

1 Mary Chicorelli, Esq.
Equal Access Legal Services
2 6703 Germantown Ave.
Suite 200/210-4
3 Philadelphia, PA, 19119
(267) 888-6703
4 Attorney for Petitioner

5
6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

7 OSCAR ARIEL LARA NUNEZ,
8  Petitioner,

Case No.

9 v.

**PETITION FOR WRIT OF
HABEAS CORPUS**

10
11 BRIAN MCSHANE, in his official capacity,
Acting Field Office Director of Enforcement
12 and Removal Operations, Philadelphia, PA
Field Office, Immigration and Customs
13 Enforcement;

14 SIRCE OWEN, in his official capacity, Acting
Director, Executive Office of Immigration
15 Review,

16 KRISTI NOEM, in her official capacity,
Secretary, U.S. Department of Homeland
17 Security;

18 U.S. DEPARTMENT OF HOMELAND
SECURITY;

19 PAMELA BONDI, in her official capacity, U.S.
Attorney General; EXECUTIVE OFFICE FOR
20 IMMIGRATION REVIEW;

21 TODD LYONS, in his official capacity, Acting
22 Director, United States Immigration and
Customs Enforcement (ICE),
23
24

1 JAMAL JAMISON, in his official capacity, as
2 warden of the Federal Detention Center,
Philadelphia, PA

3 Respondents.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 INTRODUCTION

2 1. Petitioner Oscar A. Lara Nunez is in the physical custody of Respondents at the
3 PHILADELPHIA FEDERAL DETENTION CENTER. He now faces unlawful detention
4 because the Department of Homeland Security (DHS) and the Executive Office of Immigration
5 Review (EOIR) have concluded Petitioner is subject to mandatory detention.

6 2. Petitioner is charged with, *inter alia*, having entered the United States without
7 inspection, and later paroled into the United States. 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. §
8 1182(d)(5)(A) (2018).

9 3. Based on these allegations, DHS denied Petitioner release from immigration
10 custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration
11 and Customs Enforcement (ICE) employees to consider anyone inadmissible under §
12 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(d)(5)(A) (2018)—i.e., those who entered the United States
13 without inspection or with humanitarian parole—to be an “applicant for admission” under 8
14 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

15 4. Petitioner is detained pending his removal proceedings without access to a
16 hearing conducted by a neutral decisionmaker—a federal judge or an immigration judge—to
17 determine whether his detention is warranted based on danger or flight risk, pursuant to the
18 BIA’s recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and *Matter of*
19 *Q. Li*, 29 I&N Dec. 66 (BIA 2025).

20 5. *Matter of Yajure Hurtado*, which holds that 8 U.S.C. § 1225(b)(2) makes
21 noncitizens who are apprehended in the United States but have never been admitted subject to
22 mandatory detention without a bond hearing, violates the statute. Instead, 8 U.S.C. § 1226(a)
23 applies and authorizes release on bond after a hearing before an immigration judge. The BIA’s
24

1 interpretation conflicts with the plain language and structure of the statute, as well as decades of
2 uncontroverted agency practice. Therefore, the application of § 1225(b)(2) to Petitioner is
3 contrary to law and violates the Immigration and Nationality Act (INA) and the Administrative
4 Procedure Act (APA).

5 6. Additionally, *Matter of Q. Li*, holds that certain noncitizens arrested shortly after
6 entering the U.S. are considered an "applicant for admission" and are subject to mandatory
7 detention under INA § 235(b). In that case, the noncitizen entered the country without
8 inspection, was arrested without a warrant and was issued humanitarian parole after a brief initial
9 detention. DHS then terminated the parole years later because she was arrested for state criminal
10 conduct, unrelated to immigration. The BIA held that she was subject to mandatory detention
11 under § 1225(b)(2). *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). Again, the BIA's
12 interpretation conflicts with the plain language and structure of the statute, as well as decades of
13 uncontroverted agency practice. Therefore, the application of § 1225(b)(2) to Petitioner is
14 contrary to law and violates the Immigration and Nationality Act (INA) and the Administrative
15 Procedure Act (APA).

16 7. Petitioner does *not* seek a bond redetermination hearing before an immigration
17 because it is futile. Indeed, the DHS policy states it was issued in coordination with the
18 Department of Justice (DOJ).

19 8. Petitioner's detention on this basis violates the plain language of the Immigration
20 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
21 previously entered without inspection, were paroled and are now residing in the United States.
22 Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on
23 conditional parole or bond.

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

4 10. In the alternative, if the statute does authorize Petitioner's detention without a
5 bond hearing, it violates his rights to substantive and procedural due process. Detention of all
6 noncitizens who are subject to inadmissibility grounds, like Petitioner, without any
7 individualized hearing does not "bear a reasonable relation to the purpose for which the
8 individual was committed." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Moreover, application
9 of the *Mathews v. Eldridge* balancing test shows that a bond hearing is necessary to protect
10 Petitioner from an unnecessary deprivation of liberty. See 424 U.S. 319, 335 (1976).

11 11. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released
12 immediately.

13 JURISDICTION

14 12. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
15 PHILADELPHIA FEDERAL DETENTION CENTER, Philadelphia, PA.

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

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

21 VENUE

22 15. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
23 500 (1973), venue lies in the United States District Court for the Eastern District of
24

1 Pennsylvania, the judicial district in which Petitioner currently is detained.

2 16. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
3 Respondents are employees, officers, and agencies of the United States, and because a
4 substantial part of the events or omissions giving rise to the claims occurred in the Eastern
5 District.

6 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 17. There is no statutory requirement of exhaustion of administrative remedies where
8 a noncitizen challenges the lawfulness of his detention. *Arango Marquez v. I.N.S.*, 346 F.3d 892,
9 897 (9th Cir. 2003). Any requirement of administrative exhaustion is therefore purely
10 discretionary. See *Santos v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728, at *2 (M.D. Pa. Aug.
11 2020) (“[T]he exhaustion requirement imposed by courts relating to habeas corpus petitions filed
12 by immigration detainees is a prudential benchmark which is not compelled by statute.”).

13 18. In making that decision, the Court should consider the urgency of the need for
14 immediate review. “Where a person is detained by executive order . . . the need for collateral
15 review is most pressing. . . . In this context the need for habeas corpus is more urgent.”
16 *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive
17 detainees).

18 19. Moreover, the exhaustion “doctrine is not without exception.” *Ashley v. Ridge*,
19 288 F. Supp. 2d 662, 666. (D.N.J. 2003). “Courts have found that the exhaustion of
20 administrative remedies may not be required when available remedies provide no opportunity for
21 adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial
22 constitutional question.” *Id.* at 666-67.

23 20. The Board of Immigration Appeals has issued published decisions holding that
24

1 people like the Petitioner who entered the United States without inspection, and later paroled
2 have not been admitted are ineligible for bond pursuant to 8 U.S.C. § 1225(b)(2)(A).
3 Immigration judges and the BIA are bound by this decision. 8 C.F.R. § 1003.1(g)(1). Exhaustion
4 before the BIA would therefore be futile.

5 21. Further, the BIA does not have jurisdiction to adjudicate constitutional issues.
6 *Qatanani v. Att'y Gen. of the U.S.*, 144 F.4th 485, 500 (3d Cir. 2025); see also *Ashley*, 288 F.
7 Supp. 2d at 667 (citation omitted). Therefore, any administrative proceedings would be futile
8 because petitioner raises a constitutional due process claim. *Qatanani*, 144 F.4th at 500.

9 REQUIREMENTS OF 28 U.S.C. § 2243

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

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

20 PARTIES

21 24. Petitioner OSCAR ARIEL LARA NUNEZ is a citizen of Nicaragua who has
22 been in immigration detention since January 5, 2026. After arresting Petitioner in Philadelphia,
23 Pennsylvania, ICE detained Petitioner at the Federal Detention Center. Petitioner has resided in
24

1 Philadelphia, PA since November 27, 2022.

2 25. Respondent BRIAN MCSHANE is the Acting Director of the Philadelphia Field
3 Office of ICE's Enforcement and Removal Operations division. As such, BRIAN MCSHANE is
4 Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is
5 named in his official capacity.

6 26. Respondent KRISTI NOEM is the Secretary of the Department of Homeland
7 Security. She is responsible for the implementation and enforcement of the Immigration and
8 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.
9 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

10 27. Respondent DEPARTMENT OF HOMELAND SECURITY (DHS) is the federal
11 agency responsible for implementing and enforcing the INA, including the detention and
12 removal of noncitizens.

13 28. Respondent PAMELA BONDI is the Attorney General of the United States. She
14 is responsible for the Department of Justice, of which the Executive Office for Immigration
15 Review and the immigration court system it operates is a component agency. She is sued in her
16 official capacity.

17 29. Respondent SIRE OWNEN is the Acting Director of the Executive Office for
18 Immigration Review (EOIR), the federal agency responsible for implementing and enforcing the
19 INA in removal proceedings, including for custody redeterminations in bond hearings, and is
20 sued in his official capacity.

21 30. Respondent JAMAL JAMISON is named in his official capacity as the Warden of
22 the Federal Detention Center, where Petitioner is detained. He has immediate physical custody of
23 Petitioner.
24

LEGAL FRAMEWORK

1
2 31. The INA prescribes three basic forms of detention for the vast majority of
3 noncitizens in removal proceedings.

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

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

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

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

15 36. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
16 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
17 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section
18 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1,
19 139 Stat. 3 (2025).

20 37. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining
21 that, in general, people who entered the country without inspection were not considered detained
22 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
23 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;

1 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

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

9 39. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
10 rejected well-established understanding of the statutory framework and reversed decades of
11 practice.

12 40. The new policy, entitled “Interim Guidance Regarding Detention Authority for
13 Applicants for Admission,”¹ claims that all persons who entered the United States without
14 inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore
15 are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies
16 regardless of when a person is apprehended, and affects those who have resided in the United
17 States for months, years, and even decades.

18 41. In a May 22, 2025, unpublished decision from the Board of Immigration Appeals
19 (BIA), EOIR adopts this same position.² That decision holds that all noncitizens who entered the
20 United States without admission or parole are considered applicants for admission and are
21 ineligible for immigration judge bond hearings.

22
23 ¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applicants-for-admission>.

24 ² Available at <https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf>.

1 42. ICE and EOIR have adopted this position even though federal courts have
2 rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration
3 court stopped providing bond hearings for persons who entered the United States without
4 inspection and who have since resided here, the U.S. District Court in the Western District of
5 Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not §
6 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States.
7 *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24,
8 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass.
9 July 7, 2025) (granting habeas petition based on same conclusion).

10 43. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court
11 explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b),
12 applies to people like Petitioner.

13 44. Section 1226(a) applies by default to all persons "pending a decision on whether
14 the [noncitizen] is to be removed from the United States." These removal hearings are held under
15 § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

16 45. The text of § 1226 also explicitly applies to people charged as being inadmissible,
17 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph
18 (E)'s reference to such people makes clear that, by default, such people are afforded a bond
19 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress
20 creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions,
21 the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove*
22 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

23 46. Section 1226 therefore leaves no doubt that it applies to people who face charges
24

1 of being inadmissible to the United States, including those who are present without admission or
2 parole.

3 47. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
4 recently entered the United States. The statute's entire framework is premised on inspections at
5 the border of people who are "seeking admission" to the United States. 8 U.S.C. §1225(b)(2)(A).
6 Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the
7 Nation's borders and ports of entry, where the Government must determine whether a[]
8 [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281,
9 287 (2018).

10 48. However, the *Jennings* decision contemplated people who arrive at a port of entry
11 as an "arriving alien" and seek admission into the United States at a port of entry. That court did
12 not address the issues present in this case: Petitioner (1) entered the United States without
13 inspection after crossing the border in Texas, (2) was briefly detained without a judicial warrant,
14 (3) was released one day later on parole (4) his NTA was never served on the court (5) but he
15 was then detained and placed into removal proceedings over three years later at a check-in
16 without notice.

17 49. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to
18 people like Petitioner, who have already entered and were in the United States at the time they
19 were apprehended and detained.

20 **FACTS**

21 50. Petitioner is a citizen and national of Nicaragua. He is not married but he lives
22 with his long-term partner in Philadelphia. Petitioner has three children, who live in Nicaragua.

23 51. Petitioner was a licensed attorney in Nicaragua after he graduated from university
24

1 in 2019. Petitioner tried to practice law there, but was unable to practice law freely, because he
2 was not a member of President Daniel Ortega's party, the Sandinista National Liberation Front
3 Petitioner had to flee Nicaragua after years of threats and physical assaults.

4 52. Petitioner entered the United States without inspection on November 26, 2022,
5 and was then paroled into the United States on November 27, 2022. He has resided in
6 Philadelphia, Pennsylvania since entering the United States over three years ago.

7 53. Petitioner worked and lived in Philadelphia, PA, prior to his detention and does
8 not have a criminal record. Petitioner has family, friends and other extended family in the United
9 States

10 54. Petitioner timely filed for asylum with USCIS on November 10, 2023, because
11 DHS failed to serve him or the Immigration Court with a Notice to Appear. Therefore, he was
12 not in removal proceedings in Immigration Court and had to file his asylum application with
13 USCIS.

14 55. On January 5, 2026, Petitioner was arrested when he went to his ICE Check in in
15 Philadelphia, Pennsylvania at the local ICE facility located at 114 N. 8th Street, Philadelphia, PA.
16 Petitioner is now detained at the Federal Detention Center, Philadelphia. *See Exhibit A.*

17 56. Petitioner's application for asylum will now be transferred to Immigration Court.

18 57. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. §
19 1182(a)(6)(A)(i) and 8 U.S.C. § 1225(b)(2)(A) as someone who entered the United States
20 without inspection or valid travel documents.

21 58. Petitioner is neither a flight risk nor a danger to the community. Petitioner lives
22 with his long-term partner and is supported by a network of extended family and friends.

23 59. Petitioner is represented by undersigned counsel *low bono* in his asylum matter
24

1 with USCIS, which will be transferred to Immigration Court.

2 60. Following Petitioner's arrest and transfer to Federal Detention Center, ICE issued
3 a custody determination to continue Petitioner's detention without an opportunity to post bond or
4 be released on other conditions.

5 61. Petitioner remains in detention. Without relief from this court, he will face the
6 prospect of months, or even years, in immigration custody, separated from his extended friends
7 and community.

8 62. Any request for Bond before an Immigration Judge or an appeal to the BIA is
9 futile. DHS's new policy was issued "in coordination with DOJ," which oversees the
10 immigration courts. Further, as noted, the most recent unpublished BIA decision on this issue
11 held that persons like Petitioner are subject to mandatory detention as applicants for admission.
12 Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are
13 defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for
14 admission and subject to detention under § 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez*
15 *Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27-31.

16 **CLAIMS FOR RELIEF**

17 **COUNT I**

18 **Violation of the INA**

19 63. Petitioner incorporates by reference the allegations of fact set forth in the
20 preceding paragraphs.

21 64. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
22 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
23 relevant here, it does not apply to those who previously entered the country and have been
24

1 residing in the United States prior to being apprehended and placed in removal proceedings by
2 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to
3 § 1225(b)(1), § 1226(c), or § 1231.

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

6 **COUNT II**

7 **Violation of Due Process**

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

10 67. The government may not deprive a person of life, liberty, or property without due
11 process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government
12 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the
13 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653
14 (2001).

15 68. Petitioner has a fundamental interest in liberty and being free from official
16 restraint.

17 69. The government's detention of Petitioner without a bond redetermination hearing
18 to determine whether he is a flight risk or danger to others violates his right to due process.

19 **PRAYER FOR RELIEF**

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

- 21 a. Assume jurisdiction over this matter;
- 22 b. Issue a writ of habeas corpus requiring that Respondents release Petitioner
23 immediately;
- 24

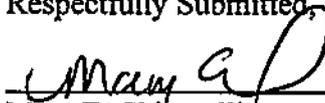
1 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
2 law; and

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

4 DATED this 6 of January, 2026.

5 Respectfully Submitted,

6 By:


7 Mary F. Chicorelli
8 Equal Access Legal Services
9 6703 Germantown Ave.
10 Suite 200/210-4
11 Philadelphia, PA 19119

12
13
14
15
16
17
18
19
20
21
22
23
24