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Gopal Thapa

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

IN THE MATTER OF:)

GOPAL THAPA,)



Petitioner / Plaintiff)

vs.)

PAMELA BONDI)

Attorney General of the)

United States of America, and)

KRISTI NOEM)

Secretary of the Department of Homeland)

Security (DHS) and)

Todd Lyons)

Acting Director)

Bureau of the Immigration and)

Customs Enforcement (ICE))

Warden)

Otero County Processing Center)

26 Mcgregor Grange Road)

Chaparral, NM 88081)

Respondents / Defendants.)

CIVIL ACTION NO.

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO
28 U.S.C. §2241 AND COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Petitioner, Gopal Thapa (hereinafter, “Thapa”), by and through his undersigned counsel, respectfully petitions this Honorable Court to enter an order Granting the Writ of Habeas Corpus, ordering the release of the Petitioner, enjoin the Respondents from taking any action to remove the Petitioner. In support of this Petition and action for declaratory and injunctive relief, Petitioner alleges as follows:

PRELIMINARY STATEMENT

1. Petitioner Gopal Thapa is in physical custody of Respondents at the Otero Country Processing Center. 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.
2. Petitioner is charged with, inter alia, having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).
3. Based on this allegation in Petitioner’s removal proceeding, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.
4. Due to the current DHS policy since the Petitioner entered the U.S. without inspection he is unable to seek a bond redetermination hearing before an immigration judge (IJ). Indeed, the DHS policy states it was issued “in coordination with the

Department of Justice (DOJ) and the Petitioner is an “applicant for admission” who is “seeking admission” and subject to mandatory detention under § 1225(b)(2)(A).

5. 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 is in the physical custody of Respondents at the Otero County Processing Center. 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.

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

7. Based on this allegation in Petitioner’s removal proceeding, DHS states that the Immigration Court does not have jurisdiction or authority to grant the Petitioner’s release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

8. 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

PARTIES

1. **Petitioner / Plaintiff Gopal Thapa is a native and citizen of Nepal who entered the United States without inspection. He is currently being detained under the direction of Respondents. He seeks issuance of a writ of Habeas Corpus.**

2. **All of the individual Respondents are sued in their official capacity.**
3. **The Respondent / Defendant Pamela Bondi is the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to INA § 103(g), 8 U.S.C. § 1103(g), routinely transacts business in the District of New Mexico, is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings, and as such is the legal custodian of Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.**
4. **The Respondent / Defendant Kristi Noem is the Secretary of the United States Department of Homeland Security ("DHS"). In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of New Mexico; supervises Respondents Todd Lyons, Acting Director of U.S.C.I.S. who is legally responsible for pursuing Petitioner's detention and removal; and as such is the legal custodian of Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, 2707 Martin Luther King Jr Ave S., Washington, DC 20528.**
5. **Respondent / Defendant TODD LYONS, Acting Director Director, Bureau of the Immigration and Customs Enforcement (ICE) In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations, and is legal custodian of Petitioner. Respondent Lyons's address is Bureau of the Immigration and Customs Enforcement (ICE) U.S. Department of Homeland Security 500 12th Street Washington, D.C. 20536.**

6. The Respondent / Defendant WARDEN, Otero County Processing Center is being sued in his official capacity and in the capacity as the Petitioner's actual physical custodian. The Warden has an address of 26 McGregor Range Road, Chaparral, New Mexico 88081.

JURISDICTION

7. Petitioner is currently detained under the authority of Respondents. On January 22, 2026, at the time of filing, Petitioner was physically present within the District of New Mexico in Respondents' custody at Otero County Processing Center 26 McGregor Range Road, Chaparral, New Mexico 88081.
8. This Court has subject has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C § 701; and for injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint[] on [Petitioner's] individual liberty," such that Petitioner is "in custody in violation of the . . . laws . . . of the United States." See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3).
9. 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

10. The District of New Mexico is the proper venue to resolve Mr. Gopal Thapa's petition for a writ of habeas corpus. Mr. Gopal Thapa is detained at the Otero County Processing Center 26 McGregor Range Road, Chaparral, New Mexico 88081 within the District of New Mexico.

Most of the substantial events relevant to the present case occurred within the District of New Mexico.

10. 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 Court of New Mexico.

REQUIREMENTS OF 28 U.S.C. § 2243

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

13. 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).

LEGAL FRAMEWORK

14. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.
15. 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).

16. 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).
17. 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).
18. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
19. 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).
20. 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).
21. 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)).

22. 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.
23. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” 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.
24. In a May 22, 2025, unpublished decision from the Board of Immigration Appeals (BIA), EOIR adopts this same position. 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.
25. 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 also *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

26. DHS's and DOJ's interpretation defies 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.
27. 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]."
28. 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)).

29. 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.
30. 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).
31. 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.

**BOND DENIAL CLASS CERTIFIED IN
MALDONADO BAUTISTA V. SANTA CRUZ**

32. Petitioner Gopal Thapa brings this petition for a writ of habeas corpus to seek enforcement of their rights as members of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner is in the physical custody of Respondents at the Otero County Processing Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*.

33. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).
34. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.
35. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.
36. Petitioner Gopa Thapa is a member of the Bond Eligible Class, as he:
 - a. does not have lawful status in the United States and is currently detained at the Otero Country Processing Center. He was apprehended by immigration authorities on November 25, 2025.
 - b. entered the United States without inspection on November 13, 2024 and was not apprehended upon arrival, *cf. id.*; and
 - c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

37. DHS placed the petitioner in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. 1182 (a)(6)(A)(i) as someone who entered the United States without inspection.
38. The Court should expeditiously grant this petition.
39. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.
40. Immigration judges have informed class members in bond hearings that they have been instructed by “leadership” that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency’s prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
41. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista*, the Court should accordingly order that within one day, Respondent DHS must release Petitioner.
42. Alternatively, the Court should order Petitioner’s release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

FACTS

43. **Petitioner has resided in the United States since November 13, 2024 when he entered without inspection. The Petitioner since lived in Elmhurst, New York.**

44. **On November 14, 2024, DHS issued a Notice to Appear and put the petitioner in removal proceedings 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.**

45. **On December 04, 2024, the Petitioner filed for Asylum at the New York Immigration Court. The asylum application currently remains pending before the EOIR.**

46. **On November 17, 2025, the Petitioner was arrested and detained by ICE at 26 Federal Plaza, New York, NY 1028 when he went to ICE office to attend his check-in appointment.**

47. **Following Petitioner's arrest and transfer to the Otero County Processing Center, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.**

48. **As stated previously DHS policy is that the court lacked jurisdiction to conduct a bond redetermination hearing because Petitioner was an applicant for admission under § 1225(b)(2)(A).**

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

50. Any appeal to the BIA is futile. DHS's new policy was issued "in coordination with DOJ," which oversees the immigration courts. Further, as noted, the most recent unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission. Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See Mot. to Dismiss, Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

CUSTODY

51. Mr. Gopal Thapa is in custody, under the auspices of the New Mexico office of Immigration and Custom's Enforcement.

IRREPARABLE HARM

52. Mr. Gopal Thapa suffers irreparable harm each day he is incarcerated. He could be held for a long period of time or removed from the United States. He is unable to meaningfully assist in the presentation of his case. Mr. Gopal Thapa is deprived of liberty separated from family members without this Honorable court intervention and Individual of Integrity could remain unnecessarily detained and deported to Nepal.

EQUAL ACCESS TO JUSTICE ACT

53. Petitioner has retained the undersigned counsel to represent her in this matter and has agreed to pay counsels reasonable attorney fees, costs and expenses. Petitioner

therefore seeks an award of his costs, attorneys' fees, and expenses, under the Equal Access to Justice Act (hereinafter, "EAJA"), 28 U.S.C. §2412, in this lawsuit.

FIRST CLAIM FOR RELIEF

COUNT 1

Violation of the INA

54. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
55. 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.
56. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT TWO

VIOLATION OF DUE PROCESS

57. Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.
58. 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 v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

59. Petitioner has a fundamental interest in liberty and being free from official restraint.
60. The government’s detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

CLAIM FOR RELIEF
Violation of the INA:
Request for Relief Pursuant to *Maldonado Bautista*

61. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
62. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).
63. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.
64. The order granting class certification in *Maldonado Bautista* further orders that “[w]hen considering this determination with the MSJ Order, the Court extends thesame declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.”

65. Respondents are parties to Maldonado Bautista and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).
66. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Issue a Writ of Habeas Corpus requiring that within one day, Respondents release Petitioner,
- c. Alternatively, Issue a writ of habeas corpus requiring that Respondents release Petitioner unless they provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days;
- d. 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
- e. Grant any other and further relief that this Court deems just and proper.

Dated: January 23, 2026

Respectfully submitted,

//s//STUART ALTMAN
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VERIFICATION OF COUNSEL

I, Stuart Altman, hereby certify that I am familiar with the case of the named petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

//s//STUART ALTMAN

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Attorney for Plaintiff
Gopal Thapa

**UNITED STATES DISTRICT COURT
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Petitioner / Plaintiff)

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PAMELA BONDI)

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KRISTI NOEM)

Secretary of the Department of Homeland)
Security (DHS) and)

Todd Lyons)

Acting Director)
Bureau of the Immigration and)
Customs Enforcement (ICE))

Warden)

Otero County Processing Center)
26 McGregor Grange Road)
Chaparral, NM 88081)

Respondents / Defendants.)

CIVIL ACTION NO.

PETITIONER'S BRIEF IN SUPPORT OF HIS HABEAS CORPUS PETITION

INTRODUCTION

Gopal Thapa is a citizen of Nepal who has been detained continuously at Otero County Processing Center. He challenges the legality of his detention.

FACTS OF THE CASE

Petitioner has resided in the United States since October 2, 2024 and lives in Elmhurst, New York. On November 17, 2025, Petitioner was arrested and detained by from a ICE check in appointment Petitioner attended. Petitioner is now detained at the Otero County Processing Center.

The Petitioner is not a flight risk has attended all hi scheduled Immigration Court Hearings and ICE check in appointments from where he was arrested. and has a child with Special Immigrant Juvenile Status in the United States. Petitioner is neither a flight risk nor a danger to the community.

As stated previously DHS policy is that the court lacked jurisdiction to conduct a bond redetermination hearing because Petitioner was an applicant for admission under § 1225(b)(2)(A).

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

Any appeal to the BIA is futile. DHS's new policy was issued "in coordination with DOJ," which oversees the immigration courts. Further, as noted, the most recent unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission. Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the

Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See Mot. to Dismiss, Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

LEGAL ARGUMENT

I. THIS COURT HAS JURISDICTION TO HEAR MR. GOPAL THAPA HABEAS PETITION.

The Writ of Habeas Corpus has a pre-eminent role in our constitutional system and “is the fundamental instrument for safeguarding individual freedom against arbitrary or lawless state action.” *Harris v. Nelson*, 294 U.S. 286, 290 (1969); U.S. Const. Art. I §9 cl2. Recently, in *INS v. St. Cyr.*, 533 U.S. 289 (2001), the United States Supreme Court reaffirmed that aliens detained by the INS can petition for writs of habeas corpus under 28 U.S.C. §2241. The Court held that “[a]t its historic core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been the strongest.” *Id.* at 301. Similarly, in the Supreme Court case of *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Court held that it had jurisdiction to review detention pursuant to INA Section 241, 8 U.S.C Section 1231(a)(6); *See Ngo v. INS*, 192 F.3d 390, 393 (3d Cir. 1999)(jurisdiction over habeas custody review of an excludable alien). Thus, in the instant case habeas review should unquestionably be available.

II. MR. GOPAL THAPA’S CONTINUED DETENTION VIOLATES DUE PROCESS AND THE UNITED STATES CONSTITUTION

The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Freedom from imprisonment—government custody, detention, or other forms of

physical restraint—lies at the heart of the Due Process Clause. *Zadvydas v. Davis*, 121 S. Ct. 2491, 2499 (2001). Government detention violates the Due Process Clause unless restraint is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances where special justification outweighs the individual’s constitutionally protected interest in avoiding physical restraint. *Zavala v. Ridge*, 310 F. Supp 2d 1071 (N.D. Calif. 2004). Substantive due process applies to aliens regardless of their residency status. *Zadvydas*, 533 U.S. at 693. See also: *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). The alien’s interest in liberty outweighs this unfettered exercise of prosecutorial power.

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.

The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” 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.

In a May 22, 2025, unpublished decision from the Board of Immigration Appeals (BIA), EOIR adopts this same position. 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.

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 also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

DHS's and DOJ's interpretation defies 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. 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].”

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)). 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.

In this case, the government continues to violate the rights of Mr. Gopal Thapa by not granting him a bond hearing.’

On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, -- F. Supp. 3d ---, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

Petitioner Gopal Thapa is a member of the Bond Eligible Class, as he:

- a. does not have lawful status in the United States and is currently detained at the Delaney Hall Detention Facility. He was apprehended by immigration authorities on November 17, 2025.
- b. entered the United States without inspection November 13, 2024 and was not apprehended upon arrival, *cf. id.*; and
- c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

CONCLUSION

For the foregoing reasons, this Court should grant the instant writ and immediately order Mr. Gopal Thapa's release on any reasonable conditions as the DHS may set.

Dated: January 23, 2026
New York, New York

Respectfully submitted,

//s//STUART ALTMAN
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Attorney for Plaintiff
Gopal Thapa

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

IN THE MATTER OF:)

GOPAL THAPA,)



Petitioner / Plaintiff)

vs.)

PAMELA BONDI)

Attorney General of the)
United States of America, and)

KRISTI NOEM)

Secretary of the Department of Homeland)
Security (DHS) and)

Todd Lyons)

Acting Director)
Bureau of the Immigration and)
Customs Enforcement (ICE))

Warden)

Otero County Processing Center)
26 McGregor Grange Road)
Chaparral, NM 88081)

Respondents / Defendants.)

CIVIL ACTION NO.

ORDER TO SHOW CAUSE

Upon the accompanying Verified Petition, accompanying brief and attached exhibits, it is hereby,

ORDERED that the Respondents show cause before this Court on the _____ day of _____ 2026 in Courtroom _____, of the United States Courthouse, New Mexico at _____ .m., or as soon thereafter as counsel may be heard why a writ of habeas corpus should not issue and the Petitioner's detention declared unlawful.

ORDERED that service of this order and supporting papers herein shall be made, if not already effected, by personal service upon the Office of the United States Attorney for the District of New Mexico no later than _____ of the _____ day of _____ 2026, and that any responding papers be filed and served upon Petitioner's counsel no later than _____ of the _____ day of _____ 2026. Any reply by Petitioner shall be served on the Respondents by the _____ day of _____ 2026.

ORDERED that pending further order of this court the removal of the Petitioner from the United states is hereby stayed.

ORDERED that pending further order of this Court any transfer of Petitioner outside the District of New Mexico, is hereby stayed.

Dated: _____

U.S.D.C.

Upon consideration of the pleadings in this case and oral argument held on _____
and for good cause, it is hereby ordered that a writ of habeas corpus should issue and that
Petitioner shall be immediately released from detention.

Dated: _____

U.S.D.C.J.

CERTIFICATE OF SERVICE

I, Stuart Altman, do hereby certify that I personally served a copy of these pleadings including a Verified Habeas Corpus Petition and attachments, Brief, Order to Show Cause and Order today January 28, 2026 on:

Ryan Ellison
First Assistant United States Attorney for the
District of New Mexico
200 N. Church Street
Las Cruces, New Mexico 88001-3512

I, Stuart Altman., do hereby certify that I served a copy of these pleadings including a Verified Habeas Corpus Petition and attachments, Brief, Order to Show Cause and Order today January 28 2026 by next day delivery by U.S. Mail today on:

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