

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF TEXAS
4 HOUSTON DIVISION

5 MIGUEL GUTIERREZ RODRIGUEZ,

6 Petitioner,

7 v.

8 Field Office Director of Enforcement and
9 Removal Operations, Houston Field Office,
10 Immigration and Customs Enforcement; Kristi
11 NOEM, Secretary, U.S. Department of
12 Homeland Security; U.S. DEPARTMENT OF
13 HOMELAND SECURITY; Pamela BONDI,
14 U.S. Attorney General; EXECUTIVE OFFICE
15 FOR IMMIGRATION REVIEW; Warden,
16 Warden of Joe Corley Processing Center,

17 Respondents.

Case No.

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS**

1 INTRODUCTION

2 1. Petitioner Miguel Gutierrez Rodriguez is in the physical custody of Respondents
3 at the Joe Corley Processing Center in Conroe, Texas. He now faces unlawful detention because
4 the Department of Homeland Security (DHS) and the Executive Office of Immigration Review
5 (EOIR) have concluded Petitioner is subject to mandatory detention.

6 2. Petitioner is charged with, inter alia, having entered the United States without
7 admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

8 3. Based on this allegation in Petitioner’s removal proceedings, DHS denied
9 Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8,
10 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone
11 inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without
12 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and
13 therefore ineligible to be released on bond.

14 4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or
15 Board) issued a precedent decision, binding on all immigration judges, holding that an
16 immigration judge has no authority to consider bond requests for any person who entered the
17 United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
18 The Board determined that such individuals are subject to detention under 8 U.S.C. §
19 1225(b)(2)(A) and therefore ineligible to be released on bond.

20 5. Petitioner’s detention on this basis violates the plain language of the Immigration
21 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
22 previously entered and are now residing in the United States. Instead, such individuals are
23 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.

1 That statute expressly applies to people who, like Petitioner, are charged as inadmissible for
2 having entered the United States without inspection.

3 6. Respondents' new legal interpretation is plainly contrary to the statutory
4 framework and contrary to decades of agency practice applying § 1226(a) to people like
5 Petitioner.

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

8 JURISDICTION

9 8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
10 Joe Corley Processing Center in Conroe, Texas.

11 9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28
12 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States
13 Constitution (the Suspension Clause).

14 10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory
15 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

16 VENUE

17 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
18 500 (1973), venue lies in the United States District Court for the Southern District of Texas, the
19 judicial district in which Petitioner currently is detained.

20 12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
21 Respondents are employees, officers, and agencies of the United States, and because a
22 substantial part of the events or omissions giving rise to the claims occurred in the Southern
23 District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

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

14. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

15. Petitioner Miguel Gutierrez Rodriguez is a citizen of Cuba who has been in immigration detention since November 14, 2025. After arresting Petitioner in Houston, Texas, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

16. Respondent Field Office Director is the Director of the Houston Field Office of ICE’s Enforcement and Removal Operations division. As such, Field Office Director is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. Field Office Director is named in their official capacity.

17. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and

1 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms.
2 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

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

6 19. Respondent Pamela Bondi is the Attorney General of the United States. She is
7 responsible for the Department of Justice, of which the Executive Office for Immigration Review
8 and the immigration court system it operates is a component agency. She is sued in her official
9 capacity.

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

13 21. Respondent Warden of the Joe Corley Processing Center has immediate physical
14 custody of Petitioner. They are sued in their official capacity.

15 **LEGAL FRAMEWORK**

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

18 23. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
19 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally
20 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),
21 while noncitizens who have been arrested, charged with, or convicted of certain crimes are
22 subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

4 25. Last, the INA also provides for detention of noncitizens who have been ordered
5 removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

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

7 27. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
8 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
9 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section
10 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1,
11 139 Stat. 3 (2025).

12 28. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining
13 that, in general, people who entered the country without inspection were not considered detained
14 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
15 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
16 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

17 29. Thus, in the decades that followed, most people who entered without inspection
18 and were placed in standard removal proceedings received bond hearings, unless their criminal
19 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent
20 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”
21 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
22 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
23 “restates” the detention authority previously found at § 1252(a)).

1 30. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
2 rejected well-established understanding of the statutory framework and reversed decades of
3 practice.

4 31. The new policy, entitled “Interim Guidance Regarding Detention Authority for
5 Applicants for Admission,”¹ claims that all persons who entered the United States without
6 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The
7 policy applies regardless of when a person is apprehended, and affects those who have resided in
8 the United States for months, years, and even decades.

9 32. On September 5, 2025, the BIA adopted this same position in a published
10 decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the
11 United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are
12 ineligible for IJ bond hearings.

13 33. Since Respondents adopted their new policies, dozens of federal courts have
14 rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected
15 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

16 34. Even before ICE or the BIA introduced these nationwide policies, IJs in the
17 Tacoma, Washington, immigration court stopped providing bond hearings for persons who
18 entered the United States without inspection and who have since resided here. There, the U.S.
19 District Court in the Western District of Washington found that such a reading of the INA is
20 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not
21 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d
22 1239 (W.D. Wash. 2025).

23 _____
24 ¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 35. Subsequently, court after court has adopted the same reading of the INA’s
2 detention authorities and rejected ICE and EOIR’s new interpretation. *See, e.g., Buenrostro-*
3 *Mendez v. Bondi*, Civ. Action No. H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025);
4 *Gutierrez v. Thompson*, Civ. Action No. 4:25-4695, 2025 WL 3187521 (S.D. Tex. Nov. 14,
5 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025);
6 *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D.
7 Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL
8 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-
9 PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No.
10 25 CIV. 5937 (DEH), 2025 WL 2371588, at *1 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*,
11 No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez*
12 *v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025);
13 *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Leal-*
14 *Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025);
15 *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025);
16 *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670, at *8
17 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL
18 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM,
19 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304
20 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-
21 CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*,
22 No. 8:25CV494, 2025 WL 2531566 at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends
23 to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-
24

1 cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v.*
2 *Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025)
3 (same).

4 36. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it
5 defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the
6 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

7 37. Section 1226(a) applies by default to all persons “pending a decision on whether
8 the [noncitizen] is to be removed from the United States.” These removal hearings are held under
9 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

10 38. The text of § 1226 also explicitly applies to people charged as being inadmissible,
11 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph
12 (E)’s reference to such people makes clear that, by default, such people are afforded a bond
13 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress
14 creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions,
15 the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove*
16 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025
17 WL 1869299, at *7.

18 39. Section 1226 therefore leaves no doubt that it applies to people who face charges
19 of being inadmissible to the United States, including those who are present without admission or
20 parole.

21 40. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
22 recently entered the United States. The statute’s entire framework is premised on inspections at
23 the border of people who are “seeking admission” to the United States. 8 U.S.C.

1 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
2 applies “at the Nation’s borders and ports of entry, where the Government must determine
3 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583
4 U.S. 281, 287 (2018).

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

8 **FACTS**

9 42. Petitioner is a Cuban national who entered the United States on March 12, 2021.
10 Shortly after entry to the United States he was detained by DHS “[p]ursuant to the authority
11 contained in section 236 of the Immigration and Nationality Act.” Exhibit A: Warrant for Arrest
12 of Alien; Exhibit B: Notice of Custody Determination under Section 236 dated April 14, 2021.
13 Section 236 of the INA is codified at §1226.

14 43. On April 8, 2021, Petitioner appeared at a Credible Fear Interview and established
15 that he had credible fear of persecution. Exhibit C: Record of Determination/Credible Fear
16 Worksheet.

17 44. On April 13, 2021, DHS issued a Notice to Appear (“NTA”) charging Petitioner
18 with inadmissibility under section 212(a)(6)(A)(i) of the Immigration and Nationality Act
19 (“INA”) as “an alien present in the United States who has not been admitted and paroled,” and
20 thereby initiated removal proceedings against Petitioner under 8 U.S.C. § 1229(a). Exhibit D:
21 Notice to Appear. The issuing officer did not designate Petitioner as an “arriving alien”.

22 45. On May 28, 2021, DHS issued another Notice of Custody Determination
23 indicating that under “the authority contained in section 236 of the Immigration and Nationality
24

1 Act” Petitioner would be release from detention. Exhibit E: Notice of Custody Determination
2 under Section 236 dated May 28, 2021.

3 46. On May 29, 2021, Petitioner was released on an Order of Release on
4 Recognizance. Exhibit F: Order of Release on Recognizance. The OREC indicates that Petitioner
5 was released under section 236 of the Immigration and Nationality Act.

6 47. Petitioner has complied with all requirements of his release.

7 48. Petitioner is married to a United States citizen. Petitioner resides in Spring, Texas
8 with his wife and stepchild. Petitioner is a beneficiary of a pending I-130 petition by his wife and
9 has a pending asylum application. Petitioner has no criminal history.

10 49. On November 14, 2025, Petitioner was arrested while he attended his check-in
11 appointment with ICE. Petitioner is now detained at the Joe Corley Processing Center in Conroe,
12 Texas. Exhibit G: ICE Inmate Locator.

13 50. Petitioner is neither a flight risk nor a danger to the community. Petitioner
14 complied with all conditions of his release, has strong ties in the United States, and has no
15 criminal history.

16 51. Following Petitioner’s arrest and transfer to the Joe Corley Processing Center,
17 ICE issued a custody determination to continue Petitioner’s detention without an opportunity to
18 post bond or be released on other conditions.

19 52. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider
20 Petitioner’s bond request.

21 53. As a result, Petitioner remains in detention. Without relief from this court, he
22 faces the prospect of months, or even years, in immigration custody, separated from their family
23 and community.

1 **CLAIMS FOR RELIEF**

2 **COUNT I**

3 **Violation of the INA**

4 54. Petitioner incorporates by reference the allegations of fact set forth in the
5 preceding paragraphs.

6 55. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
7 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
8 relevant here, it does not apply to those who previously entered the country and have been
9 residing in the United States prior to being apprehended and placed in removal proceedings by
10 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to
11 § 1225(b)(1), § 1226(c), or § 1231.

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

14 **COUNT II**

15 **Violation of Due Process**

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

18 58. The government may not deprive a person of life, liberty, or property without due
19 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government
20 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the
21 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653
22 (2001).

1 59. Petitioner has a fundamental interest in liberty and being free from official
2 restraint.

3 60. The government’s detention of Petitioner without a bond redetermination hearing
4 to determine whether he is a flight risk or danger to others violates his right to due process.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 7 a. Assume jurisdiction over this matter;
- 8 b. Order that Petitioner shall not be transferred outside the Southern District of
9 Texas while this habeas petition is pending;
- 10 c. Issue an Order to Show Cause ordering Respondents to show cause why this
11 Petition should not be granted within three days;
- 12 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
13 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
14 1226(a) within seven days;
- 15 e. Declare that Petitioner’s detention is unlawful;
- 16 f. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act
17 (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under
18 law; and
- 19 g. Grant any other and further relief that this Court deems just and proper.

20 DATED this 29th of December, 2025.

21 /s/Themistoklis Aliferis
22 Themistoklis E. Aliferis
23 Attorney for the Petitioner
24 Florida Bar No.: 111888
Southern District of Texas Bar No.: 3946023
Law Office of Sammy Aliferis, P.A.

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Attorney for the Petitioner

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

1
2 I am submitting this verification on behalf of Petitioner, because I am Petitioner’s attorney. I
3
4 have discussed with the Petitioner the facts described in this petition. Based on those discussions,
5 I hereby verify that the factual statements in the attached Petition for Writ of Habeas Corpus are
6 true and correct to the best of my knowledge.
7
8

9 Executed this 29th day of December, 2025.
10

11 /s/Themistoklis Aliferis
12 Themistoklis Aliferis *Attorney for Petitioner*
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