

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

Carlos Otoniel Orellana Cantarero,

Petitioner-Plaintiff,

v.

Alexander Sanchez, *in his official capacity*
as Facility Administrator of the IAH
Secure Adult Detention Facility;

Bret Bradford, *in his official capacity* as
Field Office Director of the Houston Office
of Enforcement and Removal Operations,
U.S. Immigrations and Customs
Enforcement; U.S. Department of
Homeland Security;

Todd M. Lyons, *in his official capacity* as
Acting Director, Immigration and Customs
Enforcement, U.S. Department of
Homeland Security;

Kristi Noem, *in her official capacity* as
Secretary, U.S. Department of Homeland
Security; and

Pamela Bondi, *in her official capacity* as
Attorney General of the United States;

Respondents-Defendants.

C/A No.

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

INTRODUCTION

1. Petitioner-Plaintiff Carlos Otoniel Orellana Cantarero ("Petitioner") is a citizen of Honduras who has resided in the U.S. for over fifteen years.
2. Immigration and Customs Enforcement ("ICE") officers apprehended Petitioner in Easton, Maryland on June 3, 2025, and charged him as removable under 8 U.S.C. §

1182(a)(6)(A)(i) for being present without admission or parole. Exh. A–B.

3. Petitioner is currently detained at the IAH Secure Adult Detention Facility in Livingston, Texas.
4. On July 10, 2025, an Immigration Judge (“IJ”) found Petitioner was detained pursuant to 8 U.S.C. § 1226(a) and ordered Petitioner’s release from custody on a \$3,500 bond. Exh. C.
5. However, Petitioner thereafter remained detained because the Department of Homeland Security (“DHS”) filed a Notice of Intent to Appeal and then a Notice of Appeal with the Board of Immigration Appeals (“BIA”), which had the effect of staying the IJ’s decision and Petitioner’s release from detention pursuant to 8 C.F.R. § 1003.19(i)(2). Exh. D–E.
6. While DHS’s appeal was pending, the IJ vacated his earlier decision and determined that Petitioner was in fact subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and the IJ did not have jurisdiction to consider his custody redetermination request. Exh. F.
7. Petitioner’s detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who has resided in the U.S. for over fifteen years and who was apprehended in the interior of the U.S., should not be considered an “applicant for admission” who is “seeking admission.” Rather, he should be detained pursuant 8 U.S.C. § 1226(a), which allows for his release on conditional parole or bond.
8. Petitioner seeks declaratory relief that he is subject to detention under § 1226(a) and its implementing regulations and asks that this Court either order Respondents to release Petitioner from custody or provide him with a bond hearing.

CUSTODY

9. Petitioner is currently in the custody of ICE at the IAH Secure Adult Detention Facility in Livingston, Texas. He is therefore in “‘custody’ of [the DHS] within the meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

10. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et. seq.*
11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

12. The Court must grant the petition for a writ of habeas corpus or issue an order to show cause (“OSC”) to Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
13. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

VENUE

14. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the Eastern District of Texas. Petitioner is under the jurisdiction of ICE’s Houston Field Office, and

he is currently detained in Livingston, Texas, at the IAH Secure Adult Detention Facility.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. Exhaustion is required only when Congress specifically mandates it. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). Here, no statute specifically mandates exhaustion.
16. Additionally, exhaustion should be waived because it would be futile. Petitioner's request for custody redetermination was denied by the Immigration Judge ("IJ"), who found he did not have jurisdiction over Petitioner's request. Exh. F. Petitioner appealed this decision to the BIA on August 10, 2025, and his appeal remains pending. However, it would be futile for Petitioner to continue with his appeal given the BIA's precedential decision on September 5, 2025, holding that noncitizens who enter without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
17. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

18. Petitioner Carlos Orellana Cantarero is from Honduras and has resided in the U.S. since 2009. He is currently detained at the IAH Secure Adult Detention Facility in Livingston, Texas.
19. Respondent Alexander Sanchez is sued in his official capacity as Facility Administrator of the IAH Secure Adult Detention Facility. In his official capacity, Mr. Sanchez is

Petitioner's immediate custodian.

20. Respondent Bret Bradford is sued in his official capacity as Field Office Director, Houston Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement ("ICE"). In his official capacity, Respondent Bradford is the legal custodian of Petitioner.
21. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.
22. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.
23. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

24. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.
25. First, under Section 1226(a), noncitizens arrested and detained "[o]n a warrant issued by the Attorney General" are subject to discretionary detention. The Attorney General (1) "may continue to detain the arrested alien," (2) "may release the alien on . . . bond of at least \$1,500," or (3) "may release the alien on . . . conditional parole." 8 U.S.C. §§ 1226(a)(1)-(2). After an arresting immigration officer makes an initial custody determination, noncitizens can request a bond hearing before an IJ, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see*

also 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

26. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be “seeking admission” under § 1225(b)(2).
27. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. *See* 8 U.S.C. §§ 1231(a)–(b).
28. For decades, long-term residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.
29. In July 2025, however, ICE began asserting that all individuals who entered without inspection should be considered “seeking admission” and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).
30. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, despite its departure from the INA’s text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
31. Numerous federal courts have rejected this interpretation and instead have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See, e.g., Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court’s disagreement with BIA’s analysis in *Yajure Hurtado*); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13,

2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025) (distinguishing *Yajure Hurtado*).

32. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, 603 U.S. 369 (2024), this Court should independently interpret the statute and give the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent.
33. 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. Following IIRIRA, the Executive Office for Immigration Review ("EOIR") issued regulations clarifying that individuals who entered the country without inspection were not considered detained under § 1225, but rather 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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").
34. The statutory context and structure also make clear that § 1226 applies to individuals who have not been admitted and entered without inspection. In 2025, Congress added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. By specifically referencing inadmissibility for entry without inspection under 8

U.S.C. § 1182(a)(6)(A), Congress made clear that such individuals are otherwise covered by § 1226(a). Thus, § 1226 plainly applies to noncitizens charged as inadmissible, including those present without admission or parole.

35. The Supreme Court has also interpreted these statutes to mean that § 1225(b) is concerned “primarily [with those] seeking entry,” and is generally imposed “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, 297, 2987 (2018). In contrast, the Supreme Court explained that § 1226 “authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings.” *Id.* at 289 (emphasis added).

36. Similarly, § 1225(b)(2) specifically applies only to those “seeking admission,” and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are “coming or attempting to come into the United States.” The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer “seeking admission” or “coming [...] into the United States.” *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing “is arriving” in § 1225(b)(1)(A)(i) and observing that “[t]he use of the present progressive, like use of the present participle, denotes an ongoing process”).

37. Accordingly, the mandatory detention provision of § 1225(b)(2) should not apply to Petitioner, who entered the U.S. over fifteen years before he was apprehended in the

interior of the country.

STATEMENT OF FACTS

38. Petitioner is a citizen of Honduras.
39. Petitioner entered the U.S. in 2009 and has resided in the U.S. since then.
40. Upon information and belief, Petitioner has never been arrested with or charged with any crime.
41. On June 3, 2025, ICE apprehended Petitioner pursuant to a warrant and charged him as removable under 8 U.S.C. § 1182(a)(6)(A)(i) for being present without admission or parole. Exh. A–B.
42. DHS thereafter initiated removal proceedings against Petitioner under 8 U.S.C. § 1229a. Exh. B.
43. An IJ at the Conroe Immigration Court held a bond hearing on July 10, 2025, at which DHS argued that the IJ lacked jurisdiction because Petitioner was detained pursuant to § 1225(b)(2). The IJ disagreed with DHS and found Petitioner was detained pursuant to § 1226(a), and he ordered Petitioner released on a \$3,500 bond. Exh. C.
44. Petitioner thereafter remained detained because DHS filed a Notice of Intent to Appeal and then a Notice of Appeal with the BIA, which had the effect of staying the IJ's decision and Petitioner's release from detention pursuant to 8 C.F.R. § 1003.19(i)(2). Exh. D–E.
45. While DHS's appeal was pending, the IJ vacated his earlier decision and determined that Petitioner was in fact subject to mandatory detention under § 1225(b)(2)(A) and that the IJ did not have jurisdiction to consider his custody redetermination request. Exh. F.
46. Petitioner remains detained and, without relief from this Court, faces the prospect of months or even years of continued detention.

COUNT I
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

47. Petitioner restates and realleges all paragraphs as if fully set forth here.
48. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
49. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. §§ 236.1(d) & 1003.19(a)-(f).
50. Petitioner's continuing detention is therefore unlawful.

COUNT II
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19 Unlawful Denial of Release on Bond

51. Petitioner restates and realleges all paragraphs as if fully set forth here.
52. In 1997, after Congress enacted IIRIRA, EOIR and the Immigration and Naturalization Service issued an interim rule explaining 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. 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.
53. 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 Fifth Amendment Right to Due Process

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

55. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.
56. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinerman v. Burch*, 494 U.S. 113, 127 (1990).
57. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release. 424 U.S. 319 (1976).
58. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").
59. The risk of erroneous deprivation is exceptionally high. Petitioner has never been arrested and has deep ties to the community.
60. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.
61. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

62. Considering these factors, Petitioner respectfully requests that this Court order his immediate release from custody or provide him with a bond hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner not be transferred outside of this District;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (4) Declare that Petitioner's detention is unlawful;
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days;
- (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.

Date: September 15, 2025

Respectfully Submitted,

/s/ Katherine Soltis
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