UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Ezequiel Rodriguez Barron

Petitioner,

v.

John Doe, Warden, Imperial Regional Adult Detention Facility; John Doe, Field Office Director, San Diego Field Office, United States Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of Homeland Security; PAMELA JO BONDI, United States Attorney General, *in their official capacities,*

Respondents.

Civil Action No.: '25CV3434 JES AHG

PETITION FOR WRIT OF HABEAS CORPUS

PETITIONER'S DHS NUMBER: [redacted]

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Ezequiel Rodriguez Barron [redacted] is in the physical custody of Respondents at the Imperial Regional Adult Detention Facility in Calexico, CA.
2. Petitioner is unlawfully detained. The Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have improperly concluded that Petitioner, despite being physically present within the interior of and residing in the United States and being arrested in Riverside County, California, should be deemed to be seeking admission to

the United States and therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

3. DHS has placed Petitioner in removal proceedings pursuant to 8 U.S.C. § 1229a and has charged Petitioner with being present in the United States without admission and therefore removable pursuant to inter alia 8 U.S.C. § 1182(a)(6)(A)(i).

4. Based on the charge of removability, DHS has denied Petitioner's release from immigration custody, pursuant to a new DHS policy issued on July 8, 2025,[1] instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) - i.e., present without admission - to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention during the removal hearing process.

5. Petitioner sought bond hearings before an immigration judge (IJ), and the IJ denied bond. The IJ based his decision on the same legal analysis as set forth in the new DHS policy. Indeed, the DHS policy states it was issued "in coordination with the Department of Justice (DOJ)." IJs function within EOIR which is a component of the Department of Justice. The IJ concluded that notwithstanding Petitioner's presence and residence within the United States, Petitioner should be deemed an "applicant for admission" who is "seeking admission" and subject to mandatory detention under § 1225(b)(2)(A).

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now present and residing in the

[1] "Interim Guidance Regarding Detention Authority for Applicants for Admission", ICE, July 8, 2025. Available at: https://immpolicytracking.org/policies/ice-issues- memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents.

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 removable for having entered the United States without inspection and being present without admission.

7. Respondents' new legal interpretation of the INA 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.

8. In addition to Petitioner's statutory rights to a bond hearing under § 1226(a), individuals within the United States have constitutional rights. "[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." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

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

JURISDICTION

10. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of sovereign immunity), 28 U.S.C. § 2241 (habeas corpus jurisdiction), 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 California, the

judicial district in which Petitioner is currently 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 California.

PARTIES

14. Petitioner Ezequiel Rodriguez Barron [redacted] was arrested by ICE agents on November 6, 2025 in Desert Hot Springs, California. He has been in immigration detention since that date. After arresting Petitioner, ICE did not set bond and Petitioner requested review of his custody by an IJ. On November 21, 2025, Petitioner was denied bond by an IJ at the Imperial Immigration Court because he was deemed an "applicant for admission." On November 28, 2025 Petitioner had a second bond redetermination hearing which was again denied by the IJ on the grounds of lacking jurisdiction.

15. Respondent John Doe is the Warden of the Imperial Regional Adult Detention Facility, where Petitioner is currently detained. He is a legal custodian of Petitioner and is named in his official capacity.

16. Respondent John Doe is the Field Office Director responsible for the San Diego Field Office of ICE with administrative jurisdiction over Petitioner's immigration case. He is a legal custodian of Petitioner and is named in his official capacity.

17. Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity.

18. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (DHS). She is a legal custodian of Petitioner and is named in her official capacity.

19. Respondent Pamela Jo Bondi is the Attorney General of the United States Department of Justice. She is a legal custodian of Petitioner and is named in her official capacity.

LEGAL FRAMEWORK

20. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a.

21. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in § 1229a removal proceedings before an IJ. Individuals covered by § 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 certain noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. See 8 U.S.C. § 1226(c).

22. Second, the INA provides for mandatory detention of noncitizens subject to an Expedited Removal order imposed pursuant to 8 U.S.C. § 1225(b)(1) and for other noncitizen applicants for admission to the U.S. who are deemed not clearly entitled to be admitted. See 8 U.S.C. § 1225(b)(2).

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

24. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a) and 1225(b)(2).

25. 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 in early 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

26. Following the enactment of the IIRIRA in 1996, EOIR drafted new Regulations applicable to proceedings before immigration judges explaining that, in general, people who entered the country without inspection – also referred to as being "present without admission" - 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).

27. Thus, in the decades that followed, most people who entered without inspection and were placed in standard § 1229a removal proceedings received bond hearings before IJs, unless their criminal history rendered them ineligible. 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)).

28. This practice both pre- and post-enactment of IIRIRA is consistent with the fact that noncitizens present within the United States – as opposed to noncitizens present at a border and seeking admission - have constitutional rights. "[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." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

29. On July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice.

30. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[2] claims that all noncitizens present within the United States who entered without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies

[2] Available at: https://immpolicytracking.org/policies/ice-issues-memoeliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents.

regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

31. In a September 2025 decision by the Board of Immigration Appeals (BIA), EOIR adopted this same position. *Matter of Yajure Hurtado*, 29 I&N Dec. 216. That decision holds that all noncitizens who entered the United States without admission or parole and who are present within the United States are considered applicants for admission and ineligible for IJ bond hearings.

32. ICE and EOIR have adopted this position even though federal courts have rejected this exact conclusion. For example, after 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, 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*, --- 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). The U.S. District Court for the Central District of California has reached the same conclusion. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 9 (TRO issued after DHS adopted the July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission."); *Ceja Gonzalez. v. Noem*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August 13, 2025), Order Granting *Ex Parte* Application for TRO and OSC, Dkt. 12 (same).

33. DHS's and EOIR's interpretation defy the INA. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to

people like Petitioner. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." *Rodriguez Vazquez*, 2025 WL 1193850 at *12. *See also Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025) Order Granting Temporary Restraining Order, Dkt. 14 at 9 ("[T]he Court finds that the potential for Petitioners' continued detention without an initial bond hearing would cause immediate and irreparable injury, as this violates statutory rights afforded under § 1226(a)."); *Ceja Gonzalez*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August 13, 2025), Order Granting *Ex Parte* Application for TRO and OSC, Dkt. 12 at 7 (§ 1226 applies to aliens present in the United States.)

34. Other portions of the text of § 1226 also explicitly apply 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 inadmissible individuals makes clear that, by default, inadmissible individuals not subject to subparagraph (E)(ii) 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)).

35. Section 1226 therefore leaves no doubt that it applies to noncitizens who are present without admission and who face charges in removal proceedings of being inadmissible to the United States.

36. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States and are encountered at or near the border. This statute's entire framework is premised on inspection 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).

37. 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.

FACTS

38. Petitioner Ezequiel Rodriguez Barron has resided in California for over a decade. He has no criminal convictions and as such is not subject to mandatory detention pursuant to 8 U.S.C. § 1226(c).

39. On November 6, 2025, Petitioner was arrested in Desert Hot Springs, California. Petitioner is now detained at the Imperial Regional Adult Detention Facility in Calexico, California.

40. ICE placed Petitioner in removal proceedings before the Imperial Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is present without admission in the United States.

41. Upon information and belief, following Petitioner's arrest and transfer to the Imperial Regional Adult Detention Facility, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

42. Petitioner subsequently requested a bond redetermination hearing before an IJ. On November 21, 2025, an IJ denied the request and issued a decision that the court lacked jurisdiction to conduct a bond redetermination hearing because Petitioner was an applicant for admission. On November 28, 2025 in a second bond redetermination hearing, the immigration judge again denied for lack of jurisdiction.

CLAIMS FOR RELIEF

COUNT ONE
VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE PROCESS

43. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

44. 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).

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

46. The Respondents' detention of Petitioner without providing Petitioner a bond redetermination hearing to determine whether he is a flight risk or a danger to others violates his right to Due Process.

COUNT TWO
VIOLATION OF 8 U.S.C. § 1226(a)

47. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

48. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Petitioner who is present and residing in the United States and has been placed under § 1229a removal proceedings and charged with inadmissibility pursuant to inter alia 8 U.S.C. § 1182(a)(6)(A)(i). As relevant here, § 1225(b)(2) does not apply to those who previously entered the country and have been present and residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens may only be detained pursuant to § 1226(a), unless subject to § 1226(c), or § 1231.

49. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).

COUNT THREE
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT 5 U.S.C. § 706(2)

50. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

51. Under the Administrative Procedure Act, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

52. Respondents' detention of Petitioner pursuant to § 1225(b)(2) is arbitrary and capricious. Respondents' detention of Petitioner violates the INA and the Fifth Amendments. Respondents do not have statutory authority under § 1225(b)(2) to detain Petitioner.

53. Petitioner's detention is arbitrary, capricious, an abuse of discretion, violative of the Constitution, and without statutory authority in violation of 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court take jurisdiction over this matter and grant the following relief:

(1) Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

(2) Award Petitioner's 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;

(3) Grant any other and further relief that this Court deems just and proper.

Dated: December 4, 2025

Respectfully submitted,

/s/Scott A. Emerick, Esq.

Scott A. Emerick
Bolour / Carl Immigration Group, APC
COUNSEL FOR PETITIONER

Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. 2242

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. I and others working under my supervision have discussed with Petitioner the events described in this Petition. 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.

/s/Scott A. Emerick _____ Date: December 4, 2025