



1226(a) Mr. Rivera is eligible for individualized consideration of whether he can be released on bond during the pendency of removal proceedings, whereas under § 1225(b)(2)(A) detention is mandatory.

4. The U.S. Department of Homeland Security (“DHS”) refused to set a bond after Mr. Rivera’s arrest earlier this month. Mr. Rivera sought a bond redetermination hearing before an Immigration Judge (“IJ”), but, on August 20, 2025, the IJ determined he lacked jurisdiction for the proceeding and agreed that Mr. Rivera is detained pursuant to 8 U.S.C. § 1225(b)(2)(A).

5. Respondents’ abrupt change in the purported legal authority for Mr. Rivera’s detention is consistent with a new policy announced by DHS on July 8, 2025, instructing ICE employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—including those who entered the United States without inspection decades ago—as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

6. District courts across the country have recognized that Respondents’ interpretation is “contrary to the plain text of the statute and the overall statutory scheme.” *Romero v. Hyde*, --- F.Supp.3d ---, 2025 WL 2403827, at \*1 (D Mass. Aug. 19, 2025) (citing cases). Mr. Rivera files this petition pursuant to 28 U.S.C. § 2241 to challenge the extent of Respondents’ authority to detain him without access to bond procedures and respectfully requests an order requiring Respondents to release him from custody or, alternatively, provide the bond hearing in accordance with 8 U.S.C. § 1226(a) and applicable regulations.

### JURISDICTION

7. Petitioner is in the physical custody of Respondents at the El Valle Detention Center in Raymondville, Texas. District courts have jurisdiction to consider habeas petitions from non-citizens who challenge the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-

17 (2003); *Garza-Garcia v. Moore*, 539 F.Supp.2d 899, 903-04 (S.D. Tex. 2007) (courts retain jurisdiction over questions of law regarding statutory authority and regulatory framework).

8. This Court has jurisdiction under 28 U.S.C. §§ 2241 (habeas corpus statute) 1331 (federal question), 1651 (All Writs Act), and the U.S. Const. I, § 9, Cl. 2 (Suspension Clause).

9. This Court may grant relief pursuant to 28 U.S.C. §§ 2241, 2201 (Declaratory Judgment Act), and 1651.

### VENUE

10. Venue lies in the U.S. District Court for the Southern District of Texas because Mr. Rivera is detained at El Valle. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 498 (1973).

11. Venue is also proper in this Court under 28 U.S.C. § 1391 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 this district.

### PARTIES

12. Mr. Rivera is a citizen of Mexico who has resided in south Texas for approximately 19 years. On or about August 5, 2025, immigration officials arrested Mr. Rivera in Harlingen, Texas and refused to set a bond for his release. At the time of filing of this habeas petition, Mr. Rivera is detained in Respondents' custody at El Valle in Raymondville, Texas.

13. Respondent Kristi Noem is the Secretary of DHS. She is responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA") and oversees U.S. Immigration and Customs Enforcement ("ICE"), which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

14. Respondent Miguel Vergara is the Director of the Harlingen and San Antonio Field Offices of ICE's Enforcement and Removal Operations division. As such, Respondent Vergara is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official capacity.

15. Respondent Francisco Vanegas is the Facility Administrator and warden at the El Valle Detention Center in Raymondville, Texas. As such, Respondent Vanegas is Petitioner's immediate custodian and responsible for Petitioner's detention. He is sued in his official capacity.

16. Respondent Todd Lyons is the Acting Director of ICE. He is responsible for implementation and enforcement of the INA and oversees ICE's Enforcement and Removal Operations division, which is responsible for Petitioner's detention. He is sued in his official capacity.

17. Respondent 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.

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

18. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petition is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*; see also *Harris v. Nelson*, 394 U.S. 286, 298-99 (1969).

19. 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). A habeas petition “is a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.” *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737-38 (9th Cir. 1954); *see also*, *McClellan v. Young*, 421 F.2d 690, 691 (6th Cir. 1970); *Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990).

### FACTS

20. Mr. Rivera is a 42-year-old man who entered the United States in approximately 2006. He has resided in the Rio Grande Valley area of Texas for nearly twenty years. Mr. Rivera has raised his U.S. citizen children in Texas.

21. In 2023 Mr. Rivera was detained at the Falfurrias Checkpoint. He presented himself to immigration officials with an approved I-130, Petition for Alien Relative application and asked the officials to allow him to continue on his way. The immigration officials detained him and processed him. He was released on OREC and referred to the Immigration Court. Exh. 1 (OREC).

22. Petitioner’s OREC states: “You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act [8 U.S.C. § 1226] and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions....” *Id.*

23. On or about August 5, 2025, Mr. Rivera was arrested by immigration officials at his regularly scheduled check-in with ICE officers. *Id.* DHS refused to set a bond for Mr. Rivera’s release from detention.



24. A Notice to Appear (“NTA”) initiating formal removal proceedings under 8 U.S.C. § 1229a was filed with the Immigration Court on or about November 16, 2023. Exh. 2 (NTA). The NTA sets out one charge of inadmissibility, that Mr. Rivera entered the United States without inspection under 8 U.S.C. § 1182(a)(6)(A)(i).

25. Pursuant to 8 C.F.R. § 1236.1(d), Mr. Rivera requested that the IJ set a bond for his release during the pendency of removal proceedings.

26. On August 20, 2025, the IJ found no jurisdiction for a bond determination hearing and denied Petitioner’s bond request. *See* Exh. 3 (Bond Order).

27. Mr. Rivera remains detained at El Valle Detention Center in Raymondville Texas.

#### **ARGUMENT AND AUTHORITIES**

28. This case concerns two different detention provisions in the INA – 8 U.S.C. § 1226(a) and 8 U.S.C. § 1225(b)(2)(A). Section 1226(a) permits release from detention on bond, while Section 1225(b)(2)(A) makes detention mandatory. The plain language of these provisions confirms that Section 1226(a) applies to Mr. Rivera, not Section 1225(b)(2)(A).

**a. By its plain language, Section 1226(a) applies to Mr. Rivera.**

29. Section 1226(a) applies broadly to anyone who is detained “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a); *see Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (describing Section 1226(a) as the “default rule” and applicable when an individual is “already in the country”). This includes individuals who are “inadmissible” as well as “deportable.” *Id.*, at § 1226(c) (excepting certain inadmissible non-citizens from bond procedures in Section 1226(a)).<sup>1</sup> The fact that Section 1226(c) excepts certain

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<sup>1</sup> Generally, non-citizens who have previously been legally admitted into the United States – such as Lawful Permanent Residents and some visa holders – are subject to grounds of deportability,

inadmissible non-citizens from bond hearings confirms Section 1226(a)'s applicability to other inadmissible non-citizens. To read Section 1226 as inapplicable to allegedly inadmissible non-citizens who entered the United States without inspection and resided in the United States for many years fails to "give independent legal effect to every word and clause in [the] statute." *United States v. Palomares*, 52 F.4<sup>th</sup> 640, 644 (5th Cir. 2022); *Aguilar Maldonado v. Olson, et al.*, No. 25-cv-3142 (SRN/SGE), 2025 WL 2374411, at \*12 (D. Minn. Aug. 15, 2025) (describing the presumption against superfluity when interpreting Section 1226(c) and 1225(b)(2)).

30. In contrast, Section 1225(b)(2) applies to "applicant[s] for admission" who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). This provision is primarily concerned with non-citizens who are "seeking entry into the United States," not individuals who have resided in the United States for decades. *Rodriguez*, 583 U.S. at 297.

31. In the last several weeks, district courts throughout the United States have found that Section 1226(a), including its bond provisions, governs detention of non-citizens whom the Government alleges are inadmissible and who entered the United States without inspection and resided in the country for significant periods of time. *See, e.g., Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1256-1261 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*2-\*8 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at \*2-\*9 (S.D.N.Y. Aug. 13, 2025); *Rocha Rosado v. Figueroa, et al.*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at \*3-\*15 (D. Az. Aug. 11, 2025); *Aguilar Maldonado*, 2025 WL 2374411, at \*9-\*13 (D. Minn. Aug. 15, 2025); *Romero v.*

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*see* 8 U.S.C. § 1227, while non-citizens who have not been legally admitted to the United States are subject to grounds of inadmissibility. 8 U.S.C. § 1182.

*Hyde*, --- F.Supp.3d ---, 2025 WL 2403827, at \*1 (D. Mass. Aug. 19, 2025) (citing cases); *Ramirez Clavijo v. Kaiser, et al.*, No. 25-cv-06248-BLF, 2025 WL 2419263, \*3-\*4. (N.D. Cal. Aug. 21, 2025).

**b. Legislative history and administrative guidance confirm Section 1226(a)'s applicability.**

32. The legislative history and relevant administrative guidance also confirm Section 1226(a)'s applicability to Mr. Rivera. Both Section 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).

33. Prior to the passage of IIRIRA, the statute that authorized detention of non-citizens within the United States pending deportation proceedings included provisions for release of non-citizens on bond. *See* 8 U.S.C. § 1252(a) (1994). Separate "exclusion" proceedings applied to non-citizens "arriving at ports of the United States." 8 U.S.C. §§ 1225, 1226 (1994).

34. Congress enacted the current Section 1226(a) with the passage of IIRIRA and explained that this provision merely "restates the current provisions in [8 U.S.C. § 1252(a) (1994)] regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [non-citizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (1996).<sup>2</sup>

35. At the same time, Congress enacted new detention provisions as part of the expedited removal scheme applicable to non-citizens arriving at or who recently entered the United States.

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<sup>2</sup> Available at: <https://www.congress.gov/committee-report/104th-congress/house-report/469/1?outputFormat=pdf> (accessed Aug. 25, 2025).



See 8 U.S.C. § 1225(b)(1)-(2). The Executive Office for Immigration Review clarified that non-citizens who had entered the United States without inspection would be “eligible for bond and bond redetermination” under Section 1226(a). Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).<sup>3</sup>

**c. Respondents’ new policy contravenes Section 1226(a).**

36. The federal government’s long-standing interpretation was that that Section 1226(a) applied to non-citizens who entered the United States without inspection and were later apprehended. *See id.*; *see also* Tr. of Oral Argument at 44:23–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954)) (“[Solicitor General]: . . . DHS’s long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.”);<sup>4</sup> *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) (A “longstanding practice of the government...can inform a court’s interpretation of what the law is.”) (internal citations omitted). Mr. Rivera had been released on an OREC pursuant to 8 U.S.C. § 1226 for more than one year in accordance with the law and Respondents’ long-standing practice. *See* Exh. 2.

37. On or about July 8, 2025, DHS adopted a new policy (“Mandatory Detention Policy”) claiming that all people who entered the United States without inspection shall now be deemed “applicants for admission” who are “seeking admission” under 8 U.S.C. § 1225 and are therefore

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<sup>3</sup> Available at: <https://www.govinfo.gov/content/pkg/FR-1997-03-06/pdf/97-5250.pdf> (accessed Aug. 25, 2025).

<sup>4</sup> Full transcript available at: [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2021/21-954\\_m6hn.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2021/21-954_m6hn.pdf) (accessed Aug. 25, 2025).

subject to mandatory detention under Section 1225(b)(2)(A).<sup>5</sup> Among other errors in Respondents' interpretation, the Mandatory Detention Policy inexplicably reads "inadmissible" non-citizens out of Section 1226's coverage, stating: "The only aliens eligible for a custody determination and release on...bond...under INA 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237...."<sup>6</sup>

38. DHS's Mandatory Detention Policy was issued "in coordination with DOJ," of which EOIR and the BIA are sub-agencies, and the BIA has recently adopted the same erroneous interpretation of Section 1225(b)(2), finding it applicable to non-citizens without an application for admission who have resided in the United States for many years.<sup>7</sup>

#### EXHAUSTION OF REMEDIES

39. Mr. Rivera is not required to exhaust remedies before pursuing habeas relief for unlawful detention. *See Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (exhaustion not required where administrative remedies are unavailable, wholly inappropriate to the relief sought, or where exhaustion would be patently futile). To the extent exhaustion is required, Mr. Rivera has sought a bond determination before an IJ who determined that he lacked jurisdiction because Mr. Rivera is purportedly subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

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<sup>5</sup> See Immigration and Customs Enforcement, "Interim Guidance Regarding Detention Authority for Applicants for Admission," July 8, 2025, *available at*: <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (accessed Aug. 25, 2025).

<sup>6</sup> *Id.*, at n.5.

<sup>7</sup> *Available at*: <https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf> (accessed Aug. 25, 2025).

40. Any appeal to the BIA is futile. DHS's new policy was issued "in coordination with DOJ," which oversees the immigration courts.<sup>8</sup> Further, as noted, the most recent unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission. Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

### CLAIMS FOR RELIEF

#### Count 1 – Violation of the INA

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

42. 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 Petitioner who previously entered the country and has been residing in the United States for years 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)(2)(A), § 1226(c), or § 1231.

43. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued detention is *ultra vires* and violates the INA.

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<sup>8</sup> *Supra*, at n.5.

**Count 2 – Violation of Due Process**

44. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
45. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). Petitioner has a fundamental interest in liberty and being free from official restraint.
46. Denying Mr. Rivera access to release from custody through required bond proceedings violates procedural and substantive due process.

**RELIEF REQUESTED**

Petitioner requests that this Court grant the following relief:

- A. Assume jurisdiction over this matter;
- B. Order Respondents to timely respond to this petition in accordance with 28 U.S.C. § 2243;
- C. Issue a writ of habeas corpus requiring release from custody or, alternatively, requiring that the IJ conduct a bond hearing.
- D. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- E. Grant any other and further relief that this Court deems just and proper.

Dated: August 27, 2025.

Respectfully submitted

/s/ Carlos M. Garcia

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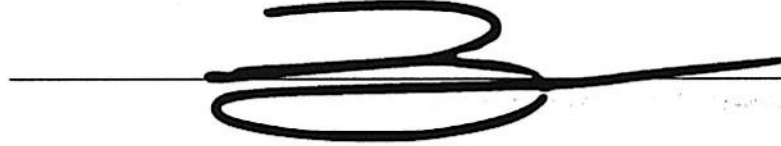
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 25, 2025

  
JORGE EDUARDO RIVERA SANCHEZ

**CERTIFICATE OF INTERPRETATION**

I certify that I am proficient in both Spanish and English and capable of interpreting the foregoing Petition for Writ of Habeas Corpus. On August 25, 2025, I interpreted the foregoing petition and the factual section of the Petition for Writ of Habeas Corpus from English into Spanish for Jorge Rivera Sanchez who indicated to me that he understood the facts in the Petition and that each of the factual statements contained therein are true and correct.

A handwritten signature in black ink, consisting of a stylized 'S' shape with a horizontal line extending to the right, positioned above a horizontal line.