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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AILIN YULETH HERNANDEZ-ANDRES

Petitioner,

v.

Markwayne MULLIN, Secretary, U.S.
Department of Homeland Security; Todd
BLANCHE, U.S. Attorney General; Gregory J.
ARCHAMBEAULT, Director, San Diego Field
Office, IMMIGRATION AND CUSTOMS
ENFORCEMENT, EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; US
DEPARTMENT OF HOMELAND
SECURITY; Christopher J. LAROSE, Senior
Warden, Otay Mesa Detention Center. *in their
official capacities*

Respondents.

Case No. '26CV3826 JES JLB

**PETITION FOR WRIT OF
HABEAS CORPUS**

Agency number:



INTRODUCTION

1. Petitioner AILIN YULETH HERNANDEZ-ANDRES is in the physical custody of Respondents at the Otay Mesa Detention Center. She now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) will refuse to hold a bond hearing claiming to have no jurisdiction.

2. Upon information and belief, Petitioner came to the United States on or about May 7, 2019 at the age of fourteen as an Unaccompanied Alien Child. She was released from the Office of Refugee Resettlement after they established communication with her mother who was in the United States. A Notice to Appear was simultaneously issued to the Respondent.

3. Petitioner's Notice to Appear from 2019 was never filed with the Immigration Court. On or about December 25, 2025 she was transferred to Immigration and Customs Enforcement after receiving a traffic citation for driving too slow and for driving without a license in Cook County, Georgia on her way home from visiting her sister for the Christmas holiday.

4. Petitioner was issued a new Notice to Appear dated December 25, 2025 charging her with having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

5. Based on this allegation in Petitioner's removal proceedings, DHS will certainly deny Petitioners 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. Additionally, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration

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2 judges, holding that an immigration judge has no authority to consider bond requests for any
3 person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. &
4 N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention
5 under 8 U.S.C. §1225(b)(2)(A) and therefore ineligible to be released on bond.

6 6. Petitioner's detention on this basis violates the plain language of the Immigration and
7 Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
8 previously entered and are now residing in the United States. Instead, such individuals are
9 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.
10 That statute expressly applies to people who, like Petitioner, are charged as inadmissible for
11 having entered the United States without inspection.

12 7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that she be
13 immediately released from custody. Petitioner asks this Court to find that Respondents' attempts
14 to detain and transfer Petitioner are arbitrary and capricious and in violation of the law, and
15 requests that during the pendency of this action, this Court issue an order preventing Petitioner's
16 transfer out of this district.

17 JURISDICTION

18 8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
19 Otay Mesa Detention Center in San Diego, California. This Court has jurisdiction under 28
20 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section
21 9, clause 2 of the United States Constitution (the Suspension Clause).

22 9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory
23 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
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VENUE

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 SOUTHERN DISTRICT OF CALIFORNIA, the judicial district in which Petitioner currently is 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 SOUTHERN DISTRICT OF CALIFORNIA.

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 AILIN YULETH HERNANDEZ-ANDRES is a citizen of Guatemala who has been in immigration detention since December 25, 2025 and is currently detained at the Otay Mesa Detention Center in San Diego, California. After arresting Petitioner in Georgia, ICE did not set bond, and Petitioner is unable to obtain review of her custody by an Immigration

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2 Judge pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA
3 2025).

4 15. Respondent Markwayne Mullin is the Secretary of the Department of Homeland
5 Security. He is responsible for the implementation and enforcement of the Immigration and
6 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr.
7 Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

8 16. Respondent Department of Homeland Security (DHS) is the federal agency
9 responsible for implementing and enforcing the INA, including the detention and removal of
10 noncitizens.

11 17. Respondent Todd Blanche is the Attorney General of the United States. He is
12 responsible for the Department of Justice, of which the Executive Office for Immigration Review
13 and the immigration court system it operates is a component agency. He is sued in his official
14 capacity.

15 18. Respondent Gregory J Archambeault, Director of the San Diego Field Office of
16 ICE's Enforcement and Removal Operations division. As such, Gregory Archambeault is
17 Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is
18 named in his official capacity.

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

22 20. Respondent Christopher J LaRose is the warden at Otay Mesa Detention Center,
23 where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his
24 official capacity.

LEGAL FRAMEWORK

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

22. 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).

23. 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).

24. 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).

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

26. 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).

27. 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).

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2 28. Thus, in the decades that followed, most people who entered without inspection
3 and were placed in standard removal proceedings received bond hearings, unless their criminal
4 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent
5 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”
6 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
7 (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
8 “restates” the detention authority previously found at § 1252(a)).

9 29. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
10 rejected well-established understanding of the statutory framework and reversed decades of
11 practice. The new policy, entitled “Interim Guidance Regarding Detention Authority for
12 Applicants for Admission,”¹ claims that all persons who entered the United States without
13 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The
14 policy applies regardless of when a person is apprehended, and affects those who have resided in
15 the United States for months, years, and even decades.

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

20 31. Since Respondents adopted their new policies, dozens of federal courts have
21 rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected
22 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

23 32. Even before ICE or the BIA introduced these nationwide policies, IJs in the
24 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.

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2 District Court in the Western District of Washington found that such a reading of the INA is
3 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not
4 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d
5 1239 (W.D. Wash. 2025).

6 33. Subsequently, court after court has adopted the same reading of the INA's
7 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*,
8 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,
9 No. CV 25-11613-BEM, --- F. Supp. 3d---, 2025 WL 2084238 (D. Mass. July 24, 2025);
10 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,
11 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL
12 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025
13 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE,
14 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-
15 ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-
16 BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH),
17 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-
18 BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-
19 02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-
20 JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051
21 (ECT/DJF), --- F. Supp. 3d---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v.*
22 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);
23 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,
24 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.

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2 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.
3 Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2
4 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 24
5 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL
6 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-
7 RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

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

11 35. Section 1226(a) applies by default to all persons “pending a decision on whether
12 the [noncitizen] is to be removed from the United States.” These removal hearings are held under
13 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

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

22 37. Section 1226 therefore leaves no doubt that it applies to people who face charges
23 of being inadmissible to the United States, including those who are present without admission or
24 parole.

 38. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who

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2 recently entered the United States. The statute's entire framework is premised on inspections at
3 the border of people who are "seeking admission" to the United States. 8 U.S.C. §
4 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
5 applies "at the Nation's borders and ports of entry, where the Government must determine
6 whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583
7 U.S. 281, 287 (2018).

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

11 **FACTUAL BACKGROUND**

12 40. Petitioner is a native and citizen of Guatemala who came to the United States as
13 an unaccompanied minor on or about May 7, 2019. Respondent has been residing in the United
14 States since that time in Plant City, Florida.

15 41. Petitioner has a United States Citizen infant son, who depends on his mother for
16 physical, financial and emotional support.

17 42. Upon being pulled over in Georgia for driving too slow and/or "impeding the
18 flow of traffic" on or about Christmas Day, Petitioner was transferred to Immigration and
19 Customs Enforcement and issued a new Notice to Appear. The New Notice to Appear dated
20 December 25, 2025, charges Petitioner as being an immigrant who was present in the United
21 States without being admitted or paroled, or who arrived in the United States at a time or place
22 other than as designated by the Attorney General under 212(a)(6)(A)(i) of the Immigration and
23 Nationality Act.

24 43. Petitioner was held at the Stewart Detention Center, in Lumpkin Georgia, for
approximately six months. She filed an Application for Asylum, Withholding of Removal and

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2 for Protection under the Convention Against Torture with the Stewart Immigration Court
3 detailing years of physical, emotional, and physiological abuse that she suffered in Guatemala at
4 the hands of her grandparents. Despite a declaration, sworn witness affidavits, and substantial
5 Country Conditions evidence that the Guatemalan government turns a blind eye to child abuse,
6 the Immigration Judge pretermitted Petitioner's claims without allowing her to testify on March
7 18, 2026. Petitioner was deprived of due process, and her claim for Protection under the
8 Convention Against Torture was completely disregarded by the Immigration Judge. Petitioner
9 timely appealed the pretermission and her subsequent order of removal to the Board of
10 Immigration Appeals on April 6, 2026. The appeal is still pending adjudication.

11 44. After the Eleventh Circuit issued a decision finding that the Immigration Judge's
12 do in fact have jurisdiction over the bond hearings of individuals who entered without inspection,
13 Petitioner's family was gathering evidence to request a bond hearing when she was arbitrarily
14 transferred to Otay Mesa Detention Center in San Diego, California. *See Hernandez Alvarez v.*
15 *Warden*, Federal Detention Center Miami, 185 F.4th 1341 (11th Cir. 2026).

16 45. Petitioner now seeks this Habeas Petition in the hopes that she can be released
17 during the pendency of her timely filed appeal before the Board of Immigration Appeals.
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CLAIMS FOR RELIEF
COUNT ONE
Violation of the INA

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

47. 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.

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

COUNT TWO
Violation of the Bond
Regulations

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

50. 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.

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

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

COUNT THREE
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

53. Petitioner restates and realleges all paragraphs as if fully set forth here.

54. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306.

55. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

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

57. The government’s detention of Petitioner without a bond redetermination hearing to determine whether she is a flight risk or danger to others violates her right to due process.

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be transferred outside of the Southern District of California while this habeas petition is pending;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (4) Issue a writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §1226(a) within seven days;
- (5) Declare that Petitioner's detention is unlawful;
- (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (7) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Date: 07/01/2026

//s// Cynthia Bautista

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Verification

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

//S// Cynthia Bautista

Date: July 1, 2026

Counsel for Petitioner