

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Jefferson CHAVARRIA-RIVERAS,
Petitioner,

vs.

**U.S. DEPARTMENT OF HOMELAND
SECURITY; Kristi NOEM, Secretary,
U.S. Department of Homeland Security;
Pamela BONDI, U.S. Attorney General,
in her official capacity; Garret RIPA,
Miami Field Office Director of
Immigration and Customs Enforcement,
Enforcement and Removal Operations;
Charles PARRA, Assistant Field Office
Director, Krome Service Processing
Center,
Respondents.**

Case No.

Petition for Writ of Habeas Corpus and Request to Show Cause

Petitioner, by and through undersigned counsel, seeks judicial review of his continued detention under 28 U.S.C. § 2241.

Introduction

1. Petitioner is currently detained at Glades County Detention Center, in Moore Haven, Florida, which is within the Krome, Miami, Control Office.

2. Petitioner, a native of Nicaragua. Petitioner has no known criminal record.

3. Petitioner applied for asylum on October 28, 2022 and is pending a final hearing for a decision on his application for asylum with the Miami Immigration Court.

4. On November 19, 2025 Petitioner was detained by ICE on his way to work. Petitioner was in possession of a valid driver's license and employment authorization card. It remains unknown why officers initially detained Petitioner.

5. Under current agency, i.e., Respondents', interpretation of the Immigration and Nationality Act [INA], Petitioner is being held without the opportunity to seek bond out of detention.

6. Petitioner's detention without bond violates the plain language of the INA. Despite the agency's interpretation, 8 U.S.C. § 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. Petitioner's continued detention is unlawful because it (1) exceeds the scope of detention authority permitted under the INA, and (2) violates the Fifth Amendment's Due Process Clause by subjecting him to punitive and indefinite confinement, thereby rendering Petitioner's detention unlawful and unconstitutional.

9. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus and order Petitioner's release from custody, with appropriate conditions of supervision if necessary. In the alternative, Petitioner requests that this Court conduct or order an immigration judge to conduct a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the reviewing court considers alternatives to detention that could mitigate risk of flight. Continued detention under these circumstances serves no legitimate governmental purpose and violates the humanitarian and constitutional principles that govern civil immigration custody.

Jurisdiction

10. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody and seeks a writ of habeas corpus challenging the legality of his continued civil detention by DHS in violation of the Constitution and laws of the United States.

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. Venue is proper in this Court under 28 U.S.C. § 2241(a) because Petitioner's custodian is within the geographic boundaries of the Southern District of Florida.

Exhaustion and Requirements of 28 U.S.C. § 2243

13. Here, because the Immigration Court is relying on BIA precedent that Petitioner is subject to mandatory detention, and thus is not eligible for bond, Petitioner has exhausted all remedies and may file a habeas petition immediately before this Honorable Court.
14. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the Respondents "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*
15. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the

constitutional law of England, 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).

Parties

16. Petitioner is a native of Nicaragua. Petitioner has been in DHS custody since November 19, 2025. Petitioner is currently detained Glades County Detention Center in Moore Haven, Florida. Petitioner’s custodian is Krome, Miami, FL Docket Control Office.
17. U.S. Department of Homeland Security [DHS] is the federal agency responsible for implementing and enforcing our nation’s immigration laws. DHS oversees its component agencies, e.g., ICE.
18. Defendant Kristi Noem is the Secretary of DHS. In that capacity, she is charged with the administration and enforcement of the nation’s immigration laws. She is used in her official capacity.
19. Defendant Pamela Bondi is the United States Attorney General. In this capacity, she directs agencies within the United States Department of Justice, including the Executive Office for Immigration Review [EOIR], which houses the immigration courts and the Board of Immigration Appeals. Defendant Bondi is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g) and oversees EOIR. She is sued in her capacity.

20. Garret Ripa, is named in his official capacity as Miami Field Office Director of the ICE Enforcement & Removal Operations (“ERO”). In this capacity, he is responsible for the administration of immigration laws and the execution of immigration confinement and the institution of removal proceedings within the Miami Dade Area, which includes Krome Processing Center, the jurisdiction where Petitioner is confined. As such, he is a custodian of Petitioner.
21. Charles Parra, is named in his official capacity as the Assistant Field Office Director of the Krome Processing Center. In this capacity, he is responsible for the immediate execution of detention over Petitioner and is the immediate custodian of Petitioner.

Relevant Factual Background

22. Petitioner is a Nicaraguan national.
23. Petitioner has no known criminal history.
24. Petitioner is in possession of a valid driver’s license and an employment authorization card.
25. Petitioner entered the United States on April 2, 2022.
26. At the time of entry, Petitioner was inspected by DHS as he was not in possession of a visa for entry.
27. On April 4, 2022, DHS placed Petitioner in removal proceedings.

28. Petitioner's sole charge of removability is under 8 USC § 212(a)(6)(A)(i) ["...alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General"]. Pet'r's App. at 4.
29. Petitioner was subsequently released from detention to await his removal proceedings within the United States.
30. On October 28, 2022, Petitioner filed an application with the Miami immigration court seeking asylum.
31. Petitioner has a final hearing on his application for asylum scheduled for February 26, 2029.
32. On November 19, 2025, Petitioner's vehicle, en-route to work, was stopped by officers. It is unknown if it was local police or ICE that initially detained Petitioner.
33. ICE eventually took Petitioner to an ICE holding facility
34. When Petitioner was detained, he was in possession of a valid driver's license and a valid employment authorization card.
35. It is today, it is unknown why Petitioner's vehicle was stopped.
36. Petitioner is currently detained at Glades County Detention Center in Moore Haven, Florida.
37. ICE in Krome, Miami, is Petitioner's custodian.

38. The immigration court docket continues to reflect that Petitioner's final hearing date for asylum is scheduled in Miami, Florida for February 26, 2029.
39. Prior to his detention, on September 5, 2025, the BIA issued its decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that individuals charged with removability under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I) are subject to mandatory detention, i.e., they are not bond eligible.
40. The BIA's recent decision reverses decades of established case law on bond eligibility.
41. Because Petitioner is subject to mandatory detention, he is not eligible for bond under this new interpretation.
42. As a result, Petitioner remains in detention. Without relief from this Court, he faces the prospect of months, or even years, in immigration custody.

Legal Background

43. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.
44. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration court. *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).

45. 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).

46. 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).

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

48. 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).

49. 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).

50. 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)).

51. 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.

52. 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

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

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.

53. 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.

54. 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.

55. Even before ICE or the BIA introduced these nationwide policies, Immigration Courts in the Tacoma, Washington, 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).

56. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., 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); *Saider Santiago Helbrum v. Williams*, No. 4:25-cv-0349-SHL-SBJ (S.D. Iowa Sept. 30, 2025); *Noel De la Cruz v. Noem*, No. 1:25-cv-00150-LTS-KEM (N.D. Iowa Oct. 20, 2025); *Ismael Cerro Perez v. Parra*, No. 1:25-cv-24820-KMW (S.D. Fla. Oct. 27, 2025).

57. 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.

58. 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].”
59. 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.
60. 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.
61. 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).

62. 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.

Cause of Action

I. Count 1: Violation of the INA

63. 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 have already been placed in removal proceedings. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

II. Count 2: Violation of the Bond Regulations

65. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

66. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individual like Petitioner.

67. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

III. Count 3: Violation of Due Process

68. 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).

69. Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. *See id.* at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). With respect to immigration confinement, the Supreme Court has recognized two special justifications: (1) preventing flight and (2) preventing danger to the community. *See id.* at 690.

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

71. 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.

Request for Relief

Petitioner respectfully request this Honorable Court to:

- a) Accept jurisdiction of the 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;
- e) Declare that Petitioner's detention is unlawful; and
- f) Grant any other and further relief that this Court deems just and proper.

Dated: December 1, 2025

Respectfully submitted,

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