

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Cesar Portugues Sanchez, §

§

Petitioner, §

§

V. §

§

KRISTI NOEM, Secretary of the United States §

Department of Homeland Security; §

PAMELA BONDI, United States Attorney §

General; §

Civil Case No. 1:25-cv-2010

MIGUEL VERGARA, San Antonio Field Office §

Director for Enforcement and Removal, U.S. §

Immigration and Customs Enforcement, §

Department of Homeland Security; §

CHARLOTTE COLLINS, Warden, T. Don Hutto §

Detention Center, Taylor, Texas; §

UNITED STATES DEPARTMENT OF §

HOMELAND SECURITY; §

UNITED STATES IMMIGRATION AND §

CUSTOMS ENFORCEMENT; §

EXECUTIVE OFFICE FOR IMMIGRATION §

REVIEW; §

§

Respondents.

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

1. The U.S. Department of Homeland Security (“DHS”) and the U.S. Department of Justice (“DOJ”) have recently reversed decades of settled immigration practice by denying immigration bond hearings to individuals like Petitioner, who was arrested inside the United States. This reversal is based on the Board of Immigration Appeals' precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), issued on September 5, 2025.

2. Under longstanding practice, individuals arrested inside the United States are subject to detention under 8 U.S.C. § 1226, which generally allows for release on bond during removal proceedings. However, following *Matter of Yajure Hurtado*, DHS and DOJ are classifying such individuals as subject to 8 U.S.C. § 1225, which does not provide for bond hearings, based solely on their initial entry without inspection—often years or decades ago. This misclassification is contrary to nearly 30 years of law and practice post-IIRIRA and is being applied uniformly, including in Texas.

3. As a result, DHS is unlawfully detaining Petitioner without the possibility of release or a bond hearing, despite legal requirements for such under §1226. Multiple federal courts nationwide, including in Texas, have ruled against this interpretation. See, e.g., *Rojas Vargas v. Bondi*, No. 1:25-cv-01699-DAE (W.D. Tex. Nov. 5, 2025); *Gonzalez Guerrero v. Noem*, No. 1:25-CV-1334-RP (W.D. Tex. Oct. 27, 2025); *Hernandez-Ramiro v. Bondi*, No. 5:25-cv-01207-XR (W.D. Tex. Oct 15, 2025); *Padron Covarrubias v. Vergara*, No. 5:25-CV-112 (S.D. Tex. Oct. 8, 2025); *Buenrostro-Mendez v. Bondi*, No. 4:25-cv-03726 (S.D. Tex. Oct. 7, 2025). DHS and DOJ continue to violate statutory, regulatory, and constitutional rights through this policy. Petitioner brings this action to prevent unlawful deprivation of liberty without due process.

4. Additionally, DOJ and DHS are willfully defying federal court orders. On November 20, 2025, in *Maldonado Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025), a district court granted partial summary judgment declaring unlawful DHS's policy that classified noncitizens arrested within the United States as "applicants for admission" under 8 U.S.C. § 1225(b). On November 25, 2025, the district court granted the petitioners' motion for class certification, certifying the nationwide Bond Eligible Class. The Bond Eligible Class consists of all noncitizens in the United States without lawful status who entered or will enter without inspection, were not or will not be apprehended upon arrival, and are not or will not be subject to mandatory detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231 at the time of DHS's initial custody determination. In the last paragraph of page 14, the district court ruled, "Accordingly, Petitioners satisfy Rule 23(b)(2). When considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." Nonetheless, in other cases, the Immigration Judges working for the DOJ claim they still have no jurisdiction.

5. Therefore, Petitioner Cesar Portugues Sanchez, through counsel, respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge his unlawful detention without bond by Immigration and Customs Enforcement (ICE) at the T. Don Hutto Detention Center, Taylor, Texas. Petitioner seeks immediate release on a reasonable bond and conditions. This petition raises constitutional claims and pure questions of law, over which this Court has jurisdiction.

I. INTRODUCTION

6. Petitioner, a Mexican citizen, has resided in the U.S. since 2004. His wife is a LPR, he has three U.S. citizen children, stable employment, no criminal convictions, and has paid his taxes every year. On September 14, 2025, Immigration and Customs Enforcement (ICE) detained him after a dismissed charge in Travis County, Texas. The respondent has been in ICE custody since. The Petitioner applied for a 42B Application for Cancellation of Removal for Non-Permanent Residents with the Immigration Court. His application argued that his [REDACTED]-year-old daughter, who has [REDACTED], commonly known as [REDACTED] [REDACTED] would suffer extreme and unusual hardship if he were to be removed from the U.S. His individual/merits hearing took place on November 6, 2025, and after hearing lengthy testimony from the Petitioner and his wife, the IJ took the case to his chambers for consideration. The IJ stated he would prioritize the case because the Petitioner was detained. However, it's been one month, and no decision has been rendered.

7. On September 5, 2025, the Board of Immigration Appeals (BIA) issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), a controversial decision in which they interpreted § 1225(b) to mandate detention for all "applicants for admission," including EWIs who are long-term residents apprehended in the interior years after entering the country. The BIA's interpretation violates the INA and the Fifth Amendment due process rights.

8. On November 20, 2025, in *Maldonado Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025), a district court granted partial summary judgment declaring unlawful DHS's policy that classified noncitizens arrested within the United States as "applicants for admission" under 8 U.S.C. § 1225(b). On November 25, 2025, the district court granted the petitioners' motion for class certification, certifying the nationwide

Bond Eligible Class. The Bond Eligible Class consists of all noncitizens in the United States without lawful status who entered or will enter without inspection, were not or will not be apprehended upon arrival, and are not or will not be subject to mandatory detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231 at the time of DHS's initial custody determination. In the last paragraph of page 14, the district court ruled, "Accordingly, Petitioners satisfy Rule 23(b)(2). When considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." Nonetheless, in other cases, the Immigration Judges working for the DOJ claim they still have no jurisdiction.

9. In light of this unlawful practice, the Petitioner cannot seek a bond redetermination hearing before an Immigration Judge (IJ) or the BIA because they claim they do not have jurisdiction to hear these types of requests. The only alternative for the Petitioner is that this court order his release on a reasonable bond and conditions, due to the fact that the DOJ is defying federal court orders and not granting due process to noncitizens who entered without inspection.

II. JURISDICTION AND VENUE

10. Petitioner is in the physical custody of the Respondents in the T. Don Hutto Detention Center, in Taylor, Texas.

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101–1537.

12. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

13. This Court has jurisdiction under 28 U.S.C. § 2241 to review the lawfulness of Petitioner's detention, as this petition raises constitutional claims (Fifth Amendment due process violations) and pure questions of law (whether the DOJ is defying federal court orders and whether the BIA's interpretation of 8 U.S.C. § 1225(b) under *Matter of Yajure Hurtado*, and applied to the Petitioner, is erroneous when detention is governed by 8 U.S.C. § 1226(a) rather than § 1225(b)).

14. Venue is proper as Petitioner is detained in Taylor, Texas, within the Western District of Texas.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. There is no statutory exhaustion requirement for habeas corpus petitions under 28 U.S.C. § 2241.

16. There are no administrative remedies available to the Petitioner under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In this precedential decision issued on September 5, 2025, the Board of Immigration Appeals (BIA) held that, based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(2)(A), immigration judges lack authority to hear bond requests or grant bond to noncitizens who are present in the United States without admission or parole. These individuals are classified as "applicants for admission," subjecting them to mandatory detention during removal proceedings, regardless of how long they have resided in the country (e.g., even after two years, as previously allowed under some regulations like 8 C.F.R. § 1003.1(d)(3)(i)). As a result, the IJ lacks jurisdiction to hear Petitioner's request for a bond redetermination hearing.

17. Additionally, even when there is a federal court order extending partial summary judgment in favor of the Bond Eligible Class (Petitioner is a part of the class), the DOJ is still claiming it doesn't have jurisdiction. *Maldonado Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025). The DOJ is defying federal court orders.

IV. PARTIES

18. Petitioner, Cesar Portugues Sanchez, is a Mexican citizen currently in ICE Custody at the T. Don Hutto Detention Center.

19. 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.

20. 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.

21. Respondent Miguel Vergara is the Director of the San Antonio Field Office of ICE's Enforcement and Removal Operations division; however, on information and belief, the DHS is rotating its Field Office Director without publishing a schedule of rotation. As such, Miguel Vergara or his unknown, unannounced provisional replacement is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He or his acting counterpart is named in his or her official capacity.

22. Respondent, Charlotte Collins, is employed by the private, for-profit detention corporation contracted by the Government as an agent to confine immigrants at T. Don Hutto Detention Center, where Petitioner is detained. She has immediate physical custody of Petitioner. She is sued in her official capacity.

23. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

24. Respondent Immigration and Customs Enforcement is the federal agency, branch of DHS, responsible for the enforcement of the INA, apprehension of non-citizens in the U.S., and detention and removal of noncitizens.

25. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

V. LEGAL FRAMEWORK

26. The INA prescribes forms of detention for noncitizens in removal proceedings.

27. 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), Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

28. The INA also 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).

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

30. 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. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

31. 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)¹.

32. 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” or “seeking admission” were entitled to a custody hearing before an IJ or other hearing officer.

33. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to

¹ <https://www.justice.gov/sites/default/files/eoir/legacy/2005/01/12/fr03ja97P.pdf>

discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b). During oral argument on November 30, 2016, then–Solicitor General Ian Gershengorn stated: “If they are not detained within 100 miles of the border or within 14 days... then they are under 1226(a) and not 1226(c)” and further clarified, in response to a question concerning “an alien who has come into the United States illegally without being admitted [and] who takes up residence 50 miles from the border,” the Government responded, “The answer is they are held under 1226(a) and that they get a bond hearing...” Transcript of Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. ____ (2018) (No. 15-1204).² DHS reiterated that such individuals “would be held under 1226(a)” and cited the administrative record to support that position. *Id.* These statements reflect DHS’s prior litigation stance that § 1226(a) governs detention for noncitizens who have entered and are residing in the United States, a position directly contrary to the agency’s current interpretation applying § 1225(b)(2)(A) to such individuals. Having prevailed in *Jennings* after taking this position, they should be estopped from taking the contrary position now simply because their political or litigation interests have changed.

34. 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. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”³ 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.

² https://www.supremecourt.gov/oral_arguments/argument_transcripts/2016/15-1204_k536.pdf

³ <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>

35. 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.

36. Since Respondents adopted their new policies, several 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.

37. A growing number of federal courts have rejected DHS, ICE, and EOIR's recent interpretation of the INA's detention provisions. These courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority applicable in long-resident EWIs, such as the present cases. For example, courts in Massachusetts, Arizona, New York, Minnesota, California, and Nebraska have reached this conclusion. See: *Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025).

38. Federal Judges in this Western District of Texas have also turned down the government's creative argument. See *Rojas Vargas v. Bondi*, No. 1:25-cv-01699-DAE (W.D. Tex. Nov. 5, 2025); *Gonzalez Guerrero v. Noem*, No. 1:25-CV-1334-RP (W.D. Tex. Oct. 27, 2025); *Hernandez-Ramiro v. Bondi*, No. 5:25-cv-01207-XR (W.D. Tex. Oct. 15, 2025).

39. These decisions reflect a clear judicial consensus, including in Texas, that the government's reliance on § 1225(b)(2) is misplaced in cases involving long-resident EWIs whose immigration status lawfully falls under § 1226(a).

40. Additionally, on November 20, 2025, in *Maldonado Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025), a district court granted partial summary judgment declaring unlawful DHS's policy that classified noncitizens arrested within the United States as "applicants for admission" under 8 U.S.C. § 1225(b). On November 25, 2025, the district court granted the petitioners' motion for class certification, certifying the nationwide Bond Eligible Class. The Bond Eligible Class consists of all noncitizens in the United States without lawful status who entered or will enter without inspection, were not or will not be apprehended upon arrival, and are not or will not be subject to mandatory detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231 at the time of DHS's initial custody determination. In the last paragraph of page 14, the district court ruled, "Accordingly, Petitioners satisfy Rule 23(b)(2). When considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."

41. Courts have uniformly rejected DHS, ICE, and EOIR's new interpretation because it defies the INA. As the Federal Courts explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

42. 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]."

43. The text of § 1226 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.

44. 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.

45. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States and were not free to mingle with the general population after being free from official restraint. 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).

46. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who entered the U.S. without inspection and have resided here for decades.

VI. FACTS

47. Petitioner entered the U.S. without inspection on or about 2004, and has resided continuously in Austin, TX, with his LPR wife and three U.S. citizen children. He has had no criminal convictions. He has paid his federal income taxes on time every year since he entered. He is the owner of a property in Travis County, with his wife, and they have paid property taxes promptly. Petitioner has had stable employment throughout his stay in the U.S. Petitioner is a hard worker and an exemplary resident of Texas.

48. Petitioner was detained on September 14, 2025, by Immigration and Customs Enforcement following a dismissed charge in Travis County, Texas. He has been in ICE custody since then.

49. On September 26, 2025, the Petitioner applied for a 42B Application for Cancellation of Removal for Non-Permanent Residents with the Immigration Court. His application argued that his 13-year-old daughter, who has complete trisomy 21 syndrome, commonly known as Down syndrome, would suffer extreme and unusual hardship if he were to be removed from the U.S. His individual/merits hearing took place on November 6, 2025, and after hearing lengthy testimony from the Petitioner and his wife, the IJ took the case to his chambers for consideration. The IJ stated he would prioritize the case because the Petitioner was detained. However, it's been one month, and no decision has been rendered.

50. On September 5, 2025, the BIA issued a novel decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that EWIs (like Petitioner) are "applicants for admission" subject to mandatory detention under INA § 235(b)(2)(A), despite their long-term residence and interior apprehension. This decision ignores legislative history, longstanding

agency practice, and federal court precedent limiting § 1225(b) to recent border arrivals. See: *Rojas Vargas v. Bondi*, No. 1:25-cv-01699-DAE (W.D. Tex. Nov. 5, 2025); *Gonzalez Guerrero v. Noem*, No. 1:25-CV-1334-RP (W.D. Tex. Oct. 27, 2025); *Hernandez-Ramiro v. Bondi*, No. 5:25-cv-01207-XR (W.D. Tex. Oct. 15, 2025).

51. On November 20, 2025, in *Maldonado Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025), a district court granted partial summary judgment declaring unlawful DHS's policy that classified noncitizens arrested within the United States as "applicants for admission" under 8 U.S.C. § 1225(b). On November 25, 2025, the district court granted the petitioners' motion for class certification, certifying the nationwide Bond Eligible Class. The Bond Eligible Class consists of all noncitizens in the United States without lawful status who entered or will enter without inspection, were not or will not be apprehended upon arrival, and are not or will not be subject to mandatory detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231 at the time of DHS's initial custody determination. In the last paragraph of page 14, the district court ruled, "Accordingly, Petitioners satisfy Rule 23(b)(2). When considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."

52. Nonetheless, on December 5, 2025, the undersigned counsel received an Order, in another case, from Immigration Judge Eric J. Tijerina claiming the federal court order did not apply and that *Matter of Yajure Hurtado* applied. Judge Anibal D. Martinez, who heard this case, also rendered a decision in another case stating that *Maldonado Bautista v. Noem* was not a judgment and did not alter *Matter of Yajure Hurtado*. The DOJ is defying federal court orders and is unwilling to provide fair proceedings in immigration court.

53. Therefore, the Petitioner is ineligible to request a bond redetermination hearing before the IJ or the BIA because they claim they do not have jurisdiction. There are no administrative remedies available to pursue. The Petitioner's detention is indefinite.

54. Petitioner's detention causes ongoing irreparable harm. Petitioner has significant positive equities: 20 years of U.S. residence, stable employment, LPR wife, three U.S. citizen children (one with Down syndrome who critically needs the Petitioner for survival), owner of property in Travis County, Texas, a consistent taxpayer, and no criminal convictions. The only negative equity is entering without inspection. The Petitioner has a viable pathway to lawful status through a 42B Application before the Immigration Court in the non-detained docket.

VII. CLAIMS FOR RELIEF

A. Violation of the INA

55. Petitioner incorporates by reference the law and allegations of fact set forth in the preceding paragraphs.

56. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizen EWIs who are long-time residents of the U.S. and who are subject to that ground of inadmissibility. As relevant here, it does not apply to those who entered without inspection years ago. Such noncitizens, as Petitioner, are detained under § 1226(a), and shall be released on bond upon an IJ's order.

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

B. Violation of Bond Regulations

58. Petitioner incorporates by reference the law and allegations of fact set forth in preceding paragraphs.

59. 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.

60. Nonetheless, pursuant to *Matter of Yajure Hurtado*, DHS, ICE, and EOIR have a policy and practice of unlawfully applying § 1225(b)(2) to individuals like Petitioner, who are instead detained under § 1226(a).

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

C. Violation of Federal Court Orders

62. Petitioner incorporates by reference the law and allegations of fact set forth in preceding paragraphs.

63. The DOJ and DHS have failed to comply with the federal court order in *Maldonado Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025), where the Court extended the partial summary judgment declaring DOJ and DHS practice unlawful, to the

Bond Eligible Class as a whole. And the Petitioner is a class member in *Maldonado Bautista*. He is a noncitizen without lawful status detained at the T. Don Hutto Detention Center who (1) entered the United States without inspection, (2) was not apprehended upon arrival, and (3) is not subject to mandatory detention pursuant to 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

D. Violation of Due Process

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

65. 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 protected by the Due Process Clause.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

66. Petitioner has a fundamental interest in liberty and being free from official restraint. He has been detained since September 14, 2025, in ICE custody without the possibility of bond. He had his final merits hearing on November 6, 2025, and the IJ has not rendered a decision to this date, one month after the hearing. The Petitioner’s detention is currently indefinite.

67. The government’s detention of Petitioner without an opportunity to seek bond violates his right to due process.

VIII. RELIEF REQUESTED

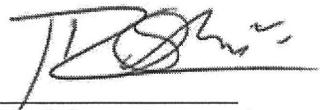
68. Petitioner prays that this Court grant the following relief:

(a) Assume jurisdiction over this matter;

- (b) Order that Petitioner shall not be transferred outside the Western District of Texas 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 under 28 U.S. Code § 2243;
- (d) A writ of habeas corpus ordering the immediate release of the Petitioner on a reasonable bond and conditions;
- (e) A declaration that Petitioner 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.

69. I declare under penalty of perjury that I am the petitioner's attorney, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Respectfully submitted, December 8, 2025.



Patricio Garza Izaguirre
Attorney for the Petitioner
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TX SBN 24087568

CERTIFICATE OF SERVICE

I, Patricio Garza Izaguirre, certify that on this date a true and correct copy of this **EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**, and all the attached documents described in the index above, were served to the following by the CM/ECF system:

1. KRISTI NOEM, Secretary of the United States Department of Homeland Security;
2. PAMELA BONDI, United States Attorney General;
3. MIGUEL VERGARA, San Antonio Field Office Director for Enforcement and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security;
4. CHARLOTTE COLLINS, Warden, T. Don Hutto Detention Center, Taylor, Texas;
5. UNITED STATES DEPARTMENT OF HOMELAND SECURITY;
6. UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT;
7. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

On December 8, 2025



Patricio Garza Izaguirre
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