

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Juan Daniel PAREJA GIRALDO

Petitioner,

v.

Mary de Anda-Ybarra, U.S. Immigration and
Customs Enforcement and Removal Operations
El Paso Field Office Director; **Todd LYONS**,
in his capacity as Acting Director, Immigration and
Customs Enforcement; **Kristi NOEM**, Secretary,
U.S. Department of Homeland Security; **Pamela**
BONDI, U.S. Attorney General; **EXECUTIVE**
OFFICE FOR IMMIGRATION REVIEW;
WARDEN, of ERO El Paso Camp East Montana,
El Paso, Texas

Respondents.

Case No. 3:26-cv-00149

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Juan Daniel Pareja Giraldo (“*Petitioner*” or “*Mr. Pareja Giraldo*”) is in the physical custody of Respondents at the ERO El Paso Camp East Montana in El Paso, Texas. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention pursuant to the Board of Immigration Appeal’s decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
2. Petitioner entered the United States on or about September 29, 2022. Upon his entry, Petitioner was given a credible fear interview. He was found to have a credible fear of

persecution or torture if returned to his home country, and then served an NTA dated October 23, 2022.

3. Petitioner is charged with, inter alia, having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).
4. Petitioner is subject to mandatory detention based on the holding of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which mandates mandatory detention for all foreign nationals who enter the United States without inspection regardless of how long they have lived in the United States.
5. Petitioner was arrested in Massachusetts by U.S. Immigration and Customs Enforcement (“ICE”) and/or other federal agents acting on ICE’s behalf on or about September 11, 2025 while on his way to work.
6. Petitioner is present in the United States, and the Department of Homeland Security (“DHS”) has alleged that Petitioner was not previously admitted or paroled into the United States.
7. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), including because Petitioner does not currently meet the criteria for Expedited Removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).
8. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, as a person already present in the United States, Petitioner is not presently “seeking admission” to the United States. *See Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314, at *6 (W.D. Tex. Nov. 26, 2025); *Mo-Rales v. Thompson*, No. SA-25-CV-01391-JKP, 2025 WL 3470871, at *4 (W.D. Tex. Nov. 21, 2025) (citing *Lopez Benitez v. Francis*, No. 25 CIV. 5937, 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025)).

9. On information and belief, Petitioner was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Petitioner could not “be returned” under that provision to mandatory custody under 8 U.S.C. § 1225(b) or any other form of custody. Petitioner is not subject to mandatory detention under § 1225 for this reason as well.
10. Instead, as a person arrested inside the United States and held in civil immigration detention, Petitioner is subject to detention, if at all, pursuant to 8 U.S.C. § 1226. *See Vargas Bondi*, No. SA-25-CV-1023-FB (HJB), 2025 WL 3300446, at *4 (W.D. Tex. Nov. 12, 2025) (collecting cases) (“Numerous courts have rejected Respondents’ broad new interpretation of § 1252(b)(2)...includ[ing] the majority of the district courts in the Fifth Circuit—and all the courts in this District—that have considered the issue.”) (alteration added, internal citation omitted). *See also Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025) (collecting cases).
11. Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).
12. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).
13. Petitioner’s detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

14. Petitioner, after entering the United States and presenting himself to authorities, passed a credible fear interview and demonstrated a credible fear of torture or persecution if returned to his home country. Respondents may allege Petitioner is subject to detention under INA § 235(b)(1)(B)(ii). *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).
15. Petitioner is not subject to the holding in *Matter of M-S-* and therefore not mandatorily detained under § 235(b)(1). Petitioner was given a credible fear interview upon entry and then issued a Notice to Appear dated October 23, 2022. The NTA placed the Petitioner into INA § 240 removal proceedings with the Executive Office of Immigration Review. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally 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).
16. Here, *Matter of M-S-* is inapplicable. While *Matter of M-S-* holds “if an alien in expedited proceedings establishes a credible fear, he “shall be detained for further consideration of the application for asylum,” it also continues, “such an alien may be “parole[d] into the United States . . . for urgent humanitarian reasons or significant public benefit.” *Matter of M-S-*, 27 I&N Dec. 509, 510.
17. Furthermore, Petitioner’s NTA is dated approximately a month after his arrival to the United States and after a credible fear was established. He was then released into the interior and his current detention occurred almost three years later in September 2025, when Petitioner was no longer in expedited proceedings. While Respondents had the statutory authority to hold Petitioner “for further consideration of the application for asylum,” Petitioner’s current

detention was after Respondents' already released him. Pursuant to *Matter of M-S-*, Petitioner's was released by Respondents after a credible fear was established and thus *Matter of M-S-* is inapplicable to these set of facts.

18. Even if the government assumes the position that Petitioner is mandatorily detained pursuant to U.S.C. §1225, the detention violates procedural due process as applied under *Mathews v. Eldridge*. In *Rincon Chavero v. Bondi*, this Court held the Supreme Court's balancing test in *Mathews v. Eldridge* is dispositive. No. 3:2025cv00638 (W.D. Tex. 2025). *See also, Lopez Arevelo v. Ripa*, EP-25-CV-337-KC (W.D. Tex. 2025). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). "[I]dentification of the specifics dictates of due process generally requires consideration of three distinct factors": (1) "the private interest that will be affected by the official action"; (2) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," and (3) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Id.* at 335.

19. Here, the first factor of *Mathews* weighs in Petitioner's favor. Petitioner has acquired a liberty interest by being present and creating a life within the United States for over three years. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraints – lies at the heart of the liberty [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690. Petitioner has established a life in the United States, free from the persecution awaiting him in his home country, has a pending asylum application

and work authorization that has allowed him to work and contribute meaningfully to his employer and his community. Turning to the second factor, Petitioner argues he would vindicate the government's interest by establishing in the record that he does not pose a risk to the communities in which he lives, he has no criminal history that would pose a danger to the community, and has been and will continue to appear for all of his hearings before the Court. Lastly for the third *Mathews* factor, the risk for Petitioner lies in his interest in being free from indefinite, arbitrary confinement pending the resolution of his removal proceedings. Further, the "value of additional safeguards is high given that it will allow an immigration judge conducting a bond hearing to make a determination on specific facts whether continued detention is necessary to ensure presence at removal hearings and safety for the community." *Rincon Chavero*, No. 3:2025cv00638 (W.D. Tex. 2025).

20. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a custody redetermination hearing (colloquially called a "bond hearing") with strong procedural protections. *See Rojas Vargas v. Bondi*, No. 1:25-CV-01699-DAE, 2025 WL 3251728, at *2 (W.D. Tex. Nov. 5, 2025) (under 8 U.S.C. § 1226, the "discretionary detention statute," a noncitizen subject to detention is entitled to procedural protections that are not afforded under the mandatory detention statute, such as the right to a bond redetermination hearing in front of an Immigration Judge and a right to appeal any custody redetermination.") (citing 8 U.S.C. § 1226); 8 C.F.R. 236.1(d) & 1003.19(a)-(f)).
21. Petitioner requests such a bond hearing.
22. Petitioner is being irreparably harmed by his ongoing unlawful detention without a bond hearing. *See Martinez v. Sec. of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) ("The interest in being free from physical detention is 'the most

- elemental of liberty interests.”) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *Chinchilla v. Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3645178, at *4 (W.D. Tex. Dec. 16, 2025) (“One’s physical freedom is a paramount interest secured by statutes and the Constitution”) (citing *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859 at *3 (W.D. Tex. Oct. 21, 2025)).
23. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioner, and any attempt to raise such claims would be futile. *See Shobande v. Lyons*, No. 1:25-CV-1744-RP, 2025 WL 3217758, at *2 (W.D. Tex. Nov. 14, 2025) (“under Respondents’ own contentions, § 1226’s detention scheme is wholly inapplicable to Petitioner’s current status, the purportedly available administrative remedy of appealing to the BIA to seek a bond hearing is ‘wholly inappropriate’ and ‘patently futile.’”) (quoting *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018)).
24. There is no statutory requirement for Petitioner to exhaust administrative remedies. *See Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *6 (“Requiring [Respondent] to wait, indefinitely, for a ruling on that appeal would be inappropriate because it would exacerbate his alleged constitutional injury—detention without a bond hearing”).
25. Accordingly, there is no requirement for Petitioner to further exhaust administrative remedies before pursuing this Petition. *Id.*

JURISDICTION

26. Petitioner is in the physical custody of Respondents. Petitioner is detained at ERO El Paso Camp East Montana in El Paso, Texas.
27. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the

Suspension Clause).

28. Respondent Mary De Anda-Ybarra, is the El Paso, Texas Office Director for U.S. Immigration and Customs Enforcement.
29. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement.
30. Respondent Kristi Noem is the U.S. Secretary of Homeland Security.
31. Respondent Pamela Bondi is the U.S. Attorney General.
32. Executive Office for Immigration Review is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.
33. Warden of ERO El Paso Camp East Montana, Texas is the physical custodian of Petitioner.
34. All respondents are named in their official capacities. One or more of the respondents is Petitioner's immediate custodian.
35. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

36. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the United States District Court for the District of Western Texas, the judicial district in which Petitioner currently is detained.
37. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Western Texas.

CLAIMS FOR RELIEF **COUNT ONE**

Violation of 8 U.S.C. 1226(a) and Associated Regulations

1. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
2. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).
3. Petitioner has not been, and will not be, provided with a bond hearing as required by law.
4. Petitioner's continuing detention is therefore unlawful.

COUNT TWO

**Violation of Fifth Amendment Right to Due Process
(Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a))**

5. Because Petitioner is a person arrested inside the United States and is subject to detention, if at all, under 8 U.S.C. § 1226(a), the Due Process Clause of the Fifth Amendment to the United States Constitution requires that Petitioner receive a bond hearing with strong procedural protections. *See Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *12-13; *Rojas Vargas v. Bondi*, 2025 WL 3251728, at *2.
6. Petitioner has not been, and will not be, provided with a bond hearing as required by law.
7. Petitioner's continuing detention is therefore unlawful.

COUNT THREE

**Violation of Fifth Amendment Right to Due Process
(Failure to Provide an Individualized Hearing for Domestic Civil Detention)**

8. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).
9. The Fifth Amendment's Due Process Clause specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. CONST. amend. V.

10. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); see *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”); cf. *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizens due process rights were limited where the person was not residing in the United States, but rather had been arrested 25 yards into U.S. territory, apparently moments after he crossed the border while he was still “on the threshold”).
11. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause. *Zadvydas*, 533 U.S. 678 at (2001)
12. The Supreme Court has thus “repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); see also *Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).
13. Petitioner was arrested inside the United States and is being held without being provided any individualized detention hearing.
14. Petitioner’s continuing detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

COUNT FOUR
Violation of Fifth Amendment Right to Due Process
(Substantive Due Process)

15. Because Petitioner is not being provided a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a “reasonable relation” to the purposes of immigration detention (*i.e.*, the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

16. Petitioner’s detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

PARTIES

17. Petitioner Juan Daniel Pareja Giraldo (“Respondent” or “Mr. Pareja Giraldo”) is a citizen of Colombia, who has been in immigration detention since on or about September 11, 2025. After collaterally arresting Petitioner when they stopped the vehicle he was in, in which he was a passenger, not the driver, the EOIR will not hold a proper bond hearing for Petitioner because he entered without inspection. Petitioner has resided in the United States since 2022 and has a pending asylum case.

38. The Petitioner is be held in mandatory detention based on the holding of *Matter of Yajure Hurtado*, 29 I&N Dec 216 (BIA 2025).

39. Respondent Mary De Anda-Ybarra, is the El Paso, Texas Office Director for U.S. Immigration and Customs Enforcement. As such, Mary De Anda-Ybarra is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. She is named in her official capacity.

40. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement.

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

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

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

44. Respondent Warden of the ERO El Paso Camp East Montana, El Paso, Texas, is sued in his official capacity as the Warden. Respondent Warden of ERO El Paso East Montana is the physical custodian of Petitioner.

45. All Respondents are named in their official capacities.

LEGAL FRAMEWORK

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

47. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally 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).

48. 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).
49. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).
50. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
51. 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).
52. 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 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).
53. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. 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)).

54. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.
55. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ claims that all persons who entered the United States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.
56. As of September 5, 2025, in a case from the Board of Immigration Appeals (BIA), EOIR adopts this same position. *Matter of Yajure Hurtado*, supra at 229. That decision holds that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bond hearings regardless of how long they have resided in the United States.
57. ICE and EOIR have adopted this position even though federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); see

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

also *Vargas Bondi*, 2025 WL 3300446, at *4 (collecting cases) (“Numerous courts have rejected Respondents’ broad new interpretation of § 1252(b)(2)...includ[ing] the majority of the district courts in the Fifth Circuit—and all the courts in this District—that have considered the issue.”) (alteration added, internal citation omitted).

58. DHS’s and DOJ’s interpretation defy the INA. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.
59. 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, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”
60. 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). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).
61. 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.
62. 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). Indeed,

the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

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

FACTS

64. Petitioner has resided in the United States since September 2022 and lived at 

 in Revere, Massachusetts  prior to his detention with Respondents.

65. On or around September 11, 2025, Petitioner was collaterally arrested during a traffic stop while in a vehicle in which he was not the driver. Petitioner was on his way to work. Petitioner is now detained at ERO El Paso Camp East Montana in El Paso, Texas.

66. DHS placed Petitioner in removal proceedings on October 26, 2022, prior to his current detention with immigration officials pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, inter alia, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

67. Petitioner has no criminal history, no outstanding warrants, and is eligible for asylum, given that he is fleeing persecution from Colombia. Petitioner has been employed and has demonstrated ties in Massachusetts, where he resides with members of his community. Petitioner is neither a flight risk nor a danger to the community.

68. Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his community.

69. Any appeal to EOIR is futile, the most recent published *Yajure Hurtado* BIA decision held that persons like Petitioner are subject to mandatory detention as applicants for admission.
70. Petitioner is also a class member of the *Maldonado Bautista v. Noem* class action lawsuit currently pending with the United States District Court for the Central District of California.
71. Pursuant to *Maldonado Bautista v. Noem*, Petitioner will be categorized as a class member once an order is issued by the Central District of California as he is: “[a] noncitizen 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 the Department of Homeland Security makes an initial custody determination.” 5:25-cv-01873-SSSS-BFM (November 25, 2025).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be transferred outside the District of Western Texas;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (4) Declare that Petitioner’s detention is unlawful.
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, provide Petitioner with a bond hearing and order Petitioner’s release on conditions the Court deems just and proper.
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Jennifer Scarborough

Law Firm of Jennifer Scarborough
P.O. Box 18460
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Texas State Bar No. 24106401
Attorney for Petitioner

Verification Pursuant to 28 U.S.C. § 2242

The undersigned counsel submits this verification on behalf of the Petitioner. Undersigned Counsel has discussed with Petitioner the events described in this Petition for Motion for Preliminary Injunction and Temporary Restraining Order and, on the basis of those discussions, verify that the statements in the Petition are true and correct to the best of her knowledge and belief.

Date: 23 Jan. 2026

/s/ Jennifer Scarborough

Counsel for Petitioner