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INTRODUCTION

1. Petitioner Moises Angel Fuentes is in the physical custody of Respondents at the Rio Grande Processing Center in Laredo, Texas. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

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

3. Based on this allegation, Respondents have concluded that they do not have jurisdiction over Petitioner's bond hearing. On July 8, 2025, DHS, in collaboration with the Executive Office for Immigration Review (Immigration Courts) issued a new policy 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 inspection—to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

4. On September 5, 2025, the Board of Immigration Appeals turned this new policy into precedent by issuing a decision that said it did “not have the authority” to hear any bond case for someone who had entered the United States without inspection.

5. Because of this new policy and the new BIA decision, Mr. Angel Fuentes cannot request a bond hearing before the Immigration Court. The Immigration Judge has no jurisdiction to hear the case.

6. The Respondents have concluded that notwithstanding Petitioner's approximately 20 years of residing in the United States, he is nevertheless an “applicant for admission” who is “seeking admission” and subject to mandatory detention under § 1225(b)(2)(A).

VENUE

13. 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 Texas, the judicial district in which Petitioner currently is detained.

14. 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 Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

15. 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, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

16. 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

17. Petitioner, Moises Angel Fuentes, is a citizen of Mexico who has been in immigration detention since approximately August 6, 2025. Prior to being detained, he was living in Corpus Christi, Texas. After arresting Petitioner while he was on his way to work,

1 Texas, ICE did not set bond. However because of Respondents' new policies, Petitioner also
2 cannot request a bond hearing before the Immigration Judge. Petitioner has resided in the United
States since approximately 2005.

3 18. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs
4 Enforcement. As such, Acting Director Todd Lyons is Petitioner's immediate custodian and is
5 responsible for Petitioner's detention and removal. He is named in his official capacity.

6 19. Respondent Kristi Noem is the Secretary of the Department of Homeland
7 Security. She is responsible for the implementation and enforcement of the Immigration and
Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.
8 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

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

12 21. Respondent Pamela Bondi is the Attorney General of the United States. She is
13 responsible for the Department of Justice, of which the Executive Office for Immigration Review
14 and the immigration court system it operates is a component agency. She is sued in her official
15 capacity.

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

19 23. Respondent Captain Norbal Vasquez is employed as the Jail Administrator of the
20 Rio Grande Processing Center in Laredo, Texas, where Petitioner is detained. He has immediate
21 physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

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

25. 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).

26. 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).

27. 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).

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

29. 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).

30. 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

1 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
2 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

3 31. 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)).

10 32. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
11 rejected well-established understanding of the statutory framework and reversed decades of
12 practice.

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

19 34. On September 5, 2025, the BIA published a decision that adopts this same
20 position and binds it on all Immigration Courts. *Matter of Yajure Hurtado*, 29 I&N Dec. 216
21 (BIA 2025). In *Matter of Yajure-Hurado*, the BIA explicitly held that “Immigration Judges lack
22 authority to hear bond requests or to grant bond to aliens who are present in the United States
23

24 ¹ Available at
25 <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.
26

1 without admission.” *Id.* In complete contradiction of decades of judicial precedence, the Board
2 stripped Immigration Judges of jurisdiction over bond for anyone who has entered the United
States without inspection.

3 35. ICE and EOIR have adopted this position even though federal courts have
4 rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration
5 court stopped providing bond hearings for persons who entered the United States without
6 inspection and who have since resided here, the U.S. District Court in the Western District of
7 Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not §
8 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States.
9 *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025);
see also Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7,
2025) (granting habeas petition based on same conclusion).

1 36. Since then, federal courts throughout the United States have agreed with the
0 Western District of Washington and granted preliminary injunctive relief for petitioners who
1 entered the United States without inspections years ago. *Lopez Santos v. Noem et al*,
1 3:25-cv-01193-TAD-KDM (W.D. La. Sept. 11, 2025); *Hernandez Marcelo v. Trump*,
1 3:25-cv-00094, (S.D. Iowa September 10, 2025); *Jose J.O.E. v. Bondi, et al*, 25-cv-3051 (D.
1 Minn August 27, 2025); *Mayo Anicasio v Kramer et. al.*, 4:25-cv-3158, (D. Neb. August 14,
2025).

2 37. DHS’s and DOJ’s interpretation defies the INA. As the *Rodriguez Vazquez* court
1 explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b),
3 applies to people like Petitioner.

1 38. Section 1226(a) applies by default to all persons “pending a decision on whether
2 the [noncitizen] is to be removed from the United States.” These removal hearings are held under
3 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

4 39. The text of § 1226 also explicitly applies to people charged as being inadmissible,
5 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph
6 (E)’s reference to such people makes clear that, by default, such people are afforded a bond
7 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress
8 creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions,
9 the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove*
10 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

11 40. Section 1226 therefore leaves no doubt that it applies to people who face charges
12 of being inadmissible to the United States, including those who are present without admission or
13 parole.

14 41. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
15 recently entered the United States. The statute’s entire framework is premised on inspections at
16 the border of people who are “seeking admission” to the United States. 8 U.S.C.
17 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
18 applies “at the Nation’s borders and ports of entry, where the Government must determine
19 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583
20 U.S. 281, 287 (2018).

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

FACTS

43. Petitioner has resided in the United States since approximately 2005 and lives in Corpus Christi, Texas .

44. On or about August 6, 2025, Petitioner was arrested by ICE when he was on his way to work. Petitioner was transferred several hours away from his family and children, and he is now detained at the Rio Grande Processing Center in Laredo, Texas.

45. DHS placed Petitioner in removal proceedings before the Laredo Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. Ex. A.

46. Mr. Angel Fuentes has two minor children, ages 9 and 14. Ex. D. He co-parents with their mother in Corpus Christi, Texas. Mr. Angel Fuentes' children have been suffering emotional distress due to his detention. Mr. Angel Fuentes and his son are especially close, and his son is having a very difficult time due to his father's absence. Mr. Angel Fuentes loves spending time with his children, including by throwing birth parties for them and teaching them to ride horses. Ex. F.

47. Following Petitioner's arrest and transfer to Rio Grande Processing Center, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions. Ex. B. However, because of Respondents' policy, Petitioner cannot request a bond hearing before the Immigration Judge, because the BIA has stripped Immigration Courts of their jurisdiction. *Yajure-Hurtado*, 29 I&N Dec. 216.

1 48. As a result, Petitioner remains in detention. Without relief from this court, he
2 faces the prospect of months, or even years, in immigration custody, separated from his family
3 and community, including his U.S. citizen children.

4 49. Any request for bond from the Immigration Judge is futile because the Board has
5 stripped it of jurisdiction. *Yajure-Hurtado*, 29 I&N Dec. 216. The Immigration Judge is not
6 allowed to hear the case. *Id.* Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the
7 Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner
8 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 I

Violation of the INA

9 50. Petitioner incorporates by reference the allegations of fact set forth in the
10 preceding paragraphs.

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

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

COUNT II

Violation of Due Process

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

54. 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).

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

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

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Declare that the actions of Respondents as set forth in Mr. Angel Fuentes Petition, Motion, and Memorandum of Law violate the Fifth Amendment, of the United States Constitution, 28 U.S.C. § 2241, the APA, and the INA;
- c. Issue a writ of habeas corpus requiring that Respondents release Petitioner or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days in which DHS bears the burden of establishing the necessity of petitioner’s continued detention and considers alternatives to detention that could mitigate flight risk;

- 1 d. Enjoin Respondents from denying Petitioner's bond under U.S.C. § 1225(b)(2);
2 e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
3 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
4 law; and
5 f. Grant any other and further relief that this Court deems just and proper.

5 DATED this 20th of September 2025.

6 /s/ Jennifer Scarborough

7 Law Firm of Jennifer Scarborough
8 P.O. Box 18460
9 Minneapolis, MN 55418
Texas State Bar No. 24106401
SDTX I.D. 3566791
Attorney for Petitioner

9
1 **Verification Pursuant to 28 U.S.C. § 2242**

0 The undersigned counsel submits this verification on behalf of the Petitioner. Undersigned
1 Counsel has discussed with Petitioner the events described in this Petition for Motion for
2 Preliminary Injunction and Temporary Restraining Order and, on the basis of those discussions,
3 verify that the statements in the Petition are true and correct to the best of her knowledge and
4 belief.

1 Date: 20 Sept. 2025 /s/ Jennifer Scarborough