

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DISTRICT OF MISSISSIPPI
FILED

JAN 16 2026

BY ARTHUR JOHNSTON
DEPUTY

FREDY ORLANDO CHOC-QUIB,)
 Petitioner,)
v.)
RAFAEL VERGARA, in his official capacity as)
Warden at Adams County Correctional Center,)
 Respondent.)

Case No. 5:26-cv-14-DCB-BWR

**PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Petitioner, Fredy Orlando Choc-Quib, has been residing in the United States since approximately 2021.
2. In or around December 13, 2025, he was apprehended by Immigration and Customs Enforcement (“ICE”) while driving home from work. He is currently detained by immigration authorities at the Adams County Correctional Center in Natchez, Mississippi.
3. Petitioner is charged with being present in the United States without admission or parole, pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exhibit 1, Notice to Appear. He remains in unlawful detention, without the opportunity for a bond hearing, under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

4. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 articulates a new Executive Office for Immigration Review (“EOIR”) policy that all persons who entered the United States without inspection, regardless of how long they have lived in the United States or how far they were apprehended from the border, are detained pursuant to 8 U.S.C. § 1225(b)(2)(A) and are thus ineligible for a discretionary bond hearing under § 1226(a).
5. This Board of Immigration Appeals (“BIA”) decision further reflects an ICE memorandum, issued in July 2025, that instructs its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject custody redetermination hearings for applicants who arrived in the United States without documents.¹
6. The agencies’ reading of the Immigration and Nationality Act’s (“INA’s”) detention provisions is a violation of the statute and due process. As a great consensus of courts from the Fifth Circuit have already concluded, § 1225(b)(2)(A) does not apply to individuals like Petitioner, who have been present in the United States for years. *See, e.g., Coj v. Noem*, No. 1:25-CV-01655, 2026 U.S. Dist. LEXIS 5718, *3 (W.D. La. Jan. 12, 2026); *Silva v. Bondi*, No. 1:25-CV-2155, 2026 U.S. Dist. LEXIS 5286, *12 (W.D. Tex. Jan. 12, 2026); *Rodriguez Moreno v. Warden, Houston Cont. Det. Facility*, No. 4:25-6018, 2026 U.S. Dist. LEXIS 4038, *2 (S.D. Tex. Jan. 9, 2026); *Martinez v. Rice*, No. 25-1780 SEC P, 2025 U.S. Dist. LEXIS 257132, *8 (W.D. La. Dec. 11, 2025). Instead, such individuals are subject to detention under a different statute, § 1226(a), and are eligible for release on bond. *See id.*

¹ *See* “ICE declares millions of undocumented immigrant ineligible for bond hearings,” *The Washington Post* (Jul. 15, 2025) <https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/>.

7. Accordingly, Petitioner seeks an order of declaratory and injunctive relief and set aside relief under the Administrative Procedure Act (“APA”) requiring that he is released or provided a bond redetermination hearing before an immigration judge (“IJ”).

JURISDICTION & VENUE

8. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory judgment); and United States Constitution Article I, Section 9 (Suspension Clause).
9. The federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by individuals challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). In *Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018), the Supreme Court again upheld the federal courts’ jurisdictions to review such claims.
10. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district.

THE PARTIES

11. Petitioner is a citizen of Guatemala who entered the United States in or around 2021. He is currently detained at the Adams County Correctional Center in Natchez, Mississippi.
12. Respondent Rafael Vergara is the Warden of the Adams County Correctional Center in Natchez, Mississippi, where Petitioner is currently detained. As the Warden, Mr. Vergara is the legal custodian of Petitioner. He is sued in his official capacity.

LEGAL BACKGROUND

I. OVERVIEW OF THE INA'S DETENTION FRAMEWORK

13. Relevant to this case, the INA includes two provisions that primarily govern the detention of noncitizens.
14. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an 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).
15. 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 under § 1225(b)(2).
16. 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 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
17. Following the 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 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).

18. Thus, in the decades that followed, most people who entered without inspection, unless they were subject to some other detention authority, received bond hearings.
19. This 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 the detention authority previously found at § 1252(a)); *Silva*, 2026 U.S. Dist. LEXIS 5286, *17 (“Contrary to Respondents’ assertions, the IIRIRA left in place an earlier distinction between noncitizens arrested in the interior of the country (not subject to mandatory detention) and noncitizens stopped at the border (subject to mandatory detention).”) (cleaned up).

II. Respondent has enacted a policy that violates INA’s statutory scheme

20. In July 2025, ICE released a memorandum instructing its attorneys to coordinate with EOIR to reject bond hearings for applicants who arrived in the United States without documents.
21. Thereafter, on September 5, 2025, the BIA published *Matter of Yajure Hurtado*, 29 I&N Dec. 216, which confirms that EOIR is taking the position that noncitizens who entered the United States without admission or parole are ineligible for IJ bond hearings.
22. As *Matter of Yajure Hurtado* is binding on IJs, it represents the widespread position that EOIR is applying across the United States.
23. EOIR’s interpretation defies the INA.
24. The plain text of the provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

25. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.”
26. 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 8 U.S.C. § 1182(a)(6)(A)(i) 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.
27. On the contrary, § 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). Indeed, the title of § 1225(b) indicates that it specifically applies at the point of “inspection for applicants for admission.”
28. Moreover, Respondent’s interpretation of the INA’s detention framework contradicts Supreme Court precedent. *See Silva*, 2026 U.S. Dist. LEXIS 5286, *16 (stating that, in *Jennings*, 583 U.S. 289, the Supreme Court explained that “U.S. immigration law authorizes the Government to detain certain [noncitizens] *seeking admission* into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)”) (internal quotation marks omitted).
29. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner.

III. *Maldonado Bautista* Rejected Respondent’s Detention Policy and Ordered that Nationwide Class Members Are Entitled to Bond Hearings

30. On November 20, 2025, the Central District of California issued an order granting partial summary judgment (“MSJ Order”) in *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.*, C.D. Cal. No. 5:25-cv-01873, which rejected Respondent’s policy governing Petitioner’s continued detention. C.D. Cal. No. 5:25-cv-01873, Dkt. 81.
31. Shortly thereafter, the *Maldonado Bautista* court granted a nationwide class certification covering all noncitizens in the United States without lawful status who: (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time DHS makes an initial custody determination. C.D. Cal. No. 5:25-cv-01873, Dkt. 83. The court concluded that class members are detained under 8 U.S.C. § 1226(a) and must be afforded a bond hearing before an IJ.
32. Following the *Maldonado Bautista* court’s decisions, Respondent took the position that, because the MSJ Order was not final, it was merely an advisory opinion.
33. In light of this confusion, on December 18, 2025, the *Maldonado Bautista* court granted the Plaintiffs’ request to issue a clarifying decision and enter a final judgment. C.D. Cal. No. 5:25-cv-01873, Dkt. 94. In doing so, the court clarified that its MSJ Order had declared Respondent’s detention policy unlawful and, thus, had vacated it under the APA. *Id.* The Court further clarified that, while the MSJ Order did not vacate *Matter of Yajure Hurtado* under the APA, the decision could not “be squared with the MSJ Order.” *Id.* at 6. Accordingly, *Matter of Yajure Hurtado* is “no longer controlling; the legal conclusion underlying the decision is no longer tenable.” *Id.*

34. The *Maldonado Bautista* court furthermore entered a final judgment. *Id.* at 11. It concluded that its “posture [was] distinct from where it stood on November 20, 2025,” because, at that time, a “final judgment was not appropriate due to the pending motion for class certification.” *Id.* at 11. Because of the “change in procedural posture,” however, as well as the “new facts indicat[ing] Respondents ha[d] counseled the noncompliance with the Court’s orders,” the *Maldonado Bautista* court concluded that its “previous reasons supporting delay in entry of final judgment pursuant . . . no longer exist[ed].”
35. As Petitioner is a *Maldonado Bautista* class member, he is entitled to a bond hearing under 8 U.S.C. § 1226(a).

FACTS

36. Petitioner is a native and citizen of Guatemala who entered the United States in or around 2021. Upon entering the United States, he was not detained by ICE.
37. Petitioner is a hard-working 21-year-old man who devotes his time to his work in order to help his family. Despite his arduous work schedule, he also finds time to spend with his partner and his aunt.
38. In 2022, ICE served Petitioner with a Notice to Appear, charging him as inadmissible under 8 U.S.C. §§ 1182(a)(6)(A)(i). *See* Ex. 1.
39. Petitioner applied for asylum on August 21, 2023. He has since appealed the IJ’s decision denying this relief, issued on April 2, 2025, with the BIA.
40. On or about December 13, 2025, Petitioner was stopped by ICE at a checkpoint in Virginia while he was driving home from work. ICE detained him and transferred him to Mississippi, where he has since remained detained.
41. Any request for a bond hearing before the immigration court is futile.

CAUSES OF ACTION

COUNT ONE

***Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Bond Hearing***

42. Petitioner repeats, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
43. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens who are subject to inadmissibility as being present in the United States without admission or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.
44. The application of § 1225(b)(2) to bar Petitioner from receiving a bond hearing before an IJ violates the INA.

COUNT TWO

***Violation of the Administrative Procedure Act
Unlawful Denial of Bond Hearing***

45. Petitioner repeats, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
46. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens who are subject to inadmissibility as being present in the United States without admission or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.
47. The application of § 1225(b)(2) to bar Petitioner from receiving a bond hearing before an IJ is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT THREE

***Violation of Procedural Due Process
Unlawful Denial of Bond Hearing***

48. Petitioner repeats, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
49. 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*, 533 U.S. at 690.
50. Petitioner has a fundamental interest in liberty and being free from official restraint. Respondent’s detention of Petitioner without a bond hearing to determine whether he is a flight risk or danger to others violates his right to due process.

COUNT FOUR

***Violation of Maldonado Bautista
Unlawful Denial of Bond Hearing***

51. Petitioner repeats, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
52. Petitioner is a member of the nationwide class certified in *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.*, C.D. Cal. No. 5:25-cv-01873.
53. Respondent’s detention of Petitioner without a bond hearing violates the *Maldonado Bautista*’s court final order that class members are detained pursuant to § 1226(a) and should thus be afforded a bond hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Honorable Court:

- (1) Accept jurisdiction over this action;
- (2) Declare that the refusal to allow him a bond redetermination hearing before an IJ violates the INA, APA, and Due Process;
- (3) Declare that Petitioner is entitled to a bond hearing as a Maldonado Bautista class member;
- (4) Issue a writ of habeas corpus requiring that Respondent releases Petitioner or provide the bond hearing to which he is entitled within 7 days, at which the Government bears the burden of justifying, by clear and convincing evidence, that he is flight risk danger to society;
- (5) Set aside Respondent's unlawful detention policy under the APA, 5 U.S.C. § 706(2);
- (6) Grant such further relief as the Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this the 14th day of January, 2026.

Brandon H. Riches
The Riches Law Firm, PLLC
Mississippi Bar # 105273
P.O. Box 1526
Ocean Springs, MS 39566
Cell/WhatsApp:(228) 800-4178
Email: Brandon@Richeslawfirm.com