

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

OSWALDO VALLE GUTIERREZ

Petitioner

v.

SCARLET GRANT, Warden, Cimarron Correctional Facility; **JOSHUA JOHNSON**, Acting Field Office Director of Dallas Field Office, U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary of the U.S. Department of Homeland Security; and **PAMELA BONDI**, Attorney General of the United States, in their official capacities

Respondents.

Case No. _____

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Oswaldo Valle Gutierrez (“Petitioner”) is currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at the Cimarron Correctional Facility in Cushing, Oklahoma. (*Ex. 5*). He faces this unlawful detention because the Department of Homeland Security (“DHS”) and the Executive Office of Immigration Review (“EOIR”) have concluded that Petitioner is subject to mandatory detention.
2. Petitioner is charged, inter alia, as inadmissible for having entered the United States without admission or inspection. See 8 U.S.C. § 1182(a)(6)(A)(i). (*Ex. 4*). Petitioner last entered the United States as a child and has resided in this country for decades, establishing substantial family and community ties. Petitioner is married to a U.S. citizen spouse and is the father of a U.S. citizen child, and prior to detention he resided with them in Dallas, Texas. (*Ex. 10*).

3. Petitioner was taken into ICE custody on November 4, 2025, and has been continuously detained since that date. (*Ex. 3; Ex. 4; Ex. 5*). Petitioner is currently detained at the Cimarron Correctional Facility in Cushing, Oklahoma, without having received any merits-based custody determination evaluating flight risk, danger, or humanitarian factors. (*Ex. 1; Ex. 2*).

4. DHS has taken the position that individuals charged under 8 U.S.C. § 1182(a)(6)(A)(i) are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and are therefore categorically ineligible for release on bond. Relying on this interpretation, the Immigration Judge denied Petitioner's bond requests solely on jurisdictional and procedural grounds, expressly declining to consider the merits of release. (*Ex. 1; Ex. 2*).

5. This detention scheme violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) applies to arriving aliens and individuals seeking admission, not to long-term residents like Petitioner who previously entered the United States and were later apprehended in the interior. Instead, individuals in Petitioner's position are governed by 8 U.S.C. § 1226(a), which authorizes discretionary release on bond or conditional parole pending removal proceedings.

6. Respondents' interpretation is contrary to the statutory framework and decades of agency practice applying § 1226(a) to noncitizens apprehended in the interior after prior entry. By categorically treating Petitioner as subject to mandatory detention, Respondents have unlawfully deprived him of a meaningful opportunity for release and violated his right to due process under the Fifth Amendment. (*Ex. 1; Ex. 2*).

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released from ICE custody, or, in the alternative, that Respondents provide him with a constitutionally adequate bond hearing under 8 U.S.C. § 1226(a) within a prompt and reasonable period set by this Court.

JURISDICTION

8. This action arises under the Constitution of the United States and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*

9. Petitioner is in the physical custody of Respondents. Petitioner is currently detained by ICE at the Cimarron Correctional Facility in Cushing, Oklahoma. (Ex. 5).

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 2241(c)(1) and (3) because Petitioner is in federal custody in violation of the Constitution and laws of the United States. This Court also has jurisdiction under 28 U.S.C. § 1331 and Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).

11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

12. Venue is proper in this Court because Petitioner is detained within the Western District of Oklahoma, and his immediate custodian is located within this judicial district. (Ex. 5).

13. Venue is also proper pursuant to 28 U.S.C. § 1391(e) because Respondents are officers, employees, and agencies of the United States, and because a substantial part of the events or omissions giving rise to Petitioner’s claims occurred within the Western District of Oklahoma, where Petitioner is detained and where Respondents exercise custody over him. (Ex. 5).

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

15. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

PARTIES

16. Petitioner Oswaldo Valle Gutierrez is a citizen of Mexico who has been in immigration detention since November 4, 2025. (Ex. 3; Ex. 4; Ex. 5). After taking custody of Petitioner in Oklahoma, ICE did not set bond. Petitioner applied for an immigration bond from an Immigration Judge, but the judge denied bond on jurisdictional grounds, concluding that he lacked authority to consider Petitioner’s bond request based on the binding decision of the Board of Immigration Appeals (“BIA”) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). (Ex. 1).

17. Respondent Joshua Johnson is the Acting Field Office Director of the Dallas Field Office of ICE’s Enforcement and Removal Operations division. As such, Johnson exercises authority over Petitioner’s detention and is responsible for the enforcement of ICE detention policies affecting Petitioner. He is sued in his official capacity.

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner’s detention. Secretary Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

19. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, including EOIR and the immigration court system. She is sued in her official capacity.

20. Respondent Dr. Scarlet Grant is employed at Cimarron Correctional Facility as Warden of the facility where Petitioner is detained. She has immediate physical custody of Petitioner and is sued in her official capacity.

STATEMENT OF FACTS

21. Petitioner Oswaldo Valle Gutierrez is a twenty nine year-old citizen of Mexico. He has resided in the United States since he was two years old and has deep family, employment, and community ties in this country. Petitioner has immediate family members in the United States, including U.S. citizen relatives, and has consistently supported his family through lawful employment. He has no history of violence and presents no danger to the community. (Ex. 3; Ex. 10; Ex. 11).

22. Petitioner entered the United States as a young child after being inspected and waved through at a port of entry while traveling in a vehicle with his father. Petitioner has resided continuously in the United States since that time. (Ex. 9). Petitioner is also the beneficiary of an approved family-based immigrant petition and an approved provisional unlawful-presence waiver, and his case has progressed through the National Visa Center, placing him on a clear path toward lawful permanent residence. (Ex. 6; Ex. 7; Ex. 9).

23. On November 4, 2025, Petitioner was apprehended by ICE in Oklahoma. ICE placed Petitioner into removal proceedings and transferred him to the Cimarron Correctional Facility in Cushing, Oklahoma, where he remains detained. (Ex. 3; Ex. 4; Ex. 5).

24. ICE charged Petitioner in Immigration Court, *inter alia*, as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), alleging that he entered the United States without admission or inspection. This allegation was based solely on the Notice to Appear and was not supported by sworn testimony or documentary evidence establishing the manner of Petitioner's entry. (Ex. 4).

25. Following Petitioner's arrest and transfer to Cimarron Correctional Facility, ICE issued a custody determination continuing Petitioner's detention without setting bond and without affording him an individualized custody assessment. (Ex. 1; Ex. 2; Ex. 3).

26. Petitioner requested an immigration bond hearing. However, the Immigration Judge declined to exercise jurisdiction to consider bond, concluding that he lacked authority to conduct a custody redetermination based on the BIA's decision in *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). As a result, the Immigration Judge expressly declined to evaluate Petitioner's flight risk, danger to the community, humanitarian factors, or eligibility for release. (Ex. 1).

27. Petitioner subsequently sought further custody review, but his requests were denied on the same procedural grounds, without any merits-based custody determination. At no point has any Immigration Judge considered whether Petitioner is a danger or flight risk, nor whether detention is necessary to effectuate removal proceedings. (Ex. 2).

28. Petitioner has been detained continuously since November 4, 2025, and remains confined at Cimarron Correctional Facility. (Ex. 5). He has experienced significant hardship during detention, including prolonged separation from his family and inability to continue supporting them financially. (Ex. 10; Ex. 11).

29. Petitioner appeared [with counsel / pro se initially and later with counsel] in his immigration proceedings. His continued detention is not the result of any delay attributable to Petitioner, but instead stems from Respondents' categorical application of an unlawful detention policy that forecloses any opportunity for release. (Ex. 1; Ex. 2).

30. As a result of Respondents' actions, Petitioner remains subject to prolonged civil detention without a meaningful bond hearing and without any individualized determination justifying continued confinement. (Ex. 1; Ex. 2).

31. Absent relief from this Court, Petitioner faces the prospect of months or years of continued immigration detention, despite having strong equities, no violent criminal history, and an advanced immigration posture that makes his detention unnecessary and punitive. (Ex. 3; Ex. 6; Ex. 7; Ex. 9; Ex. 10; Ex. 11).

LEGAL FRAMEWORK

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

33. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. Individuals detained under § 1226(a) are generally entitled to a bond hearing at the outset of their detention. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). Certain noncitizens who have been arrested, charged with, or convicted of specific crimes are subject to mandatory detention under § 1226(c).

34. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for certain other recent arrivals seeking admission under § 1225(b)(2).

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

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

37. The detention provisions at §§ 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

38. Following enactment of IIRIRA, EOIR issued regulations explaining that, in general, noncitizens who entered the United States without inspection were not considered detained under § 1225 and 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).

39. Thus, for decades thereafter, most noncitizens who entered without inspection and were placed in standard removal proceedings received bond hearings unless their criminal history rendered them ineligible under § 1226(c). This practice was consistent with longstanding agency interpretation and congressional intent. See 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

40. On July 8, 2025, ICE, “in coordination with” the Department of Justice, announced a new policy rejecting this long-standing statutory interpretation and reversing decades of practice.

41. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” asserts that all individuals who entered the United States without inspection are subject to mandatory detention under § 1225(b)(2)(A), regardless of when they were apprehended or how long they have resided in the United States.

42. On September 5, 2025, the BIA adopted this same position in *Hurtado* holding that noncitizens who entered without admission or parole are subject to detention under § 1225(b)(2)(A) and are categorically ineligible for Immigration Judge bond hearings.

43. Since Respondents adopted these new policies, numerous federal courts have rejected this interpretation of the INA’s detention provisions and have rejected *Hurtado* as contrary to law. See *infra*.

44. Subsequently, courts across the country have consistently rejected ICE’s and EOIR’s new interpretation.¹

45. Courts have uniformly held that the plain text of the INA demonstrates that § 1226(a), not § 1225(b), governs detention for individuals like Petitioner.

46. Section 1226(a) applies by default to persons “pending a decision on whether the [noncitizen] is to be removed from the United States,” and removal hearings are conducted under § 1229a.

47. The text of § 1226 expressly applies to individuals charged as inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E).

48. By contrast, § 1225(b) applies to individuals arriving at ports of entry or apprehended shortly after entry. The Supreme Court has confirmed that this scheme applies “at the Nation’s borders and ports of entry.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

49. Accordingly, § 1225(b)(2)(A) does not apply to individuals like Petitioner, who had already entered the United States and were residing here at the time of apprehension.

50. Under long-standing BIA precedent, a noncitizen who presents himself for inspection at a port of entry and is permitted to enter the United States—even without questioning or

¹ See, e.g., *Velasquez Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 U.S. Dist. LEXIS 183335 (D.N.M. Sept. 17, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025), see also, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271, at *3 (D. Neb. Aug. 19, 2025); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224, at *2 (D. Neb. Aug. 14, 2025).

documentation—has been “inspected and admitted” for purposes of the INA. *Matter of Quilantan*, 25 I. & N. Dec. 285, 293 (BIA 2010); *Matter of Areguillin*, 17 I. & N. Dec. 308 (BIA 1980).

51. In *Quilantan*, the Board held that an admission occurs where a noncitizen demonstrates “procedural regularity” at entry, meaning the individual presented himself for inspection and was permitted to enter by an immigration officer, including by a “wave-through.” 25 I. & N. Dec. at 293. Such an entry constitutes a lawful admission under the INA, notwithstanding the absence of questioning or documentation.

52. The BIA’s decision in *Hurtado* expressly applies only to noncitizens “who are present in the United States without having been admitted.” 29 I. & N. Dec. 216, 217 (BIA 2025) (emphasis added). Accordingly, where a noncitizen has in fact been inspected and admitted—whether through a wave-through or otherwise—*Hurtado* is inapplicable by its own terms.

53. Here, newly discovered evidence establishes that Petitioner was inspected and permitted to enter the United States as a child at a port of entry when officers waved the vehicle through without questioning or requesting documentation. This constitutes a lawful admission under *Quilantan* and *Areguillin*, placing Petitioner outside the scope of *Hurtado* and foreclosing any claim that he is subject to detention under 8 U.S.C. § 1225(b)(2).

54. Even assuming *arguendo* that Petitioner were deemed to have entered without inspection, Respondents’ continued detention of Petitioner under § 1225(b)(2) would remain unlawful. As set forth above, federal courts nationwide have overwhelmingly held that § 1226(a)—not § 1225(b)—governs the detention of noncitizens apprehended in the interior after prior entry, including those charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i).

55. Section 1226(a) applies by default to individuals “pending a decision on whether the [noncitizen] is to be removed from the United States,” and expressly encompasses individuals

charged as inadmissible, including those alleged to have entered without inspection. See 8 U.S.C. §§ 1226(a), 1226(c)(1)(E).

56. By contrast, § 1225(b) applies to individuals who are arriving at the border or seeking admission at ports of entry, not to individuals like Petitioner who were apprehended long after entry while residing in the interior of the United States. *Jennings*, 583 U.S. at 287.

57. Accordingly, whether Petitioner is deemed to have been lawfully admitted under *Quilantan* or alleged to have entered without inspection, Respondents' application of § 1225(b)(2) is unlawful, and Petitioner is entitled to a bond hearing under § 1226(a).

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Immigration and Nationality Act

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

60. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens like Petitioner who entered the United States years earlier and were apprehended in the interior while residing in the United States. (Ex. 3; Ex. 5).

61. As set forth above, Petitioner was inspected and admitted to the United States through a lawful "wave-through" entry at a port of entry as a child. Under long-standing precedent, including *Quilantan*, 25 I. & N. Dec. 285 (BIA 2010), such an entry constitutes an admission for purposes of the INA. Petitioner sought custody review supported by this entry evidence, but the Immigration Judge denied further consideration on procedural grounds without reaching the merits. (Ex. 2).

62. Because Petitioner was admitted to the United States, he is not an “applicant for admission,” and the BIA’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), does not apply to him by its own terms. (Ex. 2).

63. Even assuming *arguendo* that Petitioner were deemed to have entered without inspection, 8 U.S.C. § 1226(a)—not § 1225(b)—governs his detention, as he was apprehended long after entry and while residing in the interior of the United States. (Ex. 3; Ex. 5).

64. Respondents’ continued detention of Petitioner under § 1225(b)(2), and their refusal to provide a bond hearing under § 1226(a), exceed their statutory authority and violate the INA. (Ex. 1; Ex. 2).

COUNT TWO

Violation of Fifth Amendment Right to Due Process

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

66. The Fifth Amendment to the United States Constitution prohibits the government from depriving any person of liberty without due process of law. Freedom from physical detention lies at the core of the liberty protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

67. Petitioner has a fundamental liberty interest in being free from civil detention absent an individualized determination that such detention is necessary to serve a legitimate governmental purpose.

68. Respondents have detained Petitioner for months without affording him any meaningful bond hearing or individualized assessment of flight risk, danger, or humanitarian factors. (Ex. 1; Ex. 2).

69. The categorical denial of bond jurisdiction under *Hurtado*, as applied to Petitioner, has resulted in prolonged civil detention without any merits-based custody determination. (Ex. 1; Ex. 2).

70. Respondents' continued detention of Petitioner without a bond redetermination hearing violates the Due Process Clause of the Fifth Amendment. (Ex. 1; Ex. 2; Ex. 5).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests 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 Oklahoma while this habeas petition is pending;
- c. Issue an Order to Show Cause directing Respondents to show cause why the Petition should not be granted within three days;
- d. Issue a Writ of Habeas Corpus requiring Respondents to immediately release Petitioner from custody, or, in the alternative, to provide Petitioner with a constitutionally adequate bond hearing pursuant to 8 U.S.C. § 1226(a) within five days;
- e. Declare that Petitioner's continued detention is unlawful;
- f. Award Petitioner reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, and any other applicable authority; and
- g. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/Melissa M. Henry
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Counsel for Petitioner

Dated: 12/15/2025

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

I represent Petitioner, Oswaldo Valley Gutierrez, 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 15th day of December, 2025.

s/Melissa M. Henry
Melissa M. Henry