UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

OSMILVER LAINEZ-ORTIZ,

Petitioner,

v.

KELEI WALKER, Field Office Director of Enforcement and Removal Operations, DENVER Field Office, Immigration and Customs Enforcement;
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;
DAWN CEJA Warden of Aurora ICE Processing Center,
PETER MCNEILLY, U.S. Attorney-District of Colorado

Petitioners.

Case No. **1:26-cv-848**

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner, Osmilver Lainez Ortiz, is in the physical custody of Petitioners at the AURORA ICE DETENTION CENTER. He now faces unlawful detention because the Department of Homeland Security (DHS), in direct collaboration with the adjudicative body with jurisdiction over immigrants (the Executive Office of Immigration Review) (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner is a native and citizen of Guatemala. Petitioner entered the United States on or about November 1, 2022, at or near El Paso, Texas, and was released on November 14, 2022, by the Office of Refugee Resettlement (ORR) from Federal Custody pursuant to section 462 of the Homeland Security Act and Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to the care of his father, Benito Adan Lainez Ramirez. See ORR Release, Exhibit 1.

3. Petitioner was detained near Miami, Florida following a traffic stop by DHS-contracted officers in collaboration with local law enforcement, on or about December 12, 2025, and was then transferred to the Aurora ICE Detention Center. The agents were targeting construction workers based on a racial basis.

4. Petitioner's detention following a traffic stop is a direct violation of the Order issued by the U.S. District Court of Colorado in *Ramirez Ovando v Noem*, which precludes warrantless arrests in this District unless, pre-arrest, the arresting officer has probable cause to believe that the individual is in the United States in violation of United States immigration laws and probable cause that the person being arrested is likely to escape before a warrant can be obtained, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(2). *See Ramirez Ovando, et al. v Noem*, 1:25-cv-03183-RBJ, "Order", Document 49 at 61, (D. Colo., November 25, 2025).

5. At the time of the Petitioner's detention, he was employed by Upper Keys Marine Construction, where he had worked as a construction worker since August 2024.

6. The Petitioner is prima facie eligible for asylum and withholding of removal. His application was filed with U.S. Citizenship and Immigration Services ("USCIS") and has been pending since 2023. *See* Asylum Receipt, Exhibit 2.

7. Petitioner is not subject to mandatory detention under INA § 236(c)(1) based on criminal grounds. He has no criminal record in the United States or in her country of origin. He has never been charged with, arrested for, or convicted of any offense enumerated under INA § 236(c)(1)(E)(ii) ("Laken Riley Act"), including burglary, theft, larceny, shoplifting, assault of a law enforcement officer, or any crime resulting in death or serious bodily injury to another person. Petitioner has never admitted to committing such offenses or to engaging in conduct that constitute the essential elements of such offenses as defined by the laws of any state. In Matter of Guerra, 25 I&N Dec. 37, 40 (BIA 2006), the Court set forth a series of factors that Immigration Judges could look to when considering whether to release a noncitizen from custody including: (1) whether the [noncitizen] has a fixed address in the United States; (2) the [noncitizen's] length of residence in the United States; (3) the [noncitizen's] family ties in the United States, and whether they may entitle the [noncitizen] to reside permanently in the United States in the future; (4) the [noncitizen's] employment history; (5) the [noncitizen's] record of appearance in court; (6) the [noncitizen's] criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the [noncitizen's] history of immigration violations; (8) any attempts by the [noncitizen] to flee prosecution or otherwise escape from the authorities; and (9) the [noncitizen's] manner of entry to the United States.

8. Petitioner satisfies each factor identified in Matter of Guerra, 25 I&N Dec. 37, 40 (BIA

2006). First, Petitioner currently resides at [redacted] where he lives with his sister-in-law, Glenda Mejia, his brother, Ubernai Lainez Ortiz, and their two minor children, [redacted] and [redacted]. Petitioner helps financially and plays an indispensable role in maintaining the stability and well-being of his family. Second, since entering the United States as a minor, Petitioner has established deep, stable, and meaningful ties to his community. He has consistently filed taxes, maintained long-term employment, and lived within a strong and supportive family network. These facts demonstrate long-term residence, integration, and reliability. In addition, Petitioner has a consistent and exemplary employment history with Upper Keys Marine Construction, where he has been continuously employed since August 2024. He is widely regarded as a reliable, hardworking, and highly respected employee. The company's owner, Adam Allen Folley, has described Petitioner as exceptional and has offered to sponsor him, citing Petitioner's strong work ethic and good moral character. This long-standing employment further demonstrates stability and responsibility. Petitioner has never failed to appear for any immigration appointment or proceeding and has demonstrated full compliance with all requirements to date. He has no criminal history whatsoever in the United States or abroad-no arrests, charges, or convictions-and no conduct suggesting he poses a danger to the community. His only immigration violation is his initial entry as a minor.

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

10. Based on this allegation in Petitioner's removal proceedings, Petitioner was informed that DHS would deny 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 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. Thus, Petitioner withdrew his request for Bond. *See* Bond Order, Exhibit 3.

11. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) 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 therefore ineligible to be released on bond.

12. 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 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 Petitioner, are charged as inadmissible for having entered the United States without inspection.

13. The Defendants' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

14. More importantly, the Government itself has made an abrupt about-face on this issue. Defendants should be judicially estopped from asserting their current interpretation of 8 U.S.C. § 1225(b)(2)(A), because they previously prevailed in litigation after asserting the opposite interpretation. As explained in *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial

estoppel applies when a party assumes a position in a legal proceeding, succeeds in maintaining that position, and then adopts a contrary position in a subsequent proceeding to gain an unfair advantage. Here, Defendants previously, and successfully, argued that individuals who entered the United States without inspection were subject to detention under § 1226(a), and not § 1225(b)(2)(A), and courts accepted that position. Defendants now reverse course and assert that such individuals are subject to mandatory detention under § 1225(b)(2)(A), thereby denying them bond hearings. This shift in legal position undermines the integrity of the judicial process and imposes an unfair detriment on immigrant detainees who relied on the prior interpretation. Accordingly, Defendants should be estopped from asserting this inconsistent position.

JURISDICTION

15. Petitioner is in the physical custody of Defendants. Petitioner is detained at the AURORA ICE DETENTION CENTER in AURORA, COLORADO.

16. 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).

17. 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

18. 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 COLORADO, the judicial district in which Petitioner currently is detained.

19. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Petitioners 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 COLORADO.

REQUIREMENTS OF 28 U.S.C. § 2243

20. The Court must grant the petition for writ of habeas corpus or order Defendants 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, Defendants must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

21. 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

22. Petitioner, Osmilver Lainez Ortiz, is a citizen of Guatemala who has been in immigration detention since the 12th of December, 2025. Petitioner has been unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Due to this erroneous decision and due to Petitioner's unlawful arrest, Petitioner requests the intervention of this honorable Court.

23. Defendant, KELEI WALKER, is the Director of the Denver Field Office of ICE's Enforcement and Removal Operations division; however, on information and belief, the DHS is rotating their Field Office Director without publishing a schedule of rotation. As

such, KELEI WALKER or her unknown, unannounced provisional replacement is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She or her acting counterpart is named in his or her official capacity.

24. Defendant, Kristi Noem, is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
25. Defendant, Department of Homeland Security (DHS), is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.
26. Defendant, Pamela Bondi, is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.
27. Defendant, Executive Office for Immigration Review (EOIR), is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.
28. Defendant, Warden Dawn Ceja, is employed by the private, for-profit detention corporation contracted by the Government as an agent to confine immigrants at GEO Aurora Detention Center, where Petitioner is detained. She has immediate physical custody of Petitioner. She is sued in her official capacity.

29. Defendant, Peter McNeilly, is the U.S. Attorney for the District of Colorado, and, thus, responsible for responding to this Writ on behalf of the Government Petitioners. He is sued in his official capacity.

LEGAL FRAMEWORK

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

31. 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).

32. 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).

33. 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).

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

35. 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).

36. 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).

37. 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)).

38. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b). During oral argument on November 30, 2016, then–Solicitor General Ian Gershengorn stated: "If they are not detained within 100 miles of the border or within 14 days… then they are under 1226(a) and not 1226(c)" and further clarified, in response to a question concerning "an alien who has come into the United States illegally without being admitted [and] who takes up residence 50 miles from the border," the Government responded, "The answer is they are held under 1226(a) and that they get a bond

hearing…" Transcript of Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. ___ (2018) (No. 15-1204). DHS reiterated that such individuals "would be held under 1226(a)" and cited the administrative record to support that position. *Id.* These statements reflect DHS's prior litigation stance that § 1226(a) governs detention for noncitizens who have entered and are residing in the United States, a position directly contrary to the agency's current interpretation applying § 1225(b)(2)(A) to such individuals. Having prevailed in *Jennings* after taking this position, they should be estopped from taking the contrary position now simply because their political or litigation interests have changed. Estoppel in this case is necessary to preserve the predictability inherent in the rule of law and due process under the Fifth Amendment, as well as to protect the integrity of the judicial system.

39. 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.

40. 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 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.

41. 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

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

United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

42. Since Petitioners adopted their new policies, numerous 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.

43. 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 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).

44. A growing number of federal courts have rejected ICE and EOIR's expanded interpretation of the Immigration and Nationality Act's detention provisions. These courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority applicable in these cases. For example, courts in Massachusetts, Arizona, New York, Minnesota, California, and Nebraska have reached this conclusion. See: *Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025).

45. These decisions reflect a clear judicial consensus that the government's reliance on § 1225(b)(2) is misplaced in cases involving those whose immigration status lawfully falls under § 1226(a).

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

47. The U.S. District Court of Colorado also agrees with those district courts that have "join[ed] the numerous other district courts that have rejected the government's recent interpretation of the relationship between § 1225 and § 1226" after the BIA's decision in *Yajure Hurtado*. *Ortiz Donis v. Chestnut, et. al.*, No. 1:25-CV-01228 JLT SAB, 2025 WL 2879514, at *11 (E.D. Cal. Oct. 9, 2025); see also *Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496, at *5 (D.N.J. Sept. 26, 2025) (finding that the plain language of § 1225 does not apply to petitioner who entered the United States without inspection 23 years ago and that her mandatory detention violates the INA and the Due Process Clause of the Fifth Amendment). *See Mendoza Gutierrez v Baltasar,* 25-CV-2720-RMR at 14 (D. Colo., October 17, 2025). Additionally, the Court agrees with the analysis in *Ortiz Donis*, addressing the BIA's argument in Yajure Hurtado that if the § 1225(b)(2) catchall provision did not apply to noncitizens who have lived for years within the United States, then it is meaningless and does not apply to anyone. 2025 WL 2879514, at *11. Thus, the Court agrees with Petitioner that § 1225(b)(2) only applies to noncitizens "seeking admission" and inspected while trying to enter the country, and not to noncitizens who have lived in the United States continuously for over two years. Id. at

15-16. Citing the *Jennings* case, the U.S. District Court of Colorado is further convinced that § 1225 was intended for noncitizens inspected upon entry to the United States or who have lived in the United States for less than two years, and § 1226(a) is intended for the apprehension and detention of aliens "already in the country." Id. at 18. The Court goes further and considers the legislative history, past practice, and irreparable harm before concluding that Petitioner is likely to succeed on the merits that he is unlawfully detained under 8 U.S.C. § 1225 and that § 1226 actually did and should have governed Petitioner's detention from the outset, and that his detention without a bond hearing violates the INA and his procedural due process rights. Id. at 19-23.

48. The *Mendoza Gutierrez v Baltasar* case is certified as a class action. Petitioner should be considered a class member. He entered without inspection, was detained as an unaccompanied minor on November 1, 2022, and later released by ORR, and has been residing in the country for more than two years.

49. 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]."

50. 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.

51. 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.

52. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States and were not free to mingle with the general population after being free from official restraint. 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).

53. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, an unaccompanied minor, who was encountered at the border and briefly detained. The Government's own issuance of an ORR release reflects a discretionary, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). This quasi-judicial decision was made by DHS at the outset of proceedings, based on the facts available to both parties and Petitioner's own admissions. In fact, Petitioner has not been issued a Notice to Appear, which squarely contradicts the Government's current position—adopted wholesale by the Board of Immigration Appeals—that Petitioner is ineligible to apply for bond before EOIR. This reversal undermines the integrity of the adjudicative process and triggers the principles of

issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

54. On December 18, 2025, the *Bautista et. al v Noem* court issued a final judgment. The Court observes that "the core holding of *Yajure Hurtado* cannot be squared with the MSJ Order. *See Yajure-Hurtado*, 29 I. & N. Dec. at 220–28 (subjecting noncitizens present in the United States without inspection to § 1225 and denying them bond hearings for lack of jurisdiction). In spite of *Yajure Hurtado*, this Court determined that Petitioners and those similarly situated are not "applicants for admission," and therefore not subject to mandatory detention under § 1225. [MSJ Order at 12–17]. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 398–99 (2024) (requiring courts "to ignore, not follow, 'the reading the court would have reached' had it exercised its independent judgment). Although the MSJ Order does not grant vacatur of *Yajure Hurtado* under the APA, Yajure Hurtado is no longer controlling; the legal conclusion underlying the decision is no longer tenable." See *Order Granting in Part and Denying in Part Petitioners' Ex Parte Application*, 5:25-cv-01873 at 6 (C. D. Cal. 2025).

55. The *Bautista et al. v Noem* Court declared the following in its Final Judgment: 1. that the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2); 2. that, pursuant to Defendants' regulations, see 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a), are not subject to mandatory detention under § 1225(b)(2), and are entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge. See

Final Judgment, 5:25-cv-01873 at 2 (C. D. Cal. 2025). It vacated the Department of Homeland Security policy described in the July 8, 2025, "Interim Guidance Regarding Detention Authority for Applicants for Admission" under the Administrative Procedure Act as not in accordance with law. 5 U.S.C. § 706(2)(A). Finally, it granted final judgment as to Claims I, II, and III of the Amended Class Complaint. Id.

56. As of February 18, 2026, the decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216, has been vacated under the Administrative Procedure Act ("APA") in *Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026). The Court stated, "The Court's initial decision to deny Petitioners' request to vacate Yajure Hurtado under the APA was an act of judicial restraint: a formality. However, based on the representations Respondents have made to the Court, it is evident that further relief is both necessary and proper. The Court VACATES Yajure Hurtado under the APA". *Id.* at 16.

FACTS

57. Petitioner has resided in the United States in Homestead, Florida since 2022, and currently resides physically in Aurora, Colorado, where he was transferred shortly after he was detained.

58. Upon his entry into the United States, the DHS released Petitioner, a minor, into the country without a Notice to Appear.

59. On or about the 12th of December, 2025, Petitioner was detained by DHS-contracted agents following a traffic stop, which has been ruled an unlawful arrest in the U.S. District of Colorado.

60. DHS placed Petitioner in removal proceedings before the Aurora Immigration Court 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. 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

61. Petitioner's detention has inflicted profound harm on his family. Petitioner is only nineteen years old, and his family is concerned about the long term effects of detention on his emotional and psychological development.

62. Following Petitioner's arrest and transfer to AURORA DETENTION CENTER, the immigration court has not issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions. DHS has not even provided a Notice to Appear, and the initial master calendar hearing has not been scheduled.

63. Pursuant to *Matter of Yajure Hurtado*, the immigration judge will not consider Petitioner's bond request, because his unlawful detention can not be litigated before that body, who collaborated with the DHS – who is a party to these contested proceedings – to adopt the DHS position wholesale, because such efforts would be futile.

64. 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.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

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

66. 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. Those actions by DHS, followed by the Petitioner's concession to those charges before EOIR, represent a quasi-judicial determination by an agency which precludes further litigation of the issue unless new, material, and previously unavailable facts emerge. Such noncitizens continue to be detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

COUNT II
Violation of the Bond Regulations

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

69. 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.

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

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

COUNT III
Violation of Due Process

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

73. 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 (2001).

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

75. 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. Notably, Petitioner was detained after a warrantless arrest by ICE-contracted agents and without probable cause he was a flight risk, which is a violation of due process.

Judicial Estoppel

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

77. The Government is judicially estopped from asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation, including *Jennings v. Rodriguez*, the Government successfully argued that individuals who entered without inspection and were not apprehended near the border or within 14 days were subject to discretionary detention under § 1226(a), not mandatory detention under § 1225(b)(2)(A). See *Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg. at 7–8 (Nov. 30, 2016). Courts accepted that position. Now, the Government reverses course and asserts the opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then adopts a contrary position to gain an unfair advantage. The Government's reversal undermines the integrity of the judicial process and prejudices Petitioners who relied on the prior interpretation.

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 Colorado while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Defendants to show cause why this Petition should not be granted within three days;

d. Issue a Writ of Habeas Corpus requiring that Defendants 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 2nd day of March, 2026.

/s/ Ciara Faber, **Esq.**

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Attorney for Petitioner

LIST OF EXHIBITS

Exhibit 1: ORR Release

Exhibit 2: I-589 Asylum Receipt

Exhibit 3: Bond Order

EXHIBIT 3

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
AURORA IMMIGRATION COURT

Respondent Name:
LAINEZ ORTIZ, OSMILVER

To:
Rodriguez, Melissa De la caridad
[redacted]

A-Number:
[redacted]

Riders:
In Custody Redetermination Proceedings

Date:
12/30/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☐ Denied, because

☐ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
- ☐ released from custody under bond of $
- ☐ other:

☑ Other:
Withdrawn.

EXHIBIT 3

Tyh

Immigration Judge: Tyler Wood 12/30/2025

Appeal: Department of Homeland Security: ☐ waived ☐ reserved
Respondent: ☐ waived ☐ reserved

Appeal Due:

Certificate of Service

This document was served:
Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable
To: [ ] Alien | [ ] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS
Respondent Name : LAINEZ ORTIZ, OSMILVER | A-Number : [redacted]
Riders:
Date: 12/30/2025 By: PARISH, REGAN, Court Staff