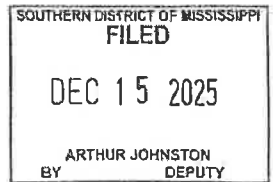


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI



JOHNNY JAVIER HERNANDEZ CRUZ,

A 

Petitioner/Plaintiff,

v.

RAPHAEL VERGARA, Warden,
Adams County Correctional Center,
TODD LYONS, Acting Director, Immigration
and Customs Enforcement, KRISTI NOEM,
Secretary of United States Department of
Homeland Security, MELISSA HARPER,
Immigration and Customs Enforcement,
New Orleans Field Office Director,
PAMELA BONDI, United States Attorney General,

Respondents/Defendants

Civil Action No. **5:25-cv-157-DCB-BWR**

ORAL ARGUMENT
REQUESTED

PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28
U.S.C. § 2241 AND COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF

INTRODUCTION

1. Petitioner, Johny Ulises Martinez Padilla, also known as Johnny Javier Hernandez, has been residing in the United States since approximately 2001.
2. In or around November 5, 2025, he was apprehended by Immigration and Customs Enforcement ("ICE"). He is currently detained by immigration authorities at the Adams County Correctional Center in Natchez, Mississippi.
3. Petitioner is charged with having entered the United States without inspection and being present without valid immigration documents, pursuant to INA 212(a)(6)(A)(i). See Exhibit 1, Notice to Appear.
4. It is futile for Petitioner to request a bond hearing before the immigration court in light of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

6. *Matter of Yajure Hurtado* articulates a new agency policy that all persons who entered the United States without inspection, regardless of how long they have lived in the United States or how far they were apprehended from the border, are deemed applicants for admission and are thus ineligible for a bond hearing under 8 U.S.C. § 1225(b)(2)(A) (stating that an applicant seeking admission shall be detained for a removal proceeding).
7. The IJ's decision reflects an ICE memorandum, issued in July 2025, instructing its attorneys to coordinate with the Department of Justice, which houses the Executive Office for Immigration Review ("EOIR"), to reject bond redetermination hearings for applicants who arrived in the United States without documents.¹
8. The agencies' reading of the Immigration and Nationality Act's ("INA's") detention provisions is a violation of the statute and due process. As a great consensus of Courts around the country have ruled, § 1225(b)(2)(A) does not apply to individuals, like Petitioner, who are present in the United States. *See, e.g., Lala Barros v. Noem et al.*, No. EP-25-CV-488-KC, 2025 U.S. Dist. LEXIS 223593, *8-*14 (W.D. Tex. Nov. 10, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 U.S. Dist. LEXIS 188232, *18-*36 (W.D. Tex. Sep. 21, 2025); *Lopez Santos v. Noem*, No. 3:25-cv-01193 SEC P, 2025 U.S. Dist. LEXIS 183412, *7-*14 (W.D. La. Sep. 11, 2025); *Kostak v. Trump*, No. 3:25-1093, 2025 U.S. Dist. LEXIS 167280, at *5 (W.D. La. Aug. 27, 2025). Instead, such individuals are subject to detention under a different statute, § 1226(a), and are eligible for release on bond. *See id.*

¹ *The Washington Post* (Jul. 15, 2025)
<https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/>

9. Accordingly, Petitioner seeks an order of declaratory and injunctive relief and set aside relief under the Administrative Procedure Act requiring that he is released or provided a bond redetermination hearing before an immigration judge.

JURISDICTION & VENUE

10. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory judgment); and United States Constitution Article I, Section 9 (Suspension Clause).
11. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district.

THE PARTIES

12. Petitioner is a citizen of Honduras who entered the United States in or around 2001. He is currently detained in Adams County Correctional Center in Natchez, Mississippi.
13. Respondent Rafael Vergara is the Warden of Adams County Correctional Center in Natchez, Mississippi, where Petitioner is currently detained. As the Warden, Mr. Vergara is a legal custodian of Petitioner. He is sued in his official capacity.
14. Respondent Todd Lyons is sued in his official capacity as Acting Director of Immigration and Customs Enforcement ("ICE"). As the Acting Director of ICE, Mr. Lyons is responsible for the administration and enforcement of the policies and procedures for ICE's detention of Petitioner at Adams County Correctional Center ("Adams").
15. Melissa Harper is the Field Office Director of the ICE Enforcement and Removal Operations New Orleans Field Office and is the federal agent charged with overseeing all ICE detention centers in Virginia. Ms. Harper is a legal custodian of Petitioner. She is sued in his official capacity.

16. Kristi Noem is the Secretary of the U.S. Department of Homeland Security. DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity.
17. Pamela Bondi is the Attorney General of the United States. She oversees the immigration court system, which is housed within EOIR and includes all IJs and the Board of Immigration Appeals (“BIA”). She is sued in her official capacity.

LEGAL BACKGROUND

18. Relevant to this case, the INA includes two provisions that primarily govern the detention of noncitizens.
19. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are 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).
20. 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).
21. 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).

22. 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 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).
23. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. 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)).
24. Respondents have enacted a policy that turns this well-established understanding on its head and violates the INA’s statutory scheme.
25. To that end, in July 2025, ICE released a memorandum instructing its attorneys to coordinate with EOIR to reject bond hearings for applicants who arrived in the United States without documents.
26. Thereafter, on September 5, 2025, the BIA published *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, which confirms that EOIR is taking the position that noncitizens who entered the United States without admission or parole are ineligible for IJ bond hearings.
27. As *Matter of Yajure Hurtado* is binding on IJs, it represents the widespread position that EOIR is applying across the United States.
28. EOIR’s interpretation defies the INA.

29. The plain text of the provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.
30. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.”
31. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to 8 U.S.C. § 1182(a)(6)(A)(i) makes clear that, by default, such people are afforded a bond hearing under subsection (a). 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.
32. EOIR’s interpretation of § 1225(b)(2)(A)—as applying to all individuals who are in the United States without admission or parole—renders 8 U.S.C. § 1226(c)(1)(E) superfluous.
33. On the contrary, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the heading of § 1225(b) indicates that it specifically applies at the point of “inspection for applicants for admission.”
34. EOIR’s interpretation of the INA’s detention framework also contradicts Supreme Court precedent. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (stating that the government can “detain certain aliens seeking admission into the country under §§1225(b)(1) and (b)(2)” and “detain certain aliens already in the country pending the outcome of removal proceedings under §§1226(a) and (c)”).

35. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to Petitioner.

FACTS

36. Petitioner is a native and citizen of Honduras who entered the United States in or around 2001. Upon entering the United States, he was not detained by ICE.
37. Petitioner is the father of two U.S.-born children and the stepfather of his wife, Debora Alfonzo's, two children. Prior to his detention, Petitioner played an integral role in all of their lives. He resided with his wife, his youngest son, and his two stepchildren, and he maintained a stable, loving parental relationship with his oldest son.
38. For the past ten years, Petitioner has operated a successful freelance handyman business, through which he has built strong, positive relationships with clients and members of his community. He is widely regarded as a reliable, hardworking individual. Despite regularly working ten-hour days, Petitioner takes his youngest son to school each morning and picks him up in the afternoon. He also contributes significantly to the household by preparing meals for the family and attending church on the weekends.
39. On or about November 5, 2025, Petitioner was stopped by a police officer while driving home from work. The officer transferred Petitioner to the custody of ICE. ICE detained him at the Baltimore Detention Center before transferring him to Mississippi, where he has remained detained ever since.
40. Shortly thereafter, ICE served Petitioner with a Notice to Appear, charging him as inadmissible under INA 212(a)(6)(A)(i). *See* Ex. 1.
41. Any request for a bond hearing before the immigration court is futile.

CAUSES OF ACTION

COUNT ONE

Violation of 8 U.S.C. § 1226(a)

Unlawful Denial of Bond Hearing

42. Petitioner repeats, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
43. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens who are subject to inadmissibility as being present in the United States without admission or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.
44. The application of § 1225(b)(2) to bar Petitioner from receiving a bond hearing before an IJ violates the INA.

COUNT TWO

Violation of the Administrative Procedure Act

Unlawful Denial of Bond

45. Petitioner repeats, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
46. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens who are subject to inadmissibility as being present in the United States without admission or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

47. The application of § 1225(b)(2) to bar Petitioner from receiving a bond hearing before an IJ is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

COUNT THREE

Violation of Procedural Due Process

48. Petitioner repeats, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
49. 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).
50. Petitioner has a fundamental interest in liberty and being free from official restraint. Respondents’ detention of Petitioner without a bond hearing to determine whether he is a flight risk or danger to others violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

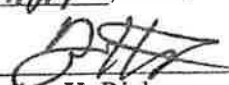
- (1) Assume jurisdiction over this matter;
- (2) Declare that the refusal to allow him a bond redetermination hearing before an IJ violates the INA, APA, and Due Process;
- (3) Issue a writ of habeas corpus requiring that Respondents release Petitioner or provide the bond hearing to which he is entitled within 7 days, at which the Government bears the burden of justifying, by clear and convincing evidence, that

he is flight risk danger to society;

- (4) Set aside Respondents' unlawful detention policy under the APA, 5 U.S.C. § 706(2);
- (5) Order further relief as this Court deems just and appropriate.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this the 10th day of December, 2025.



Brandon H. Riches

The Riches Law Firm, PLLC

Mississippi Bar # 105273

P.O. Box 1526

Ocean Springs, MS 39566

Cell/WhatsApp: (228) 800-4178

Email: Brandon@Richeslawfirm.com