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IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

LUIS GERMAN ESPINAL TORREZ

Petitioner,

v.

Brian MCSHANE, Field Office Director of
Enforcement and Removal Operations,
Philadelphia Field Office, IMMIGRATION
AND CUSTOMS ENFORCEMENT;

Kristi NOEM, Secretary, U.S. Department of
Homeland Security; U.S. DEPARTMENT OF
HOMELAND SECURITY;

Pamela BONDI, U.S. Attorney General;
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW;

Jamal LAWRENCE, Warden of
PHILADELPHIA FEDERAL DETENTION
CENTER

Respondents.

Case No. 2:26-cv-49

**PETITION FOR WRIT OF
HABEAS CORPUS**

1 INTRODUCTION

2 1. Petitioner, Luis German Espinal Torrez, is in the physical custody of Respondents
3 at the Philadelphia Federal Detention Center. He now faces unlawful detention because the
4 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 being charged with, *inter alia*, having entered the United States
7 without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i). However, DHS has not yet
8 filed the necessary Form I-862 - Notice to Appear (NTA) to commence Petitioner’s proceedings
9 with EOIR. AS such, Petitioner has not been scheduled for a hearing in the immigration court to
10 date.

11 3. DHS’s decision to detain Petitioner, without release from immigration custody, is
12 consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and
13 Customs Enforcement (ICE) employees to consider anyone inadmissible under §
14 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to
15 be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on
16 bond.

17 4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or
18 Board) issued a precedent decision, binding on all immigration judges, holding that an
19 immigration judge has no authority to consider bond requests for any person who entered the
20 United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
21 The Board determined that such individuals are subject to detention under 8 U.S.C. §
22 1225(b)(2)(A) and therefore ineligible to be released on bond.

1 **VENUE**

2 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
3 500 (1973), venue lies in the United States District Court for the Eastern District of
4 Pennsylvania, the judicial district in which Petitioner currently is detained.

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

9 **REQUIREMENTS OF 28 U.S.C. § 2243**

10 13. 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, Respondents must file a return “within three days unless for good
13 cause additional time, not exceeding twenty days, is allowed.” *Id.*

14 14. 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 15. Petitioner, Luis German Espinal Torrez, is a citizen of Nicaragua who has been in
22 immigration detention since January 5, 2026. After arresting Petitioner at the Enforcement and
23 Removal Operations (ERO) office in Philadelphia, when Petitioner was appearing for a regularly
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1 scheduled check-in, ICE did not set bond. Petitioner is unable to obtain review of his custody by
2 an Immigration Judge, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N.
3 Dec. 216 (BIA 2025).

4 16. Respondent, Brian McShane, is the Director of the Philadelphia Field Office of
5 ICE's Enforcement and Removal Operations division. As such, Brian McShane is Petitioner's
6 immediate custodian and is responsible for Petitioner's detention and removal. He is named in
7 his official capacity.

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

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

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

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

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

6 29. Thus, in the decades that followed, most people who entered without inspection
7 and were placed in standard removal proceedings received bond hearings, unless their criminal
8 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent
9 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”
10 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
11 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
12 “restates” the detention authority previously found at § 1252(a)). Even individuals who were
13 apprehended at the border and not immediately detained but placed in standard removal
14 proceedings under 8 U.S.C. § 1229a, would historically have been considered detained under
15 § 1226(a) should they later be detained in the interior of the U.S., and thus eligible for bond
16 before an immigration judge.

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

20 31. The new policy, entitled “Interim Guidance Regarding Detention Authority for
21 Applicants for Admission,”¹ claims that all persons who entered the United States without
22 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The

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

1 policy applies regardless of when a person is apprehended and affects those who have resided in
2 the United States for months, years, and even decades.

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

7 33. This followed a May 15, 2025, decision by the BIA holding an applicant for
8 admission arrested without a warrant while arriving in the United States and subsequently placed
9 into removal proceedings is detained under 8 U.S.C. § 1225(b). *Matter of Q. Li*, 29 I&N Dec. 66
10 (BIA 2025).

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

14 35. Subsequently, court after court has adopted the same reading of the INA's
15 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Rodriguez*
16 *Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-CV-
17 11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-
18 11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v.*
19 *Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025),
20 *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133
21 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL
22 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025
23 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW
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1 (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM,
2 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025
3 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF,
4 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-
5 JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-
6 KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051
7 (ECT/DJF), --- F. Supp. 3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v.*
8 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);
9 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,
10 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.
11 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.
12 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.
13 Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2
14 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not §
15 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL
16 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-
17 RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

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

21 37. Section 1226(a) applies by default to all persons “pending a decision on whether
22 the [noncitizen] is to be removed from the United States.” These removal hearings are held under
23 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”
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1 38. The text of § 1226 also explicitly applies to people charged as being inadmissible,
2 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph
3 (E)'s reference to such people makes clear that, by default, such people are afforded a bond
4 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress
5 creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions,
6 the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove*
7 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also* *Gomes*, 2025
8 WL 1869299, at *7.

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

12 40. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
13 recently entered the United States. The statute’s entire framework is premised on inspections at
14 the border of people who are “seeking admission” to the United States. 8 U.S.C.
15 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
16 applies “at the Nation’s borders and ports of entry, where the Government must determine
17 whether [a] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583
18 U.S. 281, 287 (2018).

19 41. Immigration officials and the Department of Justice (DOJ) have long taken the
20 position that immigration officials have broad discretion not to apply the detention and expedited
21 removal procedures § 1225(b), and whether to classify individuals encountered inside the United
22 States shortly after crossing the border as subject to § 1225(b) detention or § 1226(a) detention.
23 *See* Brief for Petitioners at 4-7 (No. 21-954), *Biden v. Texas*, 597 U.S. 785 (2022). The DOJ has
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1 stated, “[t]he INA affords DHS multiple options for processing applications for admission,” and
2 that includes arrest and detention pursuant to § 1226(a). *See id.* at 4-5.

3 42. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not
4 apply to people like Petitioner, who were detained and released by ICE on their own
5 recognizance pursuant to § 1226(a) before being re-detained by ICE sometime later while living
6 in the United States.

7
8 **FACTS**

9 43. Petitioner has resided in the United since November 2022 and lives in
10 Philadelphia, Pennsylvania.

11 44. On January 5, 2026, Petitioner was arrested while attending his routine check-in
12 with ICE at the Philadelphia ERO office.

13 45. When Petitioner was initially apprehended by ICE at the southern border in
14 November 2022, he was detained pursuant to 8 U.S.C. § 1226(a), released on his own
15 recognizance, and required to attend routine check-ins with ICE. Petitioner attended yearly ICE
16 check-ins as required. However, on his third check-in on January 5, 2026, he was detained.
17 Petitioner is now detained at the Federal Detention Center.

18 46. Shortly after Petitioner was initially apprehended at the border in November 2022,
19 he was issued paperwork by DHS related to his enrollment in an Alternatives to Detention
20 (ATD) program. The documents provided to Petitioner when he was first apprehended by ICE
21 clearly indicate he was arrested, detained, and released on his own recognizance pursuant to 8
22 U.S.C. § 1226 (a).

1 47. Despite having been issued a Notice to Appear (NTA) at the border, Respondent's
2 original NTA was never served to the immigration court. Respondent currently awaits the
3 issuance of a second NTA to initiate his removal proceedings.

4 48. Because Petitioner's NTA was not served on the court, he applied for asylum,
5 withholding of removal, and protection under the Convention Against Torture (CAT) with
6 United States Citizenship and Immigration Services (USCIS). His asylum application remains
7 pending with USCIS.

8 49. Petitioner lives with his aunt in Philadelphia, Pennsylvania. He is single with no
9 children.

10 50. Petitioner has never been criminally arrested or apprehended by law enforcement,
11 apart from his immigration arrest, and has become a valued member of his community.
12 Petitioner filed a timely application for asylum in September 2023, evincing his eligibility for
13 relief. Petitioner is neither a flight risk nor a danger to the community.

14 51. Following Petitioner's arrest and transfer to Federal Detention Center, ICE issued
15 a custody determination to continue Petitioner's detention without an opportunity to post bond or
16 be released on other conditions.

17 52. DHS has not yet filed the necessary Form I-862 - Notice to Appear (NTA) to
18 commence Petitioner's proceedings with EOIR. Accordingly, Petitioner is not scheduled for a
19 hearing and has not formally been placed in removal proceedings.

20 53. Petitioner remains in custody with no immigration hearing schedule, and no
21 ability to request bond, as DHS has not filed an NTA.

22 54. Further, pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to
23 consider Petitioner's bond request because he entered the United States without inspection.
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1 59. Rather, Respondents' rearrest of Petitioner on January 5, 2026, was pursuant to
2 the earlier administrative warrant DHS issued years earlier, pursuant to § 1226(a). Respondents
3 have consistently treated Petitioner as subject to § 1226(a) until this point. This is further
4 supported by the fact that Petitioner was not paroled into the United States pursuant to §
5 1182(d)(5)(A), which is the only mechanism for DHS to release someone detained under §
6 1225(b). See *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018). Respondent was released on his
7 own recognizance, which is only a mechanism for release under § 1226 (a).

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

10 **COUNT II**
11 **Violation of the Bond Regulations**

12 61. Petitioner incorporates by reference the allegations of fact set forth in preceding
13 paragraphs.

14 62. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-
15 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.
16 Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the
17 agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present
18 without having been admitted or paroled (formerly referred to as [noncitizens] who entered
19 without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323
20 (emphasis added). The agencies thus made clear that individuals who had entered without
21 inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. §
22 1226 and its implementing regulations.

23 63. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and
24 practice of applying § 1225(b)(2) to individual like Petitioner.

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

3 **COUNT III**
4 **Violation of Due Process**

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

7 66. The government may not deprive a person of life, liberty, or property without due
8 process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government
9 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the
10 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

11 67. Petitioner has a fundamental interest in liberty and being free from official
12 restraint.

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

15 **PRAYER FOR RELIEF**

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

- 17 a. Assume jurisdiction over this matter;
- 18 b. Order that Petitioner shall not be transferred outside the Eastern District of
19 Pennsylvania while this habeas petition is pending;
- 20 c. Issue an Order to Show Cause ordering Respondents to show cause why this
21 Petition should not be granted within seven days;
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- 1 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
2 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
3 1226(a) within seven days;
- 4 e. Declare that Petitioner is detained pursuant to 8 U.S.C. § 1226(a);
- 5 f. Declare that Petitioner's detention is unlawful;
- 6 g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
7 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
8 law; and
- 9 h. Grant any other and further relief that this Court deems just and proper.

10 DATED this 6th of January 2025.

11
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