Petitioner the facts described in this petition. Based on those discussions, I hereby verify that the factual statements in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed this 28th day of November, 2025.

/s/Themistoklis Aliferis
Themistoklis Aliferis
Attorney for Petitioner