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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Junior Jeovany Cristobal Gaspar,
(Alien No.  Petitioner,

v.

Field Office Director, Enforcement and
Removal Operations, Miami 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;

WARDEN of the Florida Soft Side South
Facility;

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

AND EMERGENCY RELIEF

1 **INTRODUCTION**

2 1. Petitioner Junior Jeovany Cristobal Gaspar is in the physical custody of
3 Respondents at the Florida Soft Side South Facility (“Alligator Alcatraz”). He now faces
4 unlawful detention because the Department of Homeland Security (DHS) have concluded
5 Petitioner is subject to mandatory detention.

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

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

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

19 5. 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 and are now residing in the United States. Instead, such individuals are
22 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 Florida Soft Side South Facility located in Ochopee, Florida.

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 Middle District of Florida, the
19 judicial district in which the Petitioner is currently 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 and
23 Middle Districts of Florida.

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

7 19. Respondent Warden of the Florida Soft Side South Facility has immediate
8 physical custody of the petitioner.

9 LEGAL FRAMEWORK

10 20. The INA prescribes three basic forms of detention for the vast majority of
11 noncitizens in removal proceedings.

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

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

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

22 24. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
23
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1 25. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
2 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
3 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section
4 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1,
5 139 Stat. 3 (2025).

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

11 27. Thus, in the decades that followed, most people who entered without inspection
12 and were placed in standard removal proceedings received bond hearings, unless their criminal
13 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent
14 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”
15 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
16 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
17 “restates” the detention authority previously found at § 1252(a)).

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

21 29. The new policy, entitled “Interim Guidance Regarding Detention Authority for
22 Applicants for Admission,”¹ claims that all persons who entered the United States without

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

1 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The
2 policy applies regardless of when a person is apprehended, and affects those who have resided in
3 the United States for months, years, and even decades.

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

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

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

18 33. Subsequently, courts across the country and in this judicial district have adopted
19 the same reading of the INA's detention authorities and rejected ICE and EOIR's new
20 interpretation. *See, e.g., Hinojosa Garcia v. Noem*, No. 2:25-cv-879-SPC-NPM, 2025 WL
21 3041895 (M.D. Fla. Oct. 31, 2025); *Vasquez Carcamo v. Noem*, 2:25-cv-922-SPC-NPM, 2025
22 WL 3119263 (M.D. Fla. Nov 7, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
23 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.

1 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157
2 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation*
3 *adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025);
4 *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *1 (S.D.N.Y. Aug.
5 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn.
6 Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL
7 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827
8 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025
9 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136
10 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ---
11 -, 2025 WL 2466670, at *8 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-
12 12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*,
13 No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda*
14 *v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro*
15 *Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *see also*,
16 *e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 at *2 (D. Neb. Sept. 3, 2025)
17 (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes
18 detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb.
19 Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at
20 *2 (D. Neb. Aug. 14, 2025) (same).

21 34. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it
22 defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the
23 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.
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1 35. Section 1226(a) applies by default to all persons “pending a decision on whether
2 the [noncitizen] is to be removed from the United States.” These removal hearings are held under
3 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

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

12 37. Section 1226 therefore leaves no doubt that it applies to people who face charges
13 of being inadmissible to the United States, including those who are present without admission or
14 parole.

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

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

4 **FACTS**

5 40. Petitioner is a national of Guatemala who has resided in the United States since
6 December 7, 2019. Upon entry to the United States, Petitioner was inspected by the U.S.
7 Department of Homeland Security (“DHS”).

8 41. On December 8, 2019, DHS issued a Notice to Appear (“NTA”), charging the
9 Petitioner with inadmissibility under section 212(a)(6)(A)(i) of the Immigration and Nationality
10 Act (“INA”) as “an alien present in the United States who has not been admitted or paroled,” and
11 thereby initiated removal proceedings against Petitioner under 8 U.S.C. § 1229(a). *See* Exhibit A
12 - Notice to Appear. The issuing DHS officer did not designate Petitioner as an “arriving alien.”

13 42. After processing by DHS, Petitioner was identified as an “Unaccompanied Alien
14 Child” and transferred into the custody of the U.S. Health and Human Services (“HHS”), Office
15 of Refugee Resettlement (“ORR”). *See* Exhibit B – ORR Verification of Release.

16 43. On January 6, 2020, HHS released Petitioner into the custody of his father.

17 44. After he was released from HHS custody, Petitioner filed an affirmative asylum
18 application with the United States Citizenship and Immigration Services (“USCIS”) on
19 September 30, 2021 as an unaccompanied minor child. This application was filed prior to the
20 Petitioner turning 18 years of age. *See* Exhibit C – USCIS Acknowledgment of Receipt form
21 I589.

1 45. Petitioner attended removal proceedings in Miami, Florida. On August 13, 2024,
2 Petitioner's removal proceedings were terminated by the Immigration Judge. *See* Exhibit D –
3 Order of the Immigration Judge Terminating Proceedings.

4 46. Petitioner resides in Homestead, Florida with his partner of two years. Petitioner
5 is employed in construction and is the primary source of financial support for his family.
6 Petitioner has no criminal history.

7 47. On January 10, 2026, Petitioner was arrested by ICE while he was a passenger in
8 a vehicle on his way to work. Petitioner is now detained at the Florida Soft Side South Facility in
9 Ochopee, Florida.

10 48. Petitioner is neither a flight risk nor a danger to the community. Petitioner has
11 attended all scheduled hearings, has strong family ties in the United States, has lawful
12 employment, and does not have any criminal history.

13 49. Following Petitioner's arrest and transfer to the Florida Soft Side South Facility
14 ICE issued a custody determination to continue Petitioner's detention without an opportunity to
15 post bond or be released on other conditions.

16 50. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider
17 Petitioner's bond request.

18 51. As a result, Petitioner remains in detention. Without relief from this court, he
19 faces the prospect of months, or even years, in immigration custody, separated from his family
20 and community.

21 **CLAIMS FOR RELIEF**

22 **COUNT I**

23 **Violation of the INA**

1 52. Petitioner incorporates by reference the allegations of fact set forth in the
2 preceding paragraphs.

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

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

11 **COUNT II**

12 **Violation of Due Process**

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

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

20 57. Petitioner has a fundamental interest in liberty and being free from official
21 restraint.

22 58. The government’s detention of Petitioner without a bond redetermination hearing
23 to determine whether he is a flight risk or danger to others violates his right to due process.
24

1 **PRAYER FOR RELIEF**

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

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

16 DATED this 15th day of January, 2026.

17 /s/ Themistoklis E. Aliferis
18 Themistoklis E. Aliferis
19 Florida Bar No.: 111888
20 Law Office of Sammy Aliferis, P.A.
21 6303 Waterford District Dr., Suite 400
22 Miami, FL 33126
23 Tel: (305) 200-5000
24 taliferis@aliferislaw.com

Attorney for Petitioner

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

2

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

7

8 Executed this 15th day of January, 2026.

9

10 /s/ Themistoklis E. Aliferis
11 Themistoklis E. Aliferis, Esq.
12 Attorney for Petitioner

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