

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Elmer Ariel Calderon Barrios,

Petitioner,

v.

Miami Field Office Director, Immigration and
Customs Enforcement and Removal Operations
("ICE/ERO"); Acting Director of U.S.
Immigration and Customs Enforcement
("ICE"); U.S. Immigration and Customs
Enforcement ("ICE"); U.S. Secretary of
Homeland Security; U.S. DEPARTMENT OF
HOMELAND SECURITY ("DHS"); Attorney
General of the United States; WARDEN,
Warden of Florida Soft Side South Detention
Center.

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

EXPEDITED HEARING REQUESTED

A-Number



INTRODUCTION

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2 1. Petitioner, Elmer Ariel Calderon Barrios, is in the physical custody of Respondents
3 at the Florida Soft Side South Detention Center. He now faces unlawful detention because the
4 Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR)
5 have concluded Petitioner is subject to mandatory detention.

6 2. As of date of this filing, no Notice to Appear has been issued against the Petitioner
7 to appear in Immigration Court.

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 Board)
14 issued a precedent decision, binding on all immigration judges, holding that an immigration judge
15 has no authority to consider bond requests for any person who entered the United States without
16 admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined
17 that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore
18 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 subject
22 to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute
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1 expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the
2 United States without inspection.

3 6. Respondents' new legal interpretation is plainly contrary to the statutory framework
4 and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

5 7. Accordingly, Petitioner seeks a Writ of Habeas Corpus requiring that he be released
6 unless Respondents provide a bond hearing under § 1226(a) within seven (7) days.

7 JURISDICTION

8 8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
9 Florida Soft Side South detention center, in Ochopee, Florida.

10 9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28
11 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States
12 Constitution (the Suspension Clause).

13 10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment
14 Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

15 VENUE

16 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
17 500 (1973), venue lies in the United States District Court for the Middle District of Florida, the
18 judicial district in which Petitioner is currently detained.

19 12. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because
20 Respondents are employees, officers, and agencies of the United States, and because a substantial
21 part of the events or omissions giving rise to the claims occurred in the Middle District of Florida.
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REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the Petition for Writ of Habeas Corpus or order Respondents to show cause “forthwith,” 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

14. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

15. Petitioner Elmer Ariel Calderon Barrios is a citizen of Guatemala who has been in immigration detention since January 9, 2026. After arresting Petitioner in Florida, ICE did not set a bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

16. Respondent is the Field Office Director for the Miami Field Office, Immigration and Customs Enforcement and Removal Operations (“ICE”). The Miami Field Office is responsible for local custody decisions relating to non-citizens charged with being removeable from the United States, including the arrest, detention, and custody statutes of non-citizens. As such, the Miami Field Office Director is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is sued in his official capacity.

17. Respondent is the acting director of U.S. Immigration and Customs Enforcement,

1 and has authority over the actions of ICE in general. Respondent is therefore a legal custodian of
2 the Petitioner. Respondent is sued in his official capacity.

3 18. Respondent U.S. Immigration and Customs Enforcement is the federal agency
4 responsible for custody decisions relating to non-citizens charged with being removable from the
5 United States, including the arrest, detention, and custody status of no citizens. Respondent is sued
6 in his official capacity.

7 19. Respondent is the U.S. Secretary of Homeland Security (DHS) and has authority
8 over the actions of all other DHS Respondents in this case, as well as all operations of DHS.
9 Respondent is a legal custodian of Petitioner and is charged with faithfully administering the
10 immigration laws of the United States. Respondent is sued in her official capacity.

11 20. Respondent U.S. Department of Homeland Security is the federal agency that has
12 authority over the actions of ICE and all other DHS Respondents. Respondent is sued in his official
13 capacity.

14 21. Respondent is the Attorney General of the United States, and as such has authority
15 over the Department of Justice and is charged with faithfully administering the immigration laws
16 of the United State. She is sued in her official capacity.

17 22. Respondent Warden is the Warden of Florida Soft Side South Detention Center,
18 where Petitioner is currently detained. He has immediate physical custody of Petitioner. He is sued
19 in his official capacity.

LEGAL FRAMEWORK

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

24. 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).

25. 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).

26. 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).

27. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

28. 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).

29. 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

1 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
2 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

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

10 31. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
11 rejected well-established understanding of the statutory framework and reversed decades of
12 practice.

13 32. The new policy, entitled “Interim Guidance Regarding Detention Authority for
14 Applicants for Admission,”¹ claims that all persons who entered the United States without
15 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The
16 policy applies regardless of when a person is apprehended, and affects those who have resided in
17 the United States for months, years, and even decades.

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

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

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

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

10 36. Subsequently, court after court has adopted the same reading of the INA's detention
11 authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-
12 CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-
13 11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*,
14 No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and*
15 *recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug.
16 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug.
17 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug.
18 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285
19 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass.
20 Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19,
21 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21,
22 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24,
23 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27,

2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

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

38. 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].”

39. 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*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic*

1 *Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299,
2 at *7.

3 40. Section 1226 therefore leaves no doubt that it applies to people who face charges
4 of being inadmissible to the United States, including those who are present without admission or
5 parole.

6 41. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
7 recently entered the United States. The statute's entire framework is premised on inspections at
8 the border of people who are "seeking admission" to the United States. 8 U.S.C.
9 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
10 applies "at the Nation's borders and ports of entry, where the Government must determine whether
11 a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281,
12 287 (2018).

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

16 **FACTS**

17 43. Petitioner is around 37 years old and is a citizen of Guatemala.

18 44. Petitioner entered the United States without inspection sometime in April, 2007.

19 45. Since then, Petitioner has resided in the United States in liberty for around
20 eighteen (18) years and lives in Naples, Florida.

21 46. On or about January 9, 2026, Petitioner was arrested by ICE while operating his
22 vehicle on I-75 in Florida.

1 47. Petitioner has not been issued a Notice to Appear in Immigration Court and is not
2 in removal proceedings as of the date of this filing.

3 48. Petitioner is a husband and father of three (3) US citizen children, ages 13, 8, and
4 2. The Petitioner's 13-year-old daughter suffers from microtia – a genetic deformity of the ear,
5 which requires extensive medical treatment. The daughter has had three (3) surgeries and has an
6 upcoming surgery in the coming weeks and urgently needs her father's financial and physical
7 support for her recovery. The children depend on the Petitioner for their care, wellbeing, and
8 financial support. Petitioner has no criminal history and is neither a flight risk nor a danger to the
9 community.

10 49. Following Petitioner's arrest and transfer to Florida Soft Side South Detention
11 Center, ICE issued a custody determination to continue Petitioner's detention without an
12 opportunity to post bond or be released on other conditions.

13 50. Petitioner had a bond hearing around on or about January 22, 2026, and was
14 denied bond for lack of jurisdiction by the immigration judge. Therefore without the relief
15 sought herein, the Petitioner faces unlawful detention.

16 51. Pursuant to *Matter of Yajure Hurtado*, the Immigration Judge is unable to
17 consider Petitioner's bond request.

18 52. 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.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

53. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

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

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

COUNT II
Violation of the Bond Regulations

56. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

57. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis

1 added). The agencies thus made clear that individuals who had entered without inspection were
2 eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its
3 implementing regulations.

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

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

8 **COUNT III**
9 **Violation of Due Process**

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

12 61. The government may not deprive a person of life, liberty, or property without due
13 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,
14 detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause
15 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). 8 U.S.C. § 1226

16 62. Petitioner has a fundamental interest in liberty and being free from official restraint.

17 63. The government’s detention of Petitioner without a bond redetermination hearing
18 pursuant 8 U.S.C. § 1226 to determine whether he is a flight risk or danger to others violates his
19 right to due process.
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PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the Middle District of Florida while this Habeas Petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days based on the severe medical necessity as alleged in the facts herein;
- d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven (7) days;
- e. Declare that Petitioner's detention is unlawful;
- f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- g. Grant any other and further relief that this Court deems just and proper.

DATED January 23rd, 2026.

Respectfully Submitted,

/s/ Allison Rub, Esq.

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