UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

OSCAR ENRIQUE LOPEZ GARCIA,
Petitioner,

PAUL PERRY, in his official capacity as Warden of Caroline Detention Facility
11093 S W Lewis Mem Dr, Bowling Green, VA 22427

JOSEPH SIMON, in his official capacity as Director of the Washington Field Office of U.S. Immigration and Customs Enforcement
14797 Murdock St, Chantilly, VA 20151

KRISTI NOEM, in her official capacity as Secretary of the U.S. Department Homeland Security
MS 0525 Department of Homeland Security
2707 Martin Luther King, Jr. Ave., SE
Washington DC 20528-0525

and

PAMELA BONDI, in her official capacity as Attorney General of the United States,
950 Pennsylvania Ave., NW
Washington DC 20530

Respondents.

Case No. _____

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Oscar Enrique Lopez Garcia ("Mr. Lopez") respectfully petitions this Court for a Writ of Habeas Corpus ordering his immediate release from custody. ICE detained Mr. Lopez on October 9, 2025. He now faces unlawful detention because the Department of Homeland Security ("DHS") and the Board of Immigration Appeals ("BIA") have concluded he is subject to mandatory detention because he entered the United States without inspection.

2. Mr. Lopez is charged with, *inter alia*, having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exhibit A, Notice to Appear ("NTA").

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

4. Mr. Lopez's detention on this basis violates the plain language of the Immigration and Nationality Act ("INA"). Mr. Lopez entered the US in approximately 1996. Section 1225(b)(2)(A) does not apply to individuals like Mr. Lopez who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Mr. Lopez, are charged as inadmissible for having entered the United States without inspection.

5. Respondents' new legal interpretation is plainly contrary to the statutory framework, contrary to decades of agency practice applying § 1226(a) to people like Mr. Lopez, and

contradicts how the Supreme Court has traditionally construed the relationship between § 1225(b) and § 1226(a).

6. Accordingly, Mr. Lopez seeks a writ of habeas corpus requiring that he be released from detention, or that the Immigration Judge hold a bond hearing under § 1226(a) within seven days.

JURISDICTION & VENUE

7. Mr. Lopez is in the physical custody of the Government, and is detained at the Caroline Detention Facility.
8. This action arises under the Due Process Clause of the Fifth Amendment of the United States Constitution and under the INA, 8 U.S.C. § 1101 *et seq*. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.
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 Eastern District of Virginia, the judicial district in which Mr. Lopez is currently 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 Eastern District of Virginia.

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 Oscar Enrique Lopez Garcia ("Mr. Lopez") is a citizen of Guatemala who has been in the custody of Respondents since October 9, 2025. Mr. Lopez has resided continuously in the United States since approximately 1996.

15. Respondent Paul Perry is the Warden of the Caroline Detention Facility, which is owned and operated by Core Civic and is the facility at which Respondents have detained. Mr. Lopez. ICE contracts with the Caroline Detention Facility to detain immigrants. Mr. Perry is thus Mr. Lopez's immediate custodian. He is sued in his official capacity.

16. Respondent Joseph Simon is the Director of the Washington Field Office of ICE's Enforcement and Removal Operations division. Mr. Simon is legal custodian of Mr. Lopez and is responsible for Mr. Lopez's detention. He is sued in his official capacity.

17. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Mr. Lopez's detention. Ms. Noem has ultimate custodial authority over Mr. Lopez and is sued in her official capacity.

18. Respondent Pamela Bondi is the Attorney General of the United States. As such, she is responsible for overseeing the implementation and enforcement of the federal immigration laws. She has the authority to interpret immigration laws and adjudicate removal cases. As head of the U.S. Department of Justice, she oversees the Executive Office for Immigration Review ("EOIR") and the BIA. She is sued in her official capacity.

FACTS

19. Mr. Lopez has resided in the United States since approximately 1996 and lives in Washington, D.C.

20. On October 9, 2025 Mr. Lopez was arrested while on his way to work. He was stopped by law enforcement and taken into the custody of Immigration and Customs Enforcement. Mr. Lopez is now detained at the Caroline Detention Facility in Bowling Freen, Virginia.

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

22. Mr. Lopez is neither a flight risk nor a danger to the community. In contrast, he is a dedicated participant in his community, a loving father of two US citizens and devoted husband, and a hardworking provider for his family.

23. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider a bond request from Mr. Lopez.

24. As a result, Mr. Lopez remains in indefinite detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

LEGAL FRAMEWORK

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

26. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge ("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).

27. 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).

28. 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).

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

30. 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).

31. 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).

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

33. On July 8, 2025, ICE, "in coordination with" the Department of Justice ("DOJ"), announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

34. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to the mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

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

36. This Court is under no mandate to agree with the BIA's holding and, in fact, should not defer to any agency interpretation of law just because of an ambiguous statute. *Loper Bright Enter. v. Raimando*, 603 U.S. 369, 412-413 (2024) ("Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority…courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.") Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

37. Even before ICE or the BIA introduced these nationwide policies, IJs in the 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. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

38. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL

2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 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. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

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

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

41. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E).

Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

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

43. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "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, 287 (2018).

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

Exhaustion is not required for Mr. Lopez to petition this Court for a Writ of Habeas Corpus

45. There is no statutory exhaustion requirement in 28 USC § 2241. Courts may waive a judicially created exhaustion requirement where pursuing administrative remedies would be futile or where the agency has predetermined the issue before it.

46. Here, administrative exhaustion is excused because Mr. Lopez raises serious constitutional claims, and because the INA does not require or mandate exhaustion of administrative remedies. *See Miranda v. Garland*, 34 F. 4th 338, 351 (4th Cir. 2022) (explaining that where Congress has not clearly required exhaustion, sound judicial discretion governs") (quoting *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)); *see Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d. Cir. 1992) (providing that "[e]xhaustion of administrative remedies may not be required when…a plaintiff has raised a 'substantial constitutional question'"); *Aguilar v. Lewis*, 50 F. Supp. 2d 539, 541 (E.D. Va. 1999) (clarifying that "there is no federal statute that imposes an exhaustion requirement on aliens taken into custody pending their removal").

47. Additionally, "an administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it." *McCarthy*, 503 U.S. 148 (1992).

48. Given the BIA's recent decision in *Yajure Hurtado*, the issue at hand has already been predetermined and pursuing administrative remedies would prove futile- as such, exhaustion is not required in this case.

Mr. Lopez requests that this Court keep the instant case open after granting relief, in the case that the Respondents implement "the automatic stay" under 8 C.F.R. § 1003.19(i)(2)

49. While Mr. Lopez requests that this Court grant relief and either order him released or else order the IJ hold an individualized bond hearing, he is also aware of a new strategy

implemented by the Respondents to keep individuals granted such relief subject to detention- the "automatic stay" under 8 C.F.R. § 1003.19(i)(2).

50. Both DHS and a detained noncitizen have the right to appeal an IJ's bond determination to the BIA. Normally, filing an appeal of an IJ's bond decision "shall not operate to delay compliance with the order (except as provided in § 1003.19(i)), nor stay the administrative proceedings in removal." 8 C.F.R. § 236.1(d)(4). That means that if a detainee is appealing an IJ's order of no bond, he must stay detained while the BIA considers the appeal. Conversely, if DHS is appealing an IJ's order granting bond, the detainee may post bond and be released pending appeal of the order before the BIA.

51. In response to the September 11 terrorist attacks, the government issued an interim rule establishing a new procedure through which ICE could unilaterally and automatically stay an IJ's bond order. *See* Raha Jorjani, *Ignoring the Court's Order: The Automatic Stay in Detention Cases*, 5 Intercultural Human Rights L. Rev. 89, 97-100 (2010).

52. The 2001 interim regulations made the automatic stay available in any case in which the government had made an initial custody determination of no bond or set bond at $10,000 or more. The agency openly justified the change as needed to "avoid the necessity for a case-by-case determination of whether a stay should be granted in particular cases." 66 Fed. Reg. 54909-02 (Oct. 31, 2001) (codified at 8 C.F.R. § 1003.19(i)(2) (2006)). The interim rule was initially implemented without public comment.

53. Several district courts found the 2001 version of the rule to be an unconstitutional violation of due process. One court found that the automatic stay "effectively converts any alien detained pursuant to the discretionary detention provision of § 1226(a) into one held pursuant to the mandatory detention provision of § 1226(c). Such an application of

[the regulation] seems to fly in the face of congressional intent." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 673 (D.N.J. 2003). Another found that the regulation impermissibly "allows the INS [the predecessor agency to DHS] to unilaterally override a decision of an IJ." *Bezmen v. Ashcroft*, 245F. Supp. 2d 446, 449 (D. Conn. 2003). Another determined it violated due process, stating that "due process is not satisfied where the individualized custody determination afforded to Petitioner was effectively a charade." *Altagracia Almonte- Vargas v. Elwood*, 2002 WL 1471555, at *5 (E.D. Pa., June 28, 2002).

54. In November 2006, the final rule regarding the automatic stay went into effect. The final rule maintained the effect of the 2001 rule, but added two procedural requirements. First, the current rule requires that DHS must file its appeal of the IJ's bond decision to the BIA within ten days and attach a certification from a senior legal official within DHS. 8 C.F.R. § 1003.6(c)(1). The certification requirement does not require the official to articulate the evidence upon which the certification is based, but simply to certify that factual and legal support exists.

55. Second, the current rule purports to put a time limit on the effect of the stay. It provides that the automatic stay will lapse 90 days after the filing of the notice of appeal if the BIA has not acted on the appeal. 8 C.F.R. § 1003.6(c)(4). If the noncitizen requests a briefing extension from the BIA, however, the 90 days will be tolled for the same number of days of the extension, extending the stay past 90 days. Id.

56. Additionally, after the automatic stay period has lapsed, DHS may request a discretionary stay under 8 C.F.R. § 1003.19(i)(1). 8 C.F.R. § 1003.6(c)(5). Such request extends the automatic stay up to an additional 30 days while the BIA considers the discretionary stay request. *Id.* Then, if the BIA rules in favor of the noncitizen's release,

the automatic stay is extended an additional five business days. 8 C.F.R. § 1003.6(d). If during those five days DHS refers the case to the Attorney General for review, the automatic stay is extended an additional 15 business days. 8 C.F.R. § 1003.6(c)(4).

57. All told, the automatic stay provision can hold an individual in custody for at least an additional 140 days after an IJ has made an individualized determination granting that person's release, and in some cases, even longer.

58. The automatic stay provision was utilized rather sparingly from 2006 until the first Trump administration. Then, from 2017 to 2020, ICE invoked the automatic stay approximately 171 times. Stacy L. Brustin, A Civil Shame: The Failure to Protect Due Process in Discretionary Immigration Custody & Bond Redetermination Hearings, 88 Brook. L. Rev. 163, 197 n.231 (2022). In the last few months, ICE's abuse of the automatic stay regulation has amplified even further, to the point where it has become the norm rather than the exception. ICE generally uses these stays not for noncitizens whom it claims to be particularly dangerous, but rather for cases where ICE believes the IJ lacks jurisdiction to grant bond pursuant to its new, largely untested legal theories. On information and belief, ICE is invoking the stay in every such case where an IJ rejects its jurisdictional arguments and grants bond.

59. In the last four months alone, federal district courts in at least three different cases have found ICE's invocation of the automatic stay unlawful and ordered the noncitizen petitioner's release on bond. *See, e.g., Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); Garcia Jimenez, 2025 WL 2374223; Günaydin, 2025 WL 1459154.

60. If this Court were to order relief for Mr. Lopez in the form of a bond hearing before an IJ, and the IJ were to order release pursuant to bond and DHS invoked the automatic stay provisions discussed above by filing a Notice of Service Intent to Appeal Custody Redetermination (Form EOIR-43) within 24 hours of the IJ's decision to grant bond, Mr. Lopez would find himself yet again trapped, the victim of an illegal scheme of mandatory detention. Without relief from this court, Mr. Lopez would face the prospect of indefinitely prolonged detention, also because the BIA has no time limit for issuing its decisions. *See Marroquin Ambriz v. Barr* 2019 WL 5550049, *9 (N.D. Cal., Oct. 28, 2019) (noting government concession that the BIA has no deadline by which to decide bond appeals.)

61. Given Respondents' widespread practice of using the automatic stay as a mechanism to subject individuals like Mr. Lopez to detention even after a judge has ordered release pursuant to bond, Mr. Lopez respectfully requests that this Court keep the instant case open, so he need not file a separate habeas petition in the case he finds himself in such a situation.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

1. Mr. Lopez incorporates by reference the allegations of fact set forth in the preceding paragraphs.
2. 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.

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

COUNT II

Violation of the Bond Regulations

4. Mr. Lopez incorporates by reference the allegations of fact set forth in preceding paragraphs.

5. 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.

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

7. The application of § 1225(b)(2) to Mr. Lopez unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Violation of Due Process

8. Mr. Lopez repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
9. The government may not deprive a person of life, liberty 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*, 522 U.S. 678, 690 (2001).
10. Mr. Lopez has a fundamental interest in liberty and being free from official restraint.
11. The government's detention of Mr. Lopez 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. Order that Petitioner shall not be transferred outside the Eastern District of Virginia while this habeas petition is pending;

C. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

D. Issue a Writ of Habeas Corpus requiring that Respondents release Mr. Lopez or, in the alternative, provide Mr. Lopez with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

E. Declare that Petitioner's detention is unlawful;

F. Keep the instant case open in the event that Respondents attempt to utilize the automatic stay to subject Petitioner to ongoing and unlawful detention;

G. 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

H. Grant any other and further relief that this Court deems just and proper.

Dated this 14th of October, 2025

Respectfully submitted,



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