

FILED

**JAMES J. VILT JR., CLERK
U.S. DISTRICT COURT
W/D OF KENTUCKY**

Date: Sep 11, 2025

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY**

Jose Tomas MARTINEZ-ELVIR,

Petitioner,

v.

Sam OLSON, Field Office Director of
Enforcement and Removal Operations, Chicago
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; Jeff TINDALL,
Warden of Oldham County Detention Center,

Respondents.

Case No. *3:25cv-589-CHB*

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1
2 1. Petitioner Jose Tomas Martinez-Elvir is in the physical custody of Respondents at
3 the Oldham County Detention Center. He now faces unlawful detention because the Department
4 of Homeland Security (DHS) has concluded Petitioner is subject to mandatory detention under 8
5 U.S.C. § 1225(b)(2)(A).

6 2. Petitioner was arrested by DHS directly outside of his home without a warrant.
7 Petitioner has lived in the United States for over 12 years and is the father of an infant U.S.
8 citizen son. He and his wife also raise four other children together.

9 3. Petitioner is represented by counsel in his removal proceedings. He is eligible and
10 has applied for cancellation of removal pursuant to 8 U.S.C. § 1229b(b)(1) because he has
11 resided in the United States for over 10 years, is a person of good moral character, and can
12 establish the requisite hardship on his U.S. citizen son if he is deported from the United States.

13 4. Petitioner was charged with having entered the United States without inspection
14 pursuant to 8 U.S.C. § 1182(a)(6)(A)(i).

15 5. Based on this allegation in Petitioner's removal proceeding, DHS denied
16 Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8,
17 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone
18 inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without
19 inspection—to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore
20 subject to mandatory detention.

21 6. Petitioner sought a bond redetermination hearing before an immigration judge
22 (IJ). On July 18, 2025, the IJ disagreed with DHS's July 8, 2025 policy interpreting mandatory
23 detention under 8 U.S.C. § 1225(b)(2)(A). The IJ held that 8 U.S.C. § 1225(b)(2)(A) applies to
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1 an “applicant for admission” who is “seeking admission” into the United States. The IJ held that
2 because Petitioner had effected entry in 2013, he was no longer “seeking admission” and
3 therefore not subject to mandatory detention. The IJ then determined that Petitioner was neither a
4 danger to the community nor a flight risk and granted bond in the amount of \$5000.

5 7. DHS filed an automatic stay of the IJ order granting bond under 8 C.F.R. §
6 1003.19(i)(2) and subsequently filed an appeal with the Board of Immigration Appeals (BIA).
7 Despite the IJ’s order granting bond, Petitioner is barred from posting the immigration bond and
8 remains in DHS custody pending the appeal.

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

15 9. Respondents’ new legal interpretation is plainly contrary to the statutory
16 framework and contrary to decades of agency practice applying § 1226(a) to people like
17 Petitioner.

18 10. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be
19 immediately released from custody in accordance with the bond order from the IJ. In the
20 alternative, Petitioner respectfully requests that this Court order Respondents to show cause why
21 this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

1 **JURISDICTION**

2 11. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
3 Oldham County Detention Center in La Grange, Kentucky.

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

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

9 **VENUE**

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

13 15. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
14 Respondents are employees, officers, and agencies of the United States, and because a
15 substantial part of the events or omissions giving rise to the claims occurred in the Western
16 District of Kentucky.

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

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

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

5 18. “At its historical core, the writ served as a means of reviewing the legality of
6 Executive detention. The traditional remedy provided by habeas is removing the injury of unjust
7 and illegal confinement. The traditional function of the writ is to secure release from illegal
8 custody.” *Hamama v. Adducci*, 912 F.3d 869, 875 (6th Cir. 2018) (cleaned up).

9 PARTIES

10 19. Petitioner Jose Tomas Martinez-Elvir is a 41-year-old citizen of Honduras who
11 has resided in the United States for over 12 years, since June 2013. He has been in immigration
12 detention since June 28, 2025. After arresting Petitioner in Chicago, Illinois, ICE did not set
13 bond and Petitioner requested review of his custody by an IJ. On July 18, 2025, Petitioner was
14 granted bond by an IJ at the Chicago Immigration Court because he was deemed not to be a
15 danger to the community or a flight risk and therefore eligible for bond under 8 U.S.C. §
16 1226(a).

17 20. Respondent Sam Olson is the ICE Field Office Director for the Chicago Area of
18 Responsibility, which includes Kentucky. As such, Sam Olson is Petitioner’s immediate
19 custodian and is responsible for Petitioner’s detention and removal. He is named in his official
20 capacity.

21 21. Respondent Kristi Noem is the Secretary of the Department of Homeland
22 Security. She is responsible for the implementation and enforcement of the Immigration and
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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.

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

23. 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.

24. Respondent 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.

25. Respondent Jeff Tindall is employed by Oldham County as Warden of the Oldham County Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

FACTS

26. Petitioner has resided in the United States since June of 2013 and lives in Chicago, Illinois.

27. On June 28, 2025, Petitioner was arrested directly outside of his home in Chicago, Illinois in front of his spouse and children. Respondents did not have a warrant to arrest Petitioner at his home. Petitioner is now detained at the Oldham County Detention Center.

28. Immediately after his warrantless arrest, DHS placed Petitioner in removal proceedings before the Chicago Immigration Court pursuant to 8 U.S.C. § 1229a by filing a

1 Notice to Appear. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C.
2 § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

3 29. Petitioner is represented by counsel in his removal proceedings. He is eligible and
4 has applied for cancellation of removal pursuant to 8 U.S.C. § 1229b(b)(1) because he has
5 resided in the United States for over 10 years, is a person of good moral character, and can
6 establish the requisite hardship on his U.S. citizen son if he is deported from the United States.
7 He has attended all of his immigration court hearings.

8 30. Petitioner and his wife have an infant United States citizen son. He and his wife
9 both have two children from a prior relationship, between the ages of 17 to 20, who they also
10 raise together. The family of seven lived together in Chicago, Illinois in a home Petitioner
11 purchased in November of 2024. Prior to his detention, Petitioner was the primary income-earner
12 of the family, working in a factory as a machine operator. Petitioner has worked and filed federal
13 income taxes in the United States since his entry in 2013. He is an active member of his church
14 where he assists with prayer service and volunteer janitorial work.

15 31. Petitioner has a single conviction for driving while under the influence of alcohol
16 from 2017. Petitioner completed alcohol therapy treatment, community service hours, and has
17 completely ceased to consume alcohol.

18 32. Following Petitioner's arrest by DHS without a warrant and transfer to Oldham
19 County Detention Center, ICE issued a custody determination to continue Petitioner's detention
20 without an opportunity to post bond or be released on other conditions.

21 33. Petitioner subsequently requested a bond redetermination hearing before an IJ.

22 34. Pursuant to its new policy dated July 8, 2025 entitled "Interim Guidance
23 Regarding Detention Authority for Applicants for Admission," DHS argued at the bond hearing
24

1 that the IJ lacked jurisdiction to grant Petitioner bond because all persons who entered the United
2 States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. §
3 1225, and therefore are subject to the mandatory detention provision under § 1225(b)(2)(A).

4 35. At the bond hearing, Petitioner argued that those who are inadmissible for having
5 entered the United States without inspection are eligible for bond under 8 U.S.C. § 1226(a) and
6 presented evidence to demonstrate his strong ties to the community and rehabilitation.

7 36. The IJ agreed with Petitioner that he was not subject to mandatory detention
8 under § 1225(b)(2)(A) because he had effected entry in 2013 and therefore was not “seeking
9 admission.”

10 37. After considering Petitioner’s evidence, the IJ determined that Petitioner was
11 neither a flight risk nor a danger to the community and granted a \$5,000 bond.

12 38. DHS filed an automatic stay within one business day of the IJ order granting bond
13 in accordance with 8 C.F.R. § 1003.19(i)(2). DHS then filed an appeal with the BIA within 10
14 business days to preserve the automatic stay pursuant to 8 C.F.R. § 1003.6(c).

15 39. As a result, Petitioner remains in detention and is unable to post the bond.
16 Without relief from this court, he faces the prospect of months, or even years, in immigration
17 custody, separated from his family and community. *Velasco Lopez v. Decker*, 978 F.3d 842, 852
18 (2d Cir. 2020) (recognizing that “[d]etention under § 1226(a) is frequently prolonged because it
19 continues until all proceedings and appeals are concluded.”).

20 LEGAL FRAMEWORK

21 Detention Authority

22 40. The INA prescribes three basic forms of detention for the vast majority of
23 noncitizens in removal proceedings.
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1 41. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
2 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally
3 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),
4 while noncitizens who have been arrested, charged with, or convicted of certain crimes are
5 subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

12 45. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
13 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
14 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section
15 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1,
16 139 Stat. 3 (2025).

17 46. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining
18 that, in general, people who entered the country without inspection were not considered detained
19 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
20 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
21 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that “[d]espite being
22 applicants for admission, aliens who are present without having been admitted or paroled
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1 (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond
2 redetermination.”).

3 47. Thus, in the decades that followed, most people who entered without inspection
4 and were placed in standard removal proceedings received bond hearings, unless their criminal
5 history rendered them ineligible. That practice was consistent with many more decades of prior
6 practice, in which noncitizens who were not deemed “arriving” were entitled to a custody
7 hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep.
8 No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority
9 previously found at § 1252(a)); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24,
10 2025) (“The idea that a different detention scheme would apply to non-citizens ‘already in the
11 country,’ as compared to those ‘seeking admission into the country,’ is consonant with the core
12 logic of our immigration system”) (citing *Jennings v. Rodriguez*, 583 U.S. at 289) (cleaned up)).

13 48. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
14 rejects the well-established understanding of the statutory framework and reversed decades of
15 practice.

16 49. The new policy, entitled “Interim Guidance Regarding Detention Authority for
17 Applicants for Admission,”¹ claims that all persons who entered the United States without
18 inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore
19 are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when
20 a person is apprehended and affects those who have resided in the United States for months,
21 years, and even decades.

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23
24 ¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applicants-for-admission>.

1 50. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a
2 published decision adopting this same position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216
3 (BIA 2025). That decision holds that all noncitizens who entered the United States without
4 admission or parole are considered applicants for admission and are ineligible for bond hearings
5 before an immigration judge.

6 **Due Process Clause**

7 51. Noncitizens are entitled to due process of the law under the Fifth Amendment.
8 *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). To
9 determine whether civil detention violates a noncitizen's Fifth Amendment due process rights,
10 courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

11 52. Under *Mathews*, courts weigh the following three factors: 1) "the private interest
12 that will be affected by the official action;" 2) "the risk of an erroneous deprivation of such
13 interest through the procedures used, and the probable value, if any, of additional or substitute
14 procedural safeguards;" and 3) "the Government's interest, including the function involved and
15 the fiscal and administrative burdens that the additional or substitute procedural requirement
16 would entail." 424 U.S. at 335.

17 **a. Private Interest**

18 53. As to the first *Mathews* factor, "[t]he interest in being free from physical
19 detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529,
20 531 (2004). Petitioner has been detained for over two months in the Oldham County Detention
21 Center in conditions that are indistinguishable from criminal incarceration. This detention
22 prevents him from seeing his family, going to work to support his family as the primary income-
23 earner, and deprives him of any privacy and freedom of movement.
24

1 ***b. Risk of Erroneous Deprivation***

2 54. As to the second *Mathews* factor, courts must “assess whether the challenged
3 procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to
4 which alternative procedures could ameliorate these risks.” *Gunaydin v. Trump*, No. 25-CV-
5 01151 (JMB/DLM), 2025 WL 1459154, at *8 (D. Minn. May 21, 2025). As explained above, the
6 current procedures cause an erroneous deprivation of Petitioner’s liberty interest in remaining
7 free from detention.

8 55. The new interpretation that ICE and EOIR have adopted has been consistently
9 rejected by federal courts. For example, after IJs in the Tacoma, Washington, immigration court
10 stopped providing bond hearings for persons who entered the United States without inspection
11 and who have since resided here, the U.S. District Court in the Western District of Washington
12 found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies
13 to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v.*
14 *Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v.*
15 *Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting
16 habeas petition based on same conclusion). Federal courts have continued to reject this new
17 interpretation since ICE implemented its July 8, 2025 memo. *See e.g., Martinez v. Hyde*, CV 25-
18 11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25
19 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No.
20 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v.*
21 *Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-*
22 *Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025);
23 *Jacinto v. Trump, et al*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19,

1 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24,
2 2025); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA (D. Nev. Sep. 5, 2025); *Kostak v.*
3 *Trump et al.*, No. 3:25-cv-01093-JE-KDM (W.D. La. Aug. 27, 2025).

4 56. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court
5 explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b),
6 applies to people like Petitioner.

7 57. Section 1226(a) applies by default to all persons "pending a decision on whether
8 the [noncitizen] is to be removed from the United States." These removal hearings are held under
9 § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

10 58. The text of § 1226 also explicitly applies to people charged as being inadmissible,
11 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E) (added earlier this
12 year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025)). Subparagraph (E)'s
13 reference to people inadmissible for having entered without inspection pursuant to 8 U.S.C. §
14 1182(a)(6)(A)(i) makes clear that, by default, such people are afforded a bond hearing under
15 subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific
16 exception'" to a statute's applicability, it 'proves' that absent those exceptions, the statute
17 generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove*
18 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

19 59. Section 1226 therefore leaves no doubt that it applies to people who face charges
20 of being inadmissible to the United States, including those who are present without admission or
21 parole.

22 60. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
23 recently entered the United States. The statute's entire framework is premised on inspections at
24

1 the border of people who are “seeking admission” to the United States. 8 U.S.C.
2 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
3 applies “at the Nation’s borders and ports of entry, where the Government must determine
4 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583
5 U.S. 281, 287 (2018); *see also Lopez Benitez*, 2025 WL 2267803, at *9 (“the Court need not
6 reach the outer limits of the scope of the phrase ‘seeking admission’ in § 1225(b) – it is sufficient
7 here to conclude that it does not reach someone who has been residing in this country for more
8 than two years, and that as someone ‘already in the country,’ *Jennings*, 583 U.S. at 289,
9 [Petitioner] may be subject to detention only as a matter of discretion under § 1226(a)”). .

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

13 62. In Petitioner’s case, the IJ agreed that he was not detained under § 1225(b)(2)
14 because he had already effected entry, having resided in the United States since 2013, and was
15 therefore not “seeking admission.” The IJ then made an individualized determination that
16 Petitioner was not a flight risk or danger to the community and granted a \$5,000 bond.

17 63. Nonetheless, DHS filed an auto-stay pursuant to 8 C.F.R. § 1003.19(i)(2), which
18 prevents Petitioner from posting bond and being released, while DHS appeals the IJ’s decision.

19 64. Any appeal to the BIA is futile. DHS’s new policy was issued “in coordination
20 with DOJ,” which oversees the immigration courts. Further, as noted, the BIA recently published
21 a decision holding that persons like Petitioner are subject to mandatory detention as applicants
22 for admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

1 65. Therefore, it is clear that the current procedure creates a substantial risk of
2 erroneous deprivation of Petitioner's interest in being free from arbitrary confinement.

3 **c. Government Interest**

4 66. As to the third *Mathews* factor, the government's interest in maintaining the
5 current procedure is minimal here. The new interpretation of § 1225(b)(2) – that people like
6 Petitioner who have resided in the United States for years are now subject to mandatory
7 detention – flies in the face of almost three decades of prior practice. The IJ disagreed with this
8 new interpretation and granted Petitioner bond based on an individualized determination that
9 Petitioner was not a flight risk or danger to the community. DHS's auto-stay provision permits
10 the losing party in an adversarial proceeding to effectively unilaterally overrule the IJ's
11 determination.

12 **CLAIMS FOR RELIEF**

13 **COUNT I**

14 **Violation of the INA**

15 67. Petitioner incorporates by reference the allegations of fact set forth in the preceding
16 paragraphs.

17 68. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
18 noncitizens residing in the United States who are subject to the grounds of
19 inadmissibility. As relevant here, it does not apply to those who previously entered the
20 country and have been residing in the United States prior to being apprehended and
21 placed in removal proceedings by Respondents. Such noncitizens are detained under §
22 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

3 **COUNT II**

4 **Violation of Due Process**

5
6 70. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in
7 the preceding paragraphs as if fully set forth herein.

8 71. The government may not deprive a person of life, liberty, or property without due process
9 of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,
10 detention, or other forms of physical restraint—lies at the heart of the liberty that the
11 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653
12 (2001).

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

14 73. Petitioner was granted bond by an IJ following an individualized custody redetermination
15 hearing where the IJ determined that Petitioner does not pose a danger or a flight risk.

16 74. Despite the IJ’s determination, DHS continues to detain Petitioner by unilaterally
17 invoking an automatic stay of the IJ’s decision.

18 75. The Government’s invocation of the automatic stay to continue detaining Petitioner
19 without ever demonstrating that he is a flight risk or a danger to others, and despite the
20 IJ’s individualized determination to the contrary, creates a substantial risk of erroneous
21 deprivation of Petitioner’s liberty and violates his right to due process.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Petitioner prays that this Court grant the following relief:
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- 1 a. Assume jurisdiction over this matter;
- 2 b. Issue a writ of habeas corpus requiring that Respondents immediately release
- 3 Petitioner in accordance with the IJ's bond order or, in the alternative, order
- 4 Respondents to show cause why this Petition should not be granted within three
- 5 days;
- 6 c. Enjoin Respondents from moving Petitioner outside the jurisdiction of this Court
- 7 pending adjudication of this petition;
- 8 d. Declare that Petitioner's continued detention violates the INA and the Due
- 9 Process Clause of the Fifth Amendment;
- 10 e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
- 11 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
- 12 law; and
- 13 f. Grant any other and further relief that this Court deems just and proper.

14
15 DATED this 10th of September, 2025. Respectfully submitted,

16
17 /s/ Lisa Chun

18 Lisa Chun
19 Colleen Cowgill
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(pro hac vice applications pending)

Attorneys for Petitioner

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PRIORITY OVERNIGHT
THU 09/11/25 10:30A
212 860-1614

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SHIP DATE: 09SEP25
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WESTERN DISTRICT OF KENTUCKY
601 W BROADWAY
ROOM 106
GENE SNYDER U.S. COURTHOUSE
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(312) 860-3500
REF: DETENTION-HABEAS
DEPT.
PC

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PRIORITY OVERNIGHT
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