UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARIO PONCE **Petitioner,** **v.** **JOE M. SMITH, Warden, JOE CORLEY DETENTION FACILITY; GABRIEL MARTINEZ, Acting Director of Houston Field Office, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and PAM BONDI, Attorney General of the United States, in their official capacities,** **Respondents.**	**Case No. _____** **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO § 2241 AND REQUEST FOR ORDER TO SHOW CAUSE** **ORAL ARGUMENT REQUESTED** **EXPEDITED HEARING REQUESTED**

PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND REQUEST FOR ORDER TO SHOW CAUSE

INTRODUCTION

1. Petitioner, Mario Ponce, ("Petitioner"), a noncitizen,[1] respectfully seeks a writ of habeas corpus, an Order that requires Respondents, who have illegally detained him at the Joe Corley ICE Detention Facility (aka Joe Corley ICE Processing Center) in Conroe, Texas since September 14, 2025, to release him from custody or provide him with an individualized bond hearing before an immigration judge ("IJ") pursuant to 8 U.S.C. § 1226(a).

2. Petitioner's has been denied due process—his detention is unconstitutional.

[1] Petitioner, Mario Ponce, is a citizen of Mexico. Petitioner has lived here for more than three decades. He was detained during immigration raids and enforcement actions in Houston, Texas.

3. Petitioner legally entered the United Staes more than three decades ago—he was "inspected, admitted or paroled, waved through" at Laredo, Texas into the United States.[2]

4. Petitioner is eligible for adjustment of status, an immediate relative petition, filed by his United States citizen son. Unfortunately, United States Citizenship and Immigration Services ("USCIS") has refused to timely adjudicate the pending application.

5. Petitioner has been subjected to new DHS policy issued ion July 8, 2025 which instructs all Immigration and Customs Enforcement ("ICE") employees to consider anyone arrested within the United States and charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) to be "an applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

6. The new DHS policy was issued "in coordination with the Department of Justice (DOJ)." *See* Ex. A, ICE Interim Guidance Regarding Detention Authority for Applicants for Admission. Ponce has been denied a bond hearing by an Immigration Judge based on this new policy. Exs. B and C, *Orders Denying Custody Redetermination and Bond.*

7. The denial of bond hearings to the Petitioner and his ongoing detention on the basis of the new DHS policy violates the plain language of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*. Despite the new DHS policy's assertions to the contrary, 8 U.S.C. §

[2] Section 245(a) of the Immigration and Nationality Act ("INA") permits certain individuals to apply for adjustment of status (i.e., obtain a green card) from within the United States if they were "inspected and admitted or paroled" into the country. While many undocumented individuals are barred from this benefit due to an unlawful entry, a limited line of caselaw and guidance supports that a person who was "waved through" a U.S. port of entry may, under certain conditions, still be considered "admitted" for purposes of INA § 245(a). *See Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980) (holding that an individual who was allowed to enter without questioning or inspection was "admitted" for purposes of adjustment of status); *see also, Matter of Quilantan* 25 I&N Dec. 285 (BIA 2010). Accordingly, a "waved through" entry refers to a situation in which a person enters the U.S. through a port of entry and is allowed to pass by a border official who makes no effort to inspect or verify their documents, usually under the assumption that the person is lawfully present."

1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and is now residing in the United States.

8. Instead, Petitioner is subject to a different statute, § 1226(a), that allows for release on bond or conditional parole.[3]

9. Respondents' new legal interpretation set forth in the policy is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner who are present within the United States. Respondents' new policy and the resulting ongoing detention of Petitioner without a bond hearing is depriving Petitioner of statutory and constitutional rights and unquestionably constitutes irreparable injury.

10. Petitioner therefore seeks a writ of habeas corpus and an Order enjoining Respondents from continuing to detain them unless Petitioners are provided an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. §1226(a). Petitioner also seeks an Order requiring USCIS to timely adjudicate the pending Form I-130 Petition filed by his United States Citizen son, and prohibiting Respondents from relocating Petitioner outside of the Southern District of Texas, pending final resolution of this litigation.

11. As explained above, on October 24, 2025 and again on December 2, 2025, Petitioner's motion for redetermination of his illegal detention and request for release on bond was denied by the Immigration Court, Executive Office of the Immigration Review ("EOIR"), Ex. B and C, *Orders Denying Custody Redetermination and Bond.* Regrettably, the Immigration Judge erroneously determined that Petitioner was an *applicant for admission,*[4] and that Immigration

[3] Section 1226(a) expressly applies to people who, like Petitioner, are charged as removable for having entered the United States without inspection and being present without admission.

[4] To lawfully enter the United States, an alien must apply and present himself or herself in person to an immigration officer at a U.S. port of entry when the port is open for inspection. *See* 8 CFR 235.1(a). *See Matter of S-*, 9 I&N Dec. 599 (BIA 1962) (inspection is the process that determines an alien's initial right to enter the United States upon presenting himself or herself for inspection at a port of entry). *See Ex Parte Saadi*, 23 F.2d 334 (S.D. Cal. 1927). An alien who arrives at a port of entry and presents himself or herself for inspection is an applicant for admission. Through

Court did not have jurisdiction to adjudicate Ponce's motion for release on bond. However, contrary to Immigration Court's determination, *supra*, Petitioner is not an *applicant for admission,* he was "inspected, admitted or paroled, waved through" at Laredo, Texas into the United States more than thirty years ago.[5]

12. Petitioner seeks adjudication of the subject habeas petition, including a ruling by this Court that he is eligible for release on bond and is not subject to removal.

13. Petitioner is harmed by Respondents' new, draconian policy reinterpreting the immigration detention statutes to preclude Petitioner from eligibility for bond under the Immigration and Nationality Act (INA), 8 U.S.C. § 1226(a), and for bond hearings under 8 C.F.R. §§ 1003.19(a), 1236.1(d). Instead, pursuant to this new policy, Respondents now consider Petitioner as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), without the opportunity for release on bond during the pendency of their lengthy removal proceedings.

14. Petitioner is charged with, *inter alia*, having entered the United States without inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i). Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody. Those denials were consistent with a new DHS policy issued on July 8, 2025, instructing all ICE employees to consider anyone alleged to be inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore eligible for release only on parole.

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the inspection process, an immigration officer determines whether the alien is admissible and may enter the United States under all the applicable provisions of immigration laws.

[5] Petitioner sought a bond redetermination hearing before an immigration judge (IJ) at the Conroe Immigration Court, but the IJ denied Petitioner's bond. The IJ reached this conclusion by reasoning that, notwithstanding the years or even decades Petitioner has lived in the United States, Petitioner is nevertheless an "applicant for admission" who is "seeking admission" and subject to mandatory detention under § 1225(b)(2)(A).

15. Petitioner's detention on this basis violates the plain language of the INA and its implementing regulations.

16. Subparagraph 1225(b)(2)(A) applies to individuals who are apprehended on arrival in the United States. It states that an "applicant for admission" who is "seeking admission" shall be detained for a removal proceeding. Id. It does not apply to individuals like Petitioner, who are arrested and detained by ICE after having entered and begun residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to Petitioner, charged as inadmissible for having entered the United States without inspection.

17. As argued *supra*, Respondents' new legal interpretation is plainly contrary to the statutory framework and its implementing regulations. Indeed, for decades, Respondents have applied § 1226(a) to people like Petitioner. Respondents' new policies are thus not only contrary to law, but arbitrary and capricious in violation of the Administrative Procedure Act (APA). They were also adopted without complying with the APA's procedural requirements.

18. Petitioner seeks declaratory relief that establishes that he is subject to detention under § 1226(a) and its implementing regulations and are therefore entitled to an individualized custody determination following apprehension by DHS and, if not released, a bond determination by the Immigration Court.

19. At this time, Petitioner's release is not reasonably foreseeable and absent intervention by this Court, Petitioner's removal is imminent—a habeas review is necessary pursuant to laws of the United Sates to vindicate Petitioner's statutory, constitutional, and regulatory rights. This Court should grant the instant petition for a writ of habeas corpus, because absent an order from this

Court, Petitioner will remain in detention indefinitely. Mario Ponce, the Petitioner, respectfully requests this Court find that his detention is illegal and order immediate release.

20. Additionally, Petitioner seeks relief under APA, 5 U.S.C. § 706(2), that vacates and sets aside DHS's unlawful detention policy and the Conroe Immigration Court's unlawful bond denial policy.

JURISDICTION

21. Portioner is in the physical custody of Respondents, detained at the Joe Corley ICE Processing Center in Conroe, Texas.

22. Petitioner's individual cases arises under 28 U.S.C. § 2241, and further arises under the INA, 8 U.S.C. §§ 1101–1538, and its implementing regulations; the APA, 5 U.S.C. §§ 500–596, 701–706; and the U.S. Constitution.

23. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the United States, and under 28 U.S.C. § 2241 (as to the Petitioner), as the case challenges Petitioner's unlawful detention.

24. The Court may grant relief pursuant to 28 U.S.C. § 2241; the Declaratory Judgment Act, 28 U.S.C. § 2201; the APA, 5 U.S.C. §§ 702, 706; the All Writs Act, 28 U.S.C. § 1651; Federal Rule of Civil Procedure 65; the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2); and the Court's inherent equitable powers.

25. This action further arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*. The Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

VENUE

26. Venue properly lies within the Southern District of Texas under 28 U.S.C. § 1391(e), because this is a civil action in which Respondents are employees, officers, and 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 because Petitioner had his bond hearings before the Conroe, Texas Immigration Court, which is in this District. Moreover, Petitioner resides in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

PARTIES

27. Petitioner is a citizen of Mexico. He is a resident of Harris County and is present within the jurisdiction of Southern District of Texas, Houston Division. Additionally, Petitioner is currently detained at Joe Corley Detention Facility in the custody, and under the direct control of Respondents and their agents.

28. Respondent, Joe M. Smith ("Smith"), is the Warden of the Joe Coely Detention Facility, and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Smith is a legal custodian of Petitioner.

29. Respondent Gabriel Martinez ("Martinez") is sued in his official capacity as the Acting Director of the Houston Field Office of U.S. Immigration and Customs Enforcement. Respondent Martinez is a legal custodian of Petitioner and has authority to release him.

30. Respondent Kristi Noem ("Noem") is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian

of Petitioner.

31. Respondent Pam Boni ("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 the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

LEGAL FRAMEWORK

THE WRIT OF HABEAS CORPUS

32. The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless government action. *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969); *Boumediene v. Bush*, 128 S.Ct. 2229, 2244, 2008 WL 2369628, at *12 (2008) ("The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom").

33. Historically, "[habeas corpus] has served as a means of reviewing the legality of Executive detention." *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (citing *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)). The right to habeas corpus is rooted in the U.S. Constitution's Suspension Clause. U.S. Const. art. I, § 9, cl. 2 states: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the Public Safety may require it." There also is a federal habeas corpus statute, 28 U.S.C. § 2241, which states, in pertinent part:

> (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions . . . (c) The writ of habeas corpus shall not extend to a prisoner unless: (1) He is in custody or by color of the

authority of the United States; (2) He is in custody in violation of the Constitution or laws or treaties of the United States…

34. Since its inclusion in the Judiciary Act of 1789, 28 U.S.C. § 2241 has given federal district courts jurisdiction to grant writs of habeas corpus to people who are held in "custody" by the federal government in violation of the Constitution, laws, or treaties of the United States. Under this statute, federal courts have considered both constitutional claims and claims of statutory interpretation. "Freedom from imprisonment—from government custody, detention, or other forms physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690. Indefinite detention, in particular, raises a "serious constitutional problem" and violates the Due Process Clause. *Id.* at 689–90.

35. The Supreme Court has upheld the availability § 2241 habeas corpus in cases challenging detention, *See*:

(1) *Zadvydas v. Davis*, 533 U.S. 678 (2001) – The Court held that habeas corpus may be used to bring statutory and constitutional challenges to post-removal order detention. This case addressed whether the government could detain a removable person indefinitely beyond the removal period;
(2) *Demore v. Kim*, 538 U.S. 510 (2003) – The Court held that habeas corpus may be used to bring a constitutional challenge to pre-removal order detention. The Court considered the constitutionality of the mandatory detention provision, INA § 236(c).;
(3) *Clark v. Martinez*, 543 U.S. 371 (2005) – The Court held that its decision in *Zadvydas v. Davis* also applied to government detention of persons found to be inadmissible.

REQUIREMENTS OF 28 U.S.C. § 2243

36. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") 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.* (emphasis added). 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) (emphasis added). Petitioner is "in custody" for the purpose of § 2241 because he is arrested and detained by Respondents.

THE IMMIGRATION AND NATIONALITY ACT ("INA")

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

38. 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 until their removal proceedings are concluded, see 8 U.S.C. § 1226(c).

39. 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).

40. Last, the INA also provides for detention of noncitizens who have received a final order of removal from the United States, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

41. This case concerns the detention provisions at § 1226(a) and § 1225(b)(2). 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 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

42. 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) ("Despite 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").

43. Thus, in the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *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)).

44. In recent months, Respondents have adopted an entirely new interpretation of the statute. On September 5, 2025, the Board of Immigration Appeals ("BIA"), issued an unpublished decision holding that all noncitizens who entered the United States without admission or parole are considered applicants for admission, and are therefore ineligible for IJ bond hearings under 8 U.S.C. § 1225(b)(2)(A). *See* Ex. D.

45. On July 8, 2025, ICE, "in coordination with the Department of Justice (DOJ)," announced a corresponding policy that rejected the well-established understanding of the statutory and regulatory framework and reversed decades of practice.

46. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be deemed subject to mandatory detention under § 1225(b)(2)(A). *Id.* 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.

47. It is estimated that this novel interpretation of the INA would require a person's detention any time that immigration authorities arrest one of the millions of immigrants residing in the United States who entered without inspection and who has not since been admitted or paroled.[6] According to news reports, immigration officials within the Trump administration requested this new policy in response to Congress's recent appropriation of billions of dollars to expand the immigration system, given that the ICE will soon have capacity to detain more than twice as many people on any given day.[7]

48. The IJ of the Conroe Immigration Court followed suit. This IJ now holds that he lacks jurisdiction to determine bond for any person who has entered the United States without inspection, even if that person has resided here for months, years or decades. Instead, consistent with the unpublished BIA decision and the new DHS policy, the IJ is concluding such people are subject to mandatory detention under § 1225(b)(2)(A).

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[6] Maria Sacchetti & Carol D. Leonnig, *ICE declares millions of undocumented immigrants ineligible for bond hearings*, Washington Post (July 14, 2025), https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/ [https://perma.cc/5ZTR-EN4B].

[7] *See* Michelle Hackman, *New ICE Policy Blocks Detained Migrants From Seeking Bond*, Wall Street Journal (July 15, 2025), https://www.wsj.com/politics/policy/new-ice-policy-blocks-detained-migrants-from-seeking-bond f557402a [https://perma.cc/K8NY-DAAZ].

49. Nationwide, pursuant to its July 8, 2025, policy, DHS is now asserting that all persons who entered without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

50. While some IJs in other immigration courts have continued to grant bond to people like Petitioner, consistent with its new policy, DHS also has begun filing Form EOIR-43, Notice of Service Intent to Appeal Custody Redetermination. This notice not only appeals any IJ decision granting bond but also triggers an automatic stay of the bond decision during the appeal. *See* 8 C.F.R. § 1003.19(i)(2).

51. The "auto-stay" provision of 8 C.F.R. § 1003.19(i)(2) prevents noncitizens from posting bond and being released even in jurisdictions where IJs have rejected DHS's unlawful reinterpretation of § 1225(b)(2) and have granted bond.

52. ICE and DOJ have adopted this new and unprecedented position on bond even though federal courts have rejected this exact conclusion. For example, in the Tacoma, Washington, immigration court, IJs previously stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, reasoning such people are subject to mandatory detention under § 1225(b)(2)(A).

53. There, in granting preliminary injunctive relief, the U.S. District Court for 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*, No. 3:25-CV-05240-TMC, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d 2025 WL 2084238, at *9 (D. Mass.

July 24, 2025) (ordering release where noncitizen was redetained based on ICE's assertion of detention authority under § 1225(b)).

54. DHS's and DOJ's interpretation defies the INA. As the Rodriguez Vazquez court and other courts explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

55. 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]."

56. 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). Just this year, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from § 1226(a)'s default bond provision. Subparagraph (E)'s reference to persons inadmissible under § 1182(6)(A), i.e., persons inadmissible for entering without inspection, 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, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). 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.

57. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who very 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); *see also*

Diaz Martinez, 2025 WL 2084238, at *8 ("'[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.'" (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). 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).

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

STATEMENT OF FACTS

59. Petitioner is a 56-year-old citizen of Mexico.

60. A family man, who has been married for more than thirty years and is father to three U.S. citizen children. Petitioner's oldest son, G[redacted], is a special needs child who has been dependent on his father for physical and mental support his entire life. Petitioner has been gainfully employed ever since he arrived in the United States, and has filed a tax return every year. *See* Exhibit F, IRS Tax Returns.

61. Mario Ponce has made positive contributions to his family and society for the past thirty plus years.

62. On September 14, 2025, on his way to work , Petitioner was stopped by a so-called joint task force consisting of Immigration and Customs enforcement ("ICE"), including local law enforcement, near Katy, Texas on Interstate 10. The same day, he was illegally detained and transferred to the Joe Corley Detention Facility in Conroe, Texas.

63. On October 21, 2025, Petitioner file a *Motion for Redetermination* of his illegal detention and *Request for Release on Bond* with the EOIR, *See* Exs. B and C, *Motion for Redetermination* and *Request for Release on Bond.*

64. On October 21, 2025 and again on December 2, 2025, the Immigration Judge denied said motion and erroneously determined that Petitioner was an *applicant for admission,*[8] and that Immigration Court did not have jurisdiction to adjudicate Mr. Ponce's motion for release on bond. *See* Exhibit B, *Order Denying Motion for Redetermination* and *Request for Release on Bond.*

65. Contrary to Immigration Judge's determination, Petitioner is not an applicant for admission, he is eligible for release on bond and is not subject to removal.

CLAIMS FOR RELIEF

COUNT I
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

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

67. 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) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

[8] To lawfully enter the United States, an alien must apply and present himself or herself in person to an immigration officer at a U.S. port of entry when the port is open for inspection. *See* 8 CFR 235.1(a). *See Matter of S-*, 9 I&N Dec. 599 (BIA 1962) (inspection is the process that determines an alien's initial right to enter the United States upon presenting himself or herself for inspection at a port of entry). *See Ex Parte Saadi*, 23 F.2d 334 (S.D. Cal. 1927). An alien who arrives at a port of entry and presents himself or herself for inspection is an applicant for admission. Through the inspection process, an immigration officer determines whether the alien is admissible and may enter the United States under all the applicable provisions of immigration laws.

68. Nonetheless, DHS and the Conroe Immigration Court have adopted a policy and practice of applying § 1225(b)(2) to Petitioner.

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

COUNT II
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19
Unlawful Denial of Release on Bond

70. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs as if fully set forth herein.

71. 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.

72. Nonetheless, DHS and the Conroe Immigration Court have adopted a policy and practice of applying § 1225(b)(2) to Petitioner.

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

COUNT III
Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and Capricious Agency Policy

74. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs as if fully set forth herein.

75. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). 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) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

76. Nonetheless, DHS and the Conroe Immigration Court IJs have a policy and practice of applying § 1225(b)(2) to Petitioner. Moreover, Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

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

COUNT IV

Violation of the Administrative Procedure Act Failure to Observe Required Procedures

77. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs as if fully set forth herein.

78. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D). Specifically, the APA requires agencies to follow public notice-and-comment rulemaking procedures before promulgating new regulations or amending existing regulations. See 5 U.S.C. § 553(b), (c).

79. Respondents failed to comply with the APA by adopting its policy and departing from its regulations without any rulemaking, let alone any notice or meaningful opportunity to comment. Respondents failed to publish any such new rule despite affecting the substantive rights of thousands of noncitizens under the INA, as required under 5 U.S.C. § 553(d).

80. Had Respondents complied with the advance publication and notice-and-comment rulemaking requirements under the APA, members of the public and organizations that advocate on behalf of noncitizens like Petitioner would have submitted comments opposing the new policies.

81. The APA's notice and comment exceptions related to "foreign affairs function[s] of the United States," id. § 553(a)(1), and "good cause," id. § 553(d)(3), are inapplicable. Respondents' adoption of their no-bond policies therefore violates the public notice-and-comment rulemaking procedures required under the APA.

COUNT V
Violation of Fifth Amendment Due Process Clause

82. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs as if fully set forth herein.

83. The Fifth Amendment provides that "[n]o person" shall be "be deprived of life, liberty, or property, without due process of law."

84. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533U.S. 678, 690 (2001).

85. Moreover, "[t]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

86. Respondents' mandatory detention of Petitioner without consideration for release on bond or access to a bond hearing violates his due process rights.

PRAYER FOR RELIEF

WHEREFORE,

Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Issue an Order that Respondents timely adjudicate Petitioner's immediate relative I-130 Petition;

(4) Declare that Petitioner's detention, the challenged action, violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1252;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately or provide Petitioner with a bond hearing pursuant to U.S.C. § 1226(a) or the Due Process Clause within 7 days;

(6) Set aside the denial of bond hearing that Respondents issued to Petitioner, and order Respondents to provide a new bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days;

(7) Set aside Defendants' unlawful detention policy under the APA, 5 U.S.C. § 706(2), as contrary to law, arbitrary and capricious, and contrary to constitutional right;

(8) Declare DHS's practice of using Form EOIR-43 to subject Bond Eligible Petitioner to detention after an IJ sets bond to violate the INA, its implementing regulations, and the APA where the basis for the Form EOIT-43 is DHS's new policy;

(9) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

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

Respectfully submitted,

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Counsels for Petitioner

Dated: this 3rd day of December, 2025

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

I represent the Petitioner, Mario Ponce, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 3rd day of December, 2025.

/s/ Azhar M. Chaudhary
Azhar M. Chaudhary