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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

ALVARO DURAN LINARES,

Petitioner,

v.

JUAN GONZALEZ, Assistant Field Office  
Director, Broward Transitional Center ; 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 and Jane/John  
DOE, Warden, BROWARD TRANSITIONAL  
CENTER,

Respondents.

Case No.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

## INTRODUCTION

1  
2 1. Petitioner Alvaro Duran is in the physical custody of Respondents at the Broward  
3 Transitional Center. He now faces unlawful detention because the Department of Homeland  
4 Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded that he  
5 is subject to mandatory detention.

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

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

14 4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or  
15 Board) issued a precedent decision, binding on all immigration judges (IJs), holding that an  
16 immigration judge has no authority to consider bond requests for any person who entered the  
17 United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).  
18 The Board determined that such individuals are subject to detention under 8 U.S.C. §  
19 1225(b)(2)(A) and therefore ineligible to be released on bond.

20 5. As numerous district courts already have found, Petitioner's detention on this  
21 basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A)  
22 does not apply to individuals like Petitioner who previously entered and are now residing in the  
23 United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows  
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1 for release on conditional parole or bond. That statute expressly applies to people who, like  
2 Petitioner, are charged as inadmissible for having entered the United States without inspection.

3 6. Respondents' 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 ordering his release. In the  
6 alternative, he seeks an order requiring Respondents to provide a bond hearing under § 1226(a)  
7 within seven days.

### 8 JURISDICTION

9 8. This action arises under the Constitution of the United States and the Immigration  
10 and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

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. Venue lies in the United States District Court for the Southern District of Florida,  
18 the judicial district in which Petitioner currently is detained. *See Rumsfeld v. Padilla*, 542 U.S.  
19 426, 443 (2004).

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  
23 District of Florida.

**REQUIREMENTS OF 28 U.S.C. § 2243**

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2 13. The Court must grant the petition for writ of habeas corpus or order Respondents  
3 to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an  
4 order to show cause is issued, Respondents must file a return “within three days unless for good  
5 cause additional time, not exceeding twenty days, is allowed.” *Id.*

6 14. Courts have long recognized the significance of the habeas statute in protecting  
7 individuals from unlawful detention. Habeas corpus is “perhaps the most important writ known  
8 to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of  
9 illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

**PARTIES**

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11 15. Petitioner Alvaro Duran (Mr. Duran) is a citizen of Venezuela who has been in  
12 immigration detention for nearly three months, since November 3, 2025. After arresting Mr.  
13 Duran in Orlando, ICE did not set bond. Mr. Duran is unable to obtain review of his custody by  
14 an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA  
15 2025).

16 16. Respondent Juan Gonzalez is the Assistant Field Office Director of the Broward  
17 Transitional Center. As such, Mr. Gonzalez is Petitioner’s immediate custodian and is  
18 responsible for Petitioner’s detention. He is named in his official capacity.

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



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

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

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

7           27.     The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
8 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.  
9 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section  
10 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1,  
11 139 Stat. 3 (2025).

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

17           29.     Thus, in the decades that followed, most people who entered without inspection  
18 and were placed in standard removal proceedings received bond hearings, unless their criminal  
19 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent  
20 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”  
21 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)  
22 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply  
23 “restates” the detention authority previously found at § 1252(a)).  
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1           30.     On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
2 rejected well-established understanding of the statutory framework and reversed decades of  
3 practice.

4           31.     The new policy, entitled “Interim Guidance Regarding Detention Authority for  
5 Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without  
6 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The  
7 policy applies regardless of when a person is apprehended, and affects those who have resided in  
8 the United States for months, years, and even decades.

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

13           33.     Since Respondents adopted their new policies, dozens, if not hundreds, of federal  
14 courts have rejected their new interpretation of the INA’s detention authorities. Courts have  
15 likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

16           34.     Even before ICE or the BIA introduced these nationwide policies, IJs in the  
17 Tacoma, Washington, immigration court stopped providing bond hearings for persons who  
18 entered the United States without inspection and who have since resided here. There, the U.S.  
19 District Court in the Western District of Washington found that such a reading of the INA is  
20 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not

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

1 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d  
2 1239 (W.D. Wash. 2025).

3 35. Subsequently, court after court has adopted the same reading of the INA's  
4 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*,  
5 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,  
6 No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025);  
7 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,  
8 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL  
9 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025  
10 WL 2371588, at \*1 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-  
11 SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-  
12 01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-  
13 11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-  
14 cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-  
15 01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-  
16 CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670, at \*8 (D. Minn. Aug. 27, 2025)  
17 *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug.  
18 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal.  
19 Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL  
20 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL  
21 2609425 (E.D. Mich. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025  
22 WL 2531566 at \*2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that §  
23 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-

1 RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-  
2 cv-03158-JFB-RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).

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

6 37. Section 1226(a) applies by default to all persons "pending a decision on whether  
7 the [noncitizen] is to be removed from the United States." These removal hearings are held under  
8 § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

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

17 39. Section 1226 therefore leaves no doubt that it applies to people who face charges  
18 of being inadmissible to the United States, including those who are present without admission or  
19 parole.

20 40. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
21 recently entered the United States. The statute's entire framework is premised on inspections at  
22 the border of people who are "seeking admission" to the United States. 8 U.S.C.  
23 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme  
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1 applies “at the Nation’s borders and ports of entry, where the Government must determine  
2 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583  
3 U.S. 281, 287 (2018).

4 41. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not  
5 apply to people like Mr. Duran, who have already entered and were residing in the United States  
6 at the time they were apprehended.

7 **FACTS**

8 42. Mr. Duran has resided in the United States since August 13, 2022, and lives in  
9 Orlando, Florida.

10 43. After entering the United States, DHS briefly detained Mr. Duran before releasing  
11 him on an Order of Release on Recognizance. That order stated that “[i]n accordance with [8  
12 U.S.C. § 1226] and the applicable provisions of Title 8 of the Code of Federal Regulations” he  
13 was being released on his own recognizance.

14 44. On November 3, 2025, Mr. Duran was arrested by ICE while he was working as  
15 an Uber Driver at Olando International Airport. He is now detained at the Broward Transitional  
16 Center.

17 45. DHS placed Mr. Duran in removal proceedings before the Krome Immigration  
18 Court pursuant to 8 U.S.C. § 1229a. ICE has charged Mr. Duran with, *inter alia*, being  
19 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States  
20 without inspection.

21 46. Mr. Duran is married and his wife is in immigration proceedings. He is the father  
22 of three children (one is a U.S. citizen). He is an active member of his Christian community  
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1 church; he has filed all his income taxes and more importantly he does not have any criminal  
2 record. Petitioner is neither a flight risk nor a danger to the community.

3 47. Following Mr. Duran's arrest and transfer to Broward Transitional Center, ICE  
4 continued his detention without an opportunity to post bond or be released on other conditions.

5 48. On January 7, 2026, Mr. Duran requested a bond redetermination hearing before  
6 an IJ.

7 49. The immigration judge held that he lacked jurisdiction to consider Mr. Duran's  
8 bond request pursuant to *Matter of Yajure Hurtado*.

9 50. As a result, Mr. Duran remains in detention. Without relief from this court, he  
10 faces the prospect of months, or even years, in immigration custody, separated from his family  
11 and community.

## 12 CLAIMS FOR RELIEF

### 13 COUNT I

#### 14 Violation of the INA

15 51. Petitioner incorporates by reference the allegations of fact set forth in the  
16 preceding paragraphs.

17 52. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
18 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As  
19 relevant here, it does not apply to those who previously entered the country and have been  
20 residing in the United States prior to being apprehended and placed in removal proceedings by  
21 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to  
22 § 1225(b)(1), § 1226(c), or § 1231.

1 53. The application of § 1225(b)(2) to Mr. Duran unlawfully mandates his continued  
2 detention and violates the INA.

3 **COUNT II**

4 **Violation of Due Process**

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

7 55. The government may not deprive a person of life, liberty, or property without due  
8 process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government  
9 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the  
10 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653  
11 (2001).

12 56. Mr. Duran has a fundamental interest in liberty and being free from official  
13 restraint.

14 57. The government's detention of Mr. Duran without a bond redetermination hearing  
15 to determine whether he is a flight risk or danger to others violates his right to due process.

16 **PRAYER FOR RELIEF**

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

- 18 a. Assume jurisdiction over this matter;
- 19 b. Order that Petitioner shall not be transferred outside the Southern District of  
20 Florida while this habeas petition is pending;
- 21 c. Issue an Order to Show Cause ordering Respondents to show cause why this  
22 Petition should not be granted within three days;

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- 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 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 this 25 day of January, 2026.

*s/Janette Pineiro*  
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*Attorney for Petitioner*

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

I represent Petitioner, Alvaro Duran, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 27 day of January, 2026.

*s/Jannette Pineiro*  
 Jannette Pineiro