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6 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

8 EMERSON ADRIAN LUNA LEAL,

9 Petitioner,

10 v.

11 Michael BERNACKE, Field Office Director of
12 Enforcement and Removal Operations, Salt
Lake City Field Office, Immigration and
13 Customs Enforcement; Kristi NOEM,
Secretary, U.S. Department of Homeland
14 Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; Pamela BONDI,
15 U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW; John
16 MATTOS, Warden of NEVADA SOUTHERN
DETENTION CENTER,

17 Respondents.

Case No.

PETITION FOR WRIT OF
HABEAS CORPUS

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INTRODUCTION

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2 1. Petitioner EMERSON ADRIAN LUNA LEAL is in the physical custody of
3 Respondents at the NEVADA SOUTHERN DETENTION CENTER. He now faces unlawful
4 detention because the Department of Homeland Security (DHS) and the Executive Office of
5 Immigration Review (EOIR) have concluded Petitioner 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. On September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a
9 precedent decision, binding on all immigration judges, holding that an immigration judge has no
10 authority to consider bond requests for any person who entered the United States without
11 admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined
12 that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore
13 ineligible to be released on bond.

14 4. Further, DHS will deny Petitioner release from immigration custody, consistent
15 with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs
16 Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e.,
17 those who entered the United States without admission or inspection—to be subject to detention
18 under 8 U.S.C. § 1225(b)(2)(A) and therefore 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
23 expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the
24 United States without inspection.

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

3 7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released
4 unless Respondents provide a bond hearing under § 1226(a) within seven days.

5 **JURISDICTION**

6 8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
7 NEVADA SOUTHERN DETENTION CENTER.

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

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

13 **VENUE**

14 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
15 500 (1973), venue lies in the United States District Court for the NEVADA, the judicial district in
16 which Petitioner currently is detained.

17 12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
18 Respondents are employees, officers, and agencies of the United States, and because a substantial
19 part of the events or omissions giving rise to the claims occurred in the NEVADA.

20 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

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

7 **PARTIES**

8 15. Petitioner, EMERSON ADRIAN LUNA LEAL is a citizen of VENEZUELA who
9 has been in immigration detention since January 1, 2026. After arresting Petitioner in Las Vegas,
10 Nevada, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ,
11 pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

12 16. Respondent Michael Bernacke is the Director of the Salt Lake City Field Office of
13 ICE’s Enforcement and Removal Operations division, which oversees operations in Nevada. As
14 such, Michael Bernacke is Petitioner’s immediate custodian and is responsible for Petitioner’s
15 detention and removal. He is named in his official capacity.

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

20 18. Respondent Department of Homeland Security (DHS) is the federal agency
21 responsible for implementing and enforcing the INA, including the detention and removal of
22 noncitizens.

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

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

7 21. Respondent John Mattos is employed by Corecivic as Warden of the Southern
8 Nevada Detention Center, where Petitioner is detained. He has immediate physical custody of
9 Petitioner. He is sued in his official capacity.

10 **LEGAL FRAMEWORK**

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

13 23. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
14 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally
15 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),
16 while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject
17 to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

24 27. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the

1 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-
2 -208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a)
3 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat.
4 3 (2025).

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

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

17 30. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
18 rejected well-established understanding of the statutory framework and reversed decades of
19 practice.

20 31. The new policy, entitled “Interim Guidance Regarding Detention Authority for
21 Applicants for Admission,”¹ claims that all persons who entered the United States without
22 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The
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¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 policy applies regardless of when a person is apprehended, and affects those who have resided in
2 the United States for months, years, and even decades.

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

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

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

16 35. Subsequently, court after court has adopted the same reading of the INA's detention
17 authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-
18 CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-
19 11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*,
20 No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and*
21 *recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug.
22 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug.
23 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug.
24 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285

1 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass.
2 Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19,
3 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21,
4 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24,
5 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27,
6 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670
7 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL
8 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025
9 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS
10 (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546,
11 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025
12 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025
13 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a)
14 and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025
15 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-
16 RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

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

20 37. Section 1226(a) applies by default to all persons “pending a decision on whether
21 the [noncitizen] is to be removed from the United States.” These removal hearings are held under
22 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

23 38. The text of § 1226 also explicitly applies to people charged as being inadmissible,
24 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s

1 reference to such people makes clear that, by default, such people are afforded a bond hearing
2 under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates
3 ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute
4 generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic*
5 *Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299,
6 at *7.

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

10 40. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
11 recently entered the United States. The statute’s entire framework is premised on inspections at
12 the border of people who are “seeking admission” to the United States. 8 U.S.C.
13 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
14 applies “at the Nation’s borders and ports of entry, where the Government must determine whether
15 a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281,
16 287 (2018).

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

20 FACTS

21 42. Petitioner entered the United States on September 30, 2023. He surrendered himself
22 to border patrol and was placed in removal proceedings pursuant to INA 240. He was subsequently
23 released from custody on his own recognizance pursuant to INA 236 as stated on his I-220A.

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1 43. Petitioner has resided in the United States since September 30, 2023, and lives in
2 Las Vegas, Nevada.

3 44. On January 1, 2026, Petitioner was arrested after he was pulled over. He was
4 charged with a DUI which is still pending. Upon his release from the Las Vegas Police Department,
5 he was apprehended by ICE. Petitioner is now detained at the Southern Nevada Detention Center.

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

9 46. Prior to his detention, he had been working legally at a paint factory. Petitioner has
10 an application for asylum pending with the Las Vegas Immigration Court based on persecution he
11 suffered in Venezuela because of his political opinion. Other than this one arrest, Petitioner does
12 not have any other criminal history. Petitioner is neither a flight risk nor a danger to the community.

13 47. Following Petitioner's arrest and transfer to the Southern Nevada Detention Center,
14 ICE issued a custody determination to continue Petitioner's detention without an opportunity to
15 post bond or be released on other conditions.

16 48. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider
17 Petitioner's bond request.

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

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1 **CLAIMS FOR RELIEF**

2 **COUNT I**

3 **Violation of the INA**

4 50. Petitioner incorporates by reference the allegations of fact set forth in the preceding
5 paragraphs.

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

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

14 **COUNT II**

15 **Violation of the Bond Regulations**

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

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

1 eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its
2 implementing regulations.

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

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

7 **COUNT III**

8 **Violation of Due Process**

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

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

15 59. Petitioner has a fundamental interest in liberty and being free from official restraint.

16 60. The government’s detention of Petitioner without a bond redetermination hearing to
17 determine whether he is a flight risk or danger to others violates his right to due process.

18
19 **PRAYER FOR RELIEF**

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

- 21 a. Assume jurisdiction over this matter;
- 22 b. Order that Petitioner shall not be transferred outside the District of Nevada while
23 this habeas petition is pending;
- 24 c. Issue an Order to Show Cause ordering Respondents to show cause why this

1 Petition should not be granted within three days;

- 2 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
3 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
4 1226(a) within seven days;
- 5 e. Declare that Petitioner’s detention is unlawful;
- 6 f. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act
7 (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under
8 law; and
- 9 g. Grant any other and further relief that this Court deems just and proper.

10 DATED this 6th, of February, 2026.

11 */s/ Michael Jacobs*
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