

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division

David Jonatan GARCIA AGUIRRE



BALTIMORE HOLDING CELL
31 Hopkins Plaza
Baltimore, MD 21201

Petitioner,

v.

VERNON LIGGINS, Acting Director of
Baltimore Field Office,
U.S. Immigration and Customs Enforcement
31 Hopkins Plaza
6th Floor
Baltimore MD 21021

KRISTI NOEM, Secretary of the U.S. Department
Homeland Security
MS 0525 Department of Homeland Security
2707 Martin Luther King, Jr. Ave, SE
Washington DC 20528-0525

and

PAMELA BONDI,
Attorney General of the United States,
950 Pennsylvania Avenue, NW
Washington DC 20530

in their official capacities,

Respondents.

Case No. _____

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner David Jonatan Garcia Aguirre (“Mr. Garcia Aguirre”), respectfully petitions this Court for a Writ of Habeas Corpus ordering his immediate release from custody. ICE detained Mr. Garcia Aguirre on February 24, 2026. He now faces unlawful detention because the Department of Homeland Security (“DHS”) and the Board of Immigration Appeals (“BIA”) have concluded he is subject to mandatory detention because he entered the United States without inspection.
2. Mr. Garcia Aguirre is charged with, *inter alia*, having entered the United States “without inspection.” 8 U.S.C. § 1182(a)(6)(A)(i). See Exhibit 1, Notice to Appear (“NTA”).
3. On September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and are therefore ineligible to be released on bond.
4. Mr. Garcia Aguirre’s detention on this basis violates the plain language of the Immigration and Nationality Act (“INA”). Mr. Garcia Aguirre entered the US on approximately May 15, 2024. Section 1225(b)(2)(A) does not apply to individuals like Mr. Garcia Aguirre who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Mr. Garcia Aguirre, are charged as inadmissible for having entered the United States without inspection.

5. Respondents' new legal interpretation is plainly contrary to the statutory framework, contrary to decades of agency practice applying § 1226(a) to people like Mr. Garcia Aguirre, and contradicts how the Supreme Court has traditionally construed the relationship between § 1225(b) and § 1226(a).
6. Accordingly, Mr. Garcia Aguirre seeks a writ of habeas corpus requiring immediate release from detention, or that the Immigration Judge hold a bond hearing under § 1226(a) in the Baltimore Immigration Court, and that Respondents may not transfer him outside of this district without this Court's permission.

JURISDICTION & VENUE

7. Mr. Garcia Aguirre is in the physical custody of the Government and is detained at the Baltimore Holding Cell at 31 Hopkins Plaza Baltimore, MD 21201.
8. This action arises under the Due Process Clause of the Fifth Amendment of the United States Constitution and under the INA, 8 U.S.C. § 1101 *et seq.* This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
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.
10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Maryland, the judicial district in which Mr. Garcia Aguirre is currently detained.
11. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Maryland.

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, 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).

PARTIES

14. Petitioner David Jonatan Garcia Aguirre (“Mr. Garcia Aguirre”) is a citizen of El Salvador who has been in the custody of Respondents since February 2026. Mr. Garcia Aguirre has resided continuously in the United States since early 2024.
15. Respondent Nikita Baker is sued in her official capacity as the Director of the Baltimore Field Office of U.S. Immigration and Customs Enforcement. Respondent Baker is a legal custodian of Petitioner and has authority to release him.
16. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement the component agency

responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

17. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

FACTS

18. Mr. Garcia Aguirre has resided in the United States since early 2024. He has lived for most of this time in Maryland. He has a long-term partner who is a U.S. citizen and has been steadily employed in Maryland as a subcontractor.
19. In May 2024, Mr. Garcia Aguirre was placed in removal proceedings, under 8 U.S.C. § 1229a, through the issuance of a Notice to Appear ("NTA"). DHS charged Mr. Garcia Aguirre as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for entering the United States without inspection. Mr. Garcia Aguirre's case was subsequently scheduled for a master calendar hearing before the Baltimore, Maryland Immigration Court.
20. Mr. Garcia Aguirre was arrested by ICE agents on February 24, 2026 while at work. He has been detained by DHS since then. Mr. Garcia Aguirre is currently detained by DHS at the Baltimore Holding Cell in Baltimore, Maryland.

21. Mr. Garcia Aguirre is neither a flight risk nor a danger to the community. He has a long-term U.S. citizen partner in Baltimore, Maryland and he has been steadily employed as a subcontractor in Maryland. He has no criminal history in the U.S. or in El Salvador.
22. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider a bond request from Mr. Garcia Aguirre.
23. As a result, Mr. Garcia Aguirre remains in immigration detention. Without relief from this Court, he faces the prospect of indefinite such detention.

LEGAL FRAMEWORK

24. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.
25. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (“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).
26. 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).
27. 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).

28. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
29. 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).
30. 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).
31. 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 pursuant to 8 U.S.C. § 1226(c). 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)).
32. On July 8, 2025, ICE, “in coordination with” the Department of Justice (“DOJ”), announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

33. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ claims that all persons who entered the United States without inspection shall now be subject to the 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.
34. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.
35. This Court is under no mandate to agree with the BIA’s holding and, in fact, should not defer to any agency interpretation of law just because of an ambiguous statute. *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 412-413 (2024) (“Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority...courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.”) Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.
36. Even before ICE or the BIA introduced these nationwide policies, 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. There, the

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

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*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

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

38. 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 Mr. Garcia Aguirre.
39. 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].”
40. 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 Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); see also *Gomes*, 2025 WL 1869299, at *7.

41. 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.
42. 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).
43. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Mr. Garcia Aguirre, who have already entered and were residing in the United States at the time they were apprehended.

Exhaustion is not required for Mr. Garcia Aguirre to petition this Court for a Writ of Habeas Corpus

44. There is no statutory exhaustion requirement in 28 USC § 2241. Courts may waive a judicially created exhaustion requirement where pursuing administrative remedies would be futile or where the agency has predetermined the issue before it.
45. Here, administrative exhaustion is excused because Mr. Garcia Aguirre raises serious constitutional claims, and because the INA does not require or mandate exhaustion of

administrative remedies. *See Miranda v. Garland*, 34 F. 4th 338, 351 (4th Cir. 2022) (explaining that where Congress has not clearly required exhaustion, sound judicial discretion governs”) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)); *see Guitard v. U.S. Sec’y of the Navy*, 967 F.2d 737, 741 (2d. Cir. 1992) (providing that “[e]xhaustion of administrative remedies may not be required when...a plaintiff has raised a ‘substantial constitutional question’”); *Aguilar v. Lewis*, 50 F. Supp. 2d 539, 541 (E.D. Va. 1999) (clarifying that “there is no federal statute that imposes an exhaustion requirement on aliens taken into custody pending their removal”).

46. Additionally, “an administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it.”

McCarthy, 503 U.S. 148 (1992).

47. Given the BIA’s recent decision in *Yajure Hurtado*, the issue at hand has already been predetermined and pursuing administrative remedies would prove futile- as such, exhaustion is not required in this case.

Mr. Garcia Aguirre requests that this Court keep the instant case open after granting relief, in the case that the Respondents implement “the automatic stay” under 8 C.F.R. § 1003.19(i)(2)

48. While Mr. Garcia Aguirre requests that this Court grant relief and either order him immediately released or else order the IJ hold an individualized bond hearing, he is also aware of a new strategy implemented by the Respondents to keep individuals granted such relief subject to detention- the “automatic stay” under 8 C.F.R. § 1003.19(i)(2).

49. Both DHS and a detained noncitizen have the right to appeal an IJ’s bond determination to the BIA. Normally, filing an appeal of an IJ’s bond decision “shall not operate to delay compliance with the order (except as provided in § 1003.19(i)), nor stay the

administrative proceedings in removal. 8 C.F.R. § 236.1(d)(4). That means that if a detainee is appealing an IJ's order of no bond, he must stay detained while the BIA considers the appeal. Conversely, if DHS is appealing an IJ's order granting bond, the detainee may post bond and be released pending appeal of the order before the BIA.

50. In response to the September 11 terrorist attacks, the government issued an interim rule establishing a new procedure through which ICE could unilaterally and automatically stay an IJ's bond order. *See Raha Jorjani, Ignoring the Court's Order: The Automatic Stay in Detention Cases*, 5 Intercultural Human Rights L. Rev. 89, 97-100 (2010).
51. The 2001 interim regulations made the automatic stay available in any case in which the government had made an initial custody determination of no bond or set bond at \$10,000 or more. The agency openly justified the change as needed to "avoid the necessity for a case-by-case determination of whether a stay should be granted in particular cases." 66 Fed. Reg. 54909-02 (Oct. 31, 2001) (codified at 8 C.F.R. § 1003.19(i)(2) (2006)). The interim rule was initially implemented without public comment.
52. Several district courts found the 2001 version of the rule to be an unconstitutional violation of due process. One court found that the automatic stay "effectively converts any alien detained pursuant to the discretionary detention provision of § 1226(a) into one held pursuant to the mandatory detention provision of § 1226(c). Such an application of [the regulation] seems to fly in the face of congressional intent." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 673 (D.N.J. 2003). Another found that the regulation impermissibly "allows the INS [the predecessor agency to DHS] to unilaterally override a decision of an IJ." *Bezmen v. Ashcroft*, 245F. Supp. 2d 446, 449 (D. Conn. 2003). Another determined it violated due process, stating that "due process is not satisfied where the individualized

custody determination afforded to Petitioner was effectively a charade.” *Altagracia Almonte- Vargas v. Elwood*, 2002 WL 1471555, at *5 (E.D. Pa., June 28, 2002).

53. In November 2006, the final rule regarding the automatic stay went into effect. The final rule maintained the effect of the 2001 rule but added two procedural requirements. First, the current rule requires that DHS must file its appeal of the IJ’s bond decision to the BIA within ten days and attach a certification from a senior legal official within DHS. 8 C.F.R. § 1003.6(c)(1). The certification requirement does not require the official to articulate the evidence upon which the certification is based, but simply to certify that factual and legal support exists.
54. Second, the current rule purports to put a time limit on the effect of the stay. It provides that the automatic stay will lapse 90 days after the filing of the notice of appeal if the BIA has not acted on the appeal. 8 C.F.R. § 1003.6(c)(4). If the noncitizen requests a briefing extension from the BIA, however, the 90 days will be tolled for the same number of days of the extension, extending the stay past 90 days. *Id.*
55. Additionally, after the automatic stay period has lapsed, DHS may request a discretionary stay under 8 C.F.R. § 1003.19(i)(1). 8 C.F.R. § 1003.6(c)(5). Such request extends the automatic stay up to an additional 30 days while the BIA considers the discretionary stay request. *Id.* Then, if the BIA rules in favor of the noncitizen’s release, the automatic stay is extended an additional five business days. 8 C.F.R. § 1003.6(d). If during those five days DHS refers the case to the Attorney General for review, the automatic stay is extended an additional 15 business days. 8 C.F.R. § 1003.6(c)(4).

56. All told, the automatic stay provision can hold an individual in custody for at least an additional 140 days after an IJ has made an individualized determination granting that person's release, and in some cases, even longer.
57. The automatic stay provision was utilized rather sparingly from 2006 until the first Trump administration. Then, from 2017 to 2020, ICE invoked the automatic stay approximately 171 times. Stacy L. Brustin, *A Civil Shame: The Failure to Protect Due Process in Discretionary Immigration Custody & Bond Redetermination Hearings*, 88 *Brook. L. Rev.* 163, 197 n.231 (2022). In the last few months, ICE's abuse of the automatic stay regulation has amplified even further, to the point where it has become the norm rather than the exception. ICE generally uses these stays not for noncitizens whom it claims to be particularly dangerous, but rather for cases where ICE believes the IJ lacks jurisdiction to grant bond pursuant to its new, largely untested legal theories. On information and belief, ICE is invoking the stay in every such case where an IJ rejects its jurisdictional arguments and grants bond.
58. In the last three months alone, federal district courts in at least three different cases have found ICE's invocation of the automatic stay unlawful and ordered the noncitizen petitioner's release on bond. *See, e.g., Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez*, 2025 WL 2374223; *Günaydin*, 2025 WL 1459154.
59. If this Court were to order relief for Mr. Garcia Aguirre in the form of a bond hearing before an IJ, and the IJ were to order release pursuant to bond and DHS invoked the automatic stay provisions discussed above by filing a Notice of Service Intent to Appeal Custody Redetermination (Form EOIR-43) within 24 hours of the IJ's decision to grant

- bond, Mr. Garcia Aguirre would find himself yet again trapped, the victim of an illegal scheme of mandatory detention. Without relief from this court, Mr. Garcia Aguirre would face the prospect of indefinitely prolonged detention, also because the BIA has no time limit for issuing its decisions. *See Marroquin Ambriz v. Barr* 2019 WL 5550049, *9 (N.D. Cal., Oct. 28, 2019) (noting government concession that the BIA has no deadline by which to decide bond appeals.)
60. Given Respondents' widespread practice of using the automatic stay as a mechanism to subject individuals like Mr. Garcia Aguirre to detention even after a judge has ordered release pursuant to bond, Mr. Garcia Aguirre respectfully requests that this Court keep the instant case open, so he need not file a separate habeas petition in the case he finds himself in such a situation.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

1. Mr. Garcia Aguirre incorporates by reference the allegations of fact set forth in the preceding paragraphs.
2. 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.

3. The application of § 1225(b)(2) to Mr. Garcia Aguirre unlawfully mandates his continued detention and violates the INA.

COUNT II

Violation of the Bond Regulations

4. Mr. Garcia Aguirre incorporates by reference the allegations of fact set forth in preceding paragraphs.
5. 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 added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.
6. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Mr. Garcia Aguirre.
7. The application of § 1225(b)(2) to Mr. Garcia Aguirre unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Violation of Due Process

8. Mr. Garcia Aguirre repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
9. The government may not deprive a person of life, liberty 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*, 522 U.S. 678, 690 (2001).
10. Mr. Garcia Aguirre has a fundamental interest in liberty and being free from official restraint.
11. The government’s detention of Mr. Garcia Aguirre without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

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 District of Maryland 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 days;

- D. Issue a Writ of Habeas Corpus requiring that Respondents immediately release Mr. Garcia Aguirre or, in the alternative, provide Mr. Garcia Aguirre with a bond hearing pursuant to 8 U.S.C. § 1226(a) before the Baltimore Immigration Court;
- E. Declare that Petitioner's detention is unlawful;
- F. Keep the instant case open in the event that Respondents attempt to utilize the automatic stay to subject Petitioner to ongoing and unlawful detention;
- G. 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
- H. Grant any other and further relief that this Court deems just and proper.

Certification Pursuant to Local Standing Order 2025-01

I, the undersigned, hereby certify pursuant to Fed. R. Civ. P. 11, as follows:

- (1) I understand the Petitioner to be presently detained in Maryland, based on a review of the ICE Detainee Locator website at 3:53 PM today, which shows "call ICE for details" and lists the Baltimore, Maryland Docket Control Office as the current ICE Office handling Petitioner's case, the fact that Petitioner was arrested by ICE in Maryland two days ago, and the fact that Petitioner called his partner from the Baltimore Holding Cell on Thursday, February 26, 2026 and stated that he was currently being detained at the Baltimore Holding Cell;
- (2) emergency relief is necessary, because Petitioner is at risk of unlawful removal from the United States; and
- (3) this Court has subject-matter jurisdiction over the Petitioner pursuant to 28 U.S.C. § 2241, and no jurisdiction-stripping statute applies to prevent habeas corpus review of detention and unlawful removal.

Dated this 26th day of February, 2026

Respectfully submitted,

/s/ Benjamin G. Messer
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