

SOUTHERN DISTRICT OF MISSISSIPPI
FILED

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BY ARTHUR JOHNSTON
DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

CARLOS ENRIQUE DIAZ RIVAS,

A 

Petitioner/Plaintiff,

v.

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

Respondents/Defendants

Civil Action No. *5:26-cv-2-DCB-BWR*

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

BACKGROUND

Petitioner, Mr. Carlos Diaz Rivas, hereby petitions this Court for a writ of habeas corpus as well as for an injunction to remedy Petitioner's unlawful detention and to enjoin Petitioner's continued unlawful detention by the Respondents. Due to the government's change in policy, Petitioner will be held without the possibility of a bond hearing. Mr. Diaz Rivas asks this Court to order his release or, in the alternative, order immigration officials to set a bond amount. Mr. Diaz Rivas also hereby requests that a hearing be set on this matter. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

PARTIES

1. Petitioner, Mr. Diaz Rivas, is a native and citizen of El Salvador who entered the United States on or about December 2004 without inspection and has not had any interactions with immigration since entering. He has maintained continuous presence in the United States since entering. On November 18, 2025, Petitioner was detained by immigration officials and is currently being held at the Adams County Correctional Center in Natchez, MS.
2. Respondent Pam Bondi is sued in her official capacity as the United States Attorney General. As Attorney General, Ms. Bondi is responsible for the administration and enforcement of the immigration laws of the United States.
3. Respondent Kristi Noem is sued in her official capacity as Secretary of the Department of Homeland Security (“DHS”). As Secretary of DHS, Ms. Noem is responsible for the administration and enforcement of the immigration laws of the United States.
4. 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”).
5. Respondent Mellissa Harper is sued in her official capacity as Field Office Director of ICE and Enforcement and Removal (“ERO”) for the New Orleans office. As the Field Office Director of ICE/ERO, Ms. Harper is responsible for the administration and enforcement of the policies and procedures for ICE’s detention of Petitioner at Adams County Correctional Center.
6. Respondent, Rafael Vergara, is the Warden of Adams County Correctional Center. As such, Mr. Vergara is responsible for the operation of the Correctional Center where Mr. Diaz

Rivas is detained. Because ICE contracts with detention centers such as Adams to house immigration detainees such as Mr. Diaz Rivas, Respondent has immediate physical custody of the Petitioner.

JURISDICTION

7. This action arises under the Constitution of the United States, 28 U.S.C. § 2241(c)(1), and the Immigration and Nationality Act, as amended (“INA”), 8 U.S.C. § 1101 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution (“Suspension Clause”), and 28 U.S.C. § 1331, as the Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (“We conclude that § 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.”); *see also, Demore v. Kim*, 538 U.S. 510 (2003) (evaluating mandatory detention for pre-removal detainees for the “brief period necessary” to complete removal proceedings); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest.”); *Clark v. Martinez*, 543 U.S. 371 (2005) (holding that *Zadvydas* applies to aliens found inadmissible as well as removable).
8. Further, this action also arises pursuant to 28 U.S.C. § 1331, federal question jurisdiction, as this Court has power to issue a federal injunction to force the ICE and the Correctional Center to release Mr. Diaz Rivas so that he will not have to endure the continued burden of unreasonable detention.

VENUE

9. Venue lies in the Southern District of Mississippi, because Mr. Diaz Rivas is currently detained in the territorial jurisdiction of this Court, at the Adams County Correctional Center. 28 U.S.C. § 1391.

LEGAL BACKGROUND

10. The Immigration and Nationality Act (“INA”) prescribes three basic forms of detention for noncitizens in removal proceedings.
11. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge (“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).
12. 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).
13. Last, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).
14. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
15. 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).

16. Following 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 that they 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).
17. 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)).
18. Respondents’ new policy turns this well-established understanding on its head and violates the statutory scheme.
19. Overwhelmingly, courts have rejected the interpretation offered by Respondents that § 1225(b)(2) requires the detention of all noncitizens living in the country who are “inadmissible” because they entered the United States without inspection.¹

¹ *See, e.g.,* Lopez Benitez v. Francis, No. 25-Civ-5937, 2025 WL 2371588, *9 (S.D.N.Y. Aug. 13, 2025); Martinez v. Hyde, No. CV 25-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025); Gomes v. Hyde, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); Garcia v. Noem, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *6 (S.D. Cal. Sept. 3, 2025); Lopez-Campos v. Raycraft, No. 2:25-cv-12486-2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025); Kostak v. Trump, No. 3:25-cv-01093-JE-KDM, Doc. 20 at 7 (W.D. La. Aug. 27, 2025); Benitez v. Noem, No. 5:25-cv-02190-RGK-AS, Doc. 11 at 5 (C.D. Cal. Aug. 26, 2025); Leal-Hernandez v. Noem, No. 1:25-cv-02428-JRR, 2025 WL 2430025, at *10 (D. Md. Aug. 24, 2025); Romero v. Hyde, No. 25-11631-BEM, 2025 WL 2403827, at *13 (D. Mass. Aug. 19, 2025); Arrazola-Gonzalez v. Noem, No. 5:25-cv-01789-

20. Despite these findings from federal courts, ICE released a memorandum instructing its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject bond redetermination hearings for applicants who arrived in the United States without documents.
21. A May 22, 2025, unpublished BIA decision confirms that the Executive Office for Immigration Review (EOIR) is taking this same position that noncitizens who entered the United States without admission or parole are ineligible for immigration judge bond hearings.
22. This is now a widespread position adopted by EOIR applying across the United States.
23. This interpretation defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.
24. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, which “decid[e] the inadmissibility or deportability of a[] [noncitizen].”
25. 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 such people 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.

ODW, 2025 WL 2379285, at *2 (C.D. Cal. Aug. 15, 2025); Maldonado, 2025 WL 2374411, at *13; dos Santos v. Noem, No. 1:25-cv-12052-JEK, 2025 WL 2370988, at *8 (D. Mass. Aug. 14, 2025).

26. By contrast, § 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).
27. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner who are alleged to have entered the United States without admission or parole.

FACTS

28. Petitioner Diaz Rivas has resided in the United States since 2004 and was living in New York before being detained and transported to Natchez, MS.
29. Mr. Diaz Rivas was arrested during an immigration enforcement action. He was not engaged in any illegal conduct. He has only a single arrest from around 2010 for public intoxication.
30. He was placed into removal proceedings to appear before an immigration judge (IJ) and was charged with having entered the United States without inspection and being present without valid immigration documents. 8 U.S.C. § 1182(a)(6)(A)(i). *See Exhibit A.*
31. Mr. Diaz Rivas will seek relief before the immigration court but will not be allowed to seek a bond redetermination hearing due to the new policy regarding bond jurisdiction.
32. ICE has not granted release or set a bond amount for the Petitioner, despite there being no danger to the community or flight risk.

CAUSES OF ACTION

COUNT 1

Violation of 8 U.S.C. § 1226(a)

Unlawful Denial of a Bond Hearing

33. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
34. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted or paroled. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.
35. The application of § 1225(b)(2) to bar Petitioner from receiving a bond redetermination hearing before an immigration judge is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT 2

Violation of Procedural Due Process

36. Petitioner repeats, re-alleges, and incorporates by reference paragraphs 1 to 32 as if fully set forth herein.
37. 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, 121 S.Ct. 2491, 150 L.Ed.2d. 653 (2001).
38. Petitioner has a fundamental interest in liberty and being free from official restraint.

39. The government's detention of Petitioner without the possibility for a bond redetermination 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:

- a. Assume jurisdiction over this matter;
- b. Declare that the Petitioner's inability to seek a bond redetermination hearing before an immigration judge violates the INA, APA, and Due Process;
- c. Issue a writ of habeas corpus requiring that Defendants release Petitioner;
- d. Set aside Respondents' unlawful detention policy under the APA, 5 U.S.C. § 706(2);
- e. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 241(d), 5 U.S.C. § 504, or any other applicable law; and
- f. 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 6th day of January, 2026.



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