UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Gerardo Jose PORTILLO LOZANO,
[redacted]

Petitioner,

v.

Joseph SIMON, Acting Field Office Director of Enforcement and Removal Operations, New Orleans 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; Paul PERRY, Warden of Caroline Detention Facility,

Respondents.

Case No. 1:25-cv-1790

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Gerardo José Portillo Lozano, is a native and citizen of El Salvador who entered the United States without inspection in 2013 and has resided here continuously since that time. On September 12, 2025, immigration agents encountered him while he was a passenger in a vehicle that was pulled over by law enforcement on the George Washington Parkway in Northern Virginia. He was taken into immigration custody and is now detained at the Caroline Detention Facility in Bowling Green, Virginia, pending completion of his removal proceedings. Although he has no criminal history, and despite his arrival in the United States more than a decade ago, the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have concluded that he is subject to mandatory immigration detention because he should be deemed to be "seeking admission" to the United States.

2. DHS and EOIR's position in this case reflects a new policy shift, reversing the government's decades-long practice. Respondents' insistence that Petitioner is subject to mandatory detention is not only a significant departure from prior agency interpretation but also contrary to the plain language of the Immigration and Nationality Act (INA) and in violation of Petitioner's constitutional rights.

3. This Court should therefore intervene and grant Petitioner's writ of habeas corpus, ordering his release from immigration custody or, in the alternative, requiring EOIR to conduct a bond hearing under 8 U.S.C. § 1226(a) at which DHS bears the burden of proving that continued detention is warranted.

4. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, 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 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) 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 therefore ineligible to be released on bond.

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner 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 Petitioner, are charged as inadmissible for having entered the United States without inspection.

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

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

JURISDICTION

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Caroline Detention Facility in Bowling Green, Virginia.

10. 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).

11. 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.

VENUE

12. 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 Petitioner currently is detained. In addition, under *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004), jurisdiction over a habeas petition challenging present physical custody lies in the district of confinement and against the immediate custodian—here, the Warden of the Caroline Detention Facility.

13. 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

14. 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.*

15. 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). The Fourth Circuit has likewise emphasized that "the writ of habeas corpus is, at its core, an equitable remedy that must be administered with the initiative and flexibility essential to ensure that miscarriages of justice within its reach are surfaced and corrected." *In re Braxton*, 258 F.3d 250, 255 (4th Cir. 2001); *see also United States v. Poole*, 531 F.3d 263, 270 n.7 (4th Cir. 2008).

16. Given that Petitioner has already been detained for nearly a month without a bond hearing, and that the legality of his custody turns on a pure question of statutory interpretation requiring no factual development, expedited consideration within three days (or such shorter period as the Court deems just) is necessary to prevent continued unlawful detention and irreparable harm.

PARTIES

17. Petitioner Gerardo Jose Portillo Lozano is alleged to be a citizen of El Salvador who has been in immigration detention since September 12, 2025. After arresting Petitioner in Northern Virginia, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

18. Respondent Joseph Simon is the Acting Field Office Director of the Washington Field Office of U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). As such, he is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal within this jurisdiction. He is sued in his official capacity.

19. Respondent Kristi Noem is the Secretary of the Department of Homeland 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.

Secretary Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

20. Respondent U.S. Department of Homeland Security (DHS) is the federal agency charged with enforcing the INA, including the arrest, detention, and removal of noncitizens in the United States.

21. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice (DOJ), which includes the Executive Office for Immigration Review (EOIR). Through EOIR, she supervises the immigration court system that adjudicates Petitioner's removal and custody proceedings. She is sued in her official capacity.

22. Respondent Executive Office for Immigration Review (EOIR) is a component agency of the Department of Justice responsible for administering removal proceedings and for adjudicating custody redeterminations in immigration bond hearings.

23. Respondent Paul Perry, Warden of the Caroline Detention Facility (the facility is under contract with LaSalle Corrections), has immediate physical custody of Petitioner and is sued in his official capacity.

LEGAL FRAMEWORK

24. The INA establishes three principal detention schemes for noncitizens in removal proceedings.

25. First, 8 U.S.C. § 1226 governs individuals in standard § 1229a proceedings before an Immigration Judge. Those detained under § 1226(a) are generally eligible for release on bond or conditional parole, 8 C.F.R. §§ 1003.19(a), 1236.1(d), while certain criminal categories are subject to mandatory detention under § 1226(c).

26. Second, § 1225(b) mandates detention of applicants for admission—either recent entrants in expedited removal under § 1225(b)(1) or other arriving noncitizens under § 1225(b)(2).

27. Finally, § 1231 applies to persons with final orders of removal.

28. This case concerns §§ 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 3009-585. Section 1226(a) was most recently amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Following IIRIRA, EOIR and the former Immigration and Naturalization Service (INS) issued regulations clarifying that, in general, people who entered the country without inspection but were placed in § 1229a proceedings are detained under § 1226(a), not § 1225. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Asylum Procedures*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997).

30. For decades thereafter, noncitizens who entered without inspection and were placed in standard removal proceedings received bond hearings unless detained under § 1226(c). See 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting § 1226(a) "restates" prior § 1252(a)).

31. On July 8, 2025, ICE, in coordination with DOJ, announced *Interim Guidance Regarding Detention Authority for Applicants for Admission*, asserting that all individuals who entered without inspection fall under § 1225(b)(2)(A). The Board of Immigration Appeals adopted the same view in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

32. Courts within this Circuit have rejected that interpretation, holding that § 1226(a) governs individuals apprehended well after entry and placed in § 1229a proceedings. See *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Quispe-Ardiles v. Noem*, 2025 WL 2598823 (E.D. Va. Sept. 30, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); see also *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025). These courts, consistent with decades of agency practice, have correctly found § 1226—not § 1225—to apply to noncitizens residing within the United States.

33. This interpretation accords with Fourth Circuit precedent recognizing that statutes authorizing detention must be narrowly construed to prevent unlawful deprivation of liberty. *See In re Braxton*, 258 F.3d 250, 255 (4th Cir. 2001) (habeas is an equitable remedy to correct unlawful restraint).

34. Section 1226(a) applies by default to all persons "pending a decision on whether [they are] to be removed from the United States," including those charged as inadmissible under § 1182(a)(6)(A)(i). Congress's reference to such individuals in § 1226(c)(1)(E) confirms that they fall within § 1226(a) unless expressly excluded.

35. By contrast, § 1225(b) applies only to "applicants for admission" at or near the border. The Supreme Court has explained that this provision governs detention "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

36. Petitioner, who entered the United States in 2013 and has resided here for over a decade, was not apprehended at or near the border and is not in expedited removal. He is therefore detained under § 1226(a) and entitled to a bond hearing.

FACTS

37. Petitioner has resided in the United States since August 2013 and lives in Alexandria, Virginia.

38. On or about September 12, 2025, at approximately 8:15 to 8:20 a.m., Petitioner was a passenger in a work van driven by his employer, a U.S. citizen, when a single U.S. Park Police officer initiated a stop on the George Washington Parkway toward Maryland, near their job site. The officer stated the stop was because "vans were not slowing down to pass in that area." Petitioner states this was untrue; their vehicle was moving lawfully with traffic and had committed no parking or moving violation. The stop appeared to be part of a targeted operation focused on Latino workers and work vans. Petitioner observed no white drivers stopped and later learned that other Latino workers were detained that same morning. The officer asked the driver for identification, and before he could respond, Petitioner advised him not to provide it because he was a U.S. citizen. The officer then turned to Petitioner and asked for his own identification. When Petitioner said he did not have it with him, the officer replied, "So you're undocumented—get down." The officer then reached into the vehicle, took a wallet from the cupholder, and found Petitioner's Virginia driver's license and Salvadoran ID card.

39. Despite having valid Virginia identification, Petitioner was ordered out of the van and detained. His employer was not arrested or cited, received no paperwork or explanation for the stop, and confirmed that no traffic violation was identified. Shortly afterward, several additional officers and armed individuals in uniform identifying themselves as ICE or "bounty hunters" arrived, bringing the total to about five. They did not read Petitioner his rights or provide any written explanation for the arrest. They took custody of Petitioner and transported him to an ICE facility in Chantilly, Virginia, where he was fingerprinted, photographed, and

questioned. Officers asked if he wanted to "voluntarily return" to his country, which he refused, and they also asked for the names of his family members. Petitioner requested a lawyer and a judge and declined to sign any documents. He was later transferred to the Caroline Detention Center in Bowling Green, Virginia, where he remains detained.

40. Following his transfer, ICE officers served him with a Notice to Appear ("NTA") initiating removal proceedings before the Immigration Court. The NTA was issued after his warrantless arrest and detention described above.

41. Petitioner has remained in ICE custody since that date and has not been released on bond or parole. His employer witnessed the entire incident and confirmed that the stated reason for the stop was false and that Petitioner was detained only after they found his Salvadoran ID.

42. Petitioner continues to be held at the Caroline Detention Center in Bowling Green, Virginia. He has not been provided any custody determination, bond hearing, or opportunity for parole. No immigration judge has reviewed his detention or made any individualized finding regarding flight risk or danger to the community.

43. Petitioner is a long-term resident of Virginia, the father of a U.S. citizen son, and has no criminal record. He has been steadily employed and maintains strong family and community ties. Despite these equities, he remains detained as a result of the unconstitutional arrest and transfer described above.

44. Without relief from this Court, Petitioner faces the prospect of months or even years in immigration custody, separated from his family and community.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

46. 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.

47. By treating Petitioner as an "applicant for admission" and applying § 1225(b)(2)(A), Respondents have acted contrary to the plain language of the INA, decades of agency practice, and settled judicial precedent. Their interpretation unlawfully mandates Petitioner's continued detention without a bond hearing and exceeds statutory authority under the INA. See *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

48. Accordingly, Respondents' actions violate 8 U.S.C. § 1226(a) and must be set aside under 28 U.S.C. § 2241.

COUNT II

Violation of Procedural Due Process

49. Petitioner realleges and incorporates by reference all preceding paragraphs.

50. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. *See 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 Clause protects." Id.

51. Petitioner has a fundamental interest in his freedom and in remaining with his U.S.-citizen son and stepdaughter. Yet Respondents continue to detain him indefinitely without an individualized custody hearing to determine whether he poses a flight risk or danger to the community.

52. Detaining Petitioner without a bond redetermination hearing violates the procedural and substantive guarantees of the Due Process Clause. See *Demore v. Kim*, 538 U.S. 510, 532 (2003) (upholding detention only when accompanied by adequate procedural protections); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025).

53. Petitioner's continued confinement, absent such safeguards, is arbitrary, excessive, and unconstitutional.

COUNT III

Violation of Substantive Due Process

54. Petitioner realleges and incorporates by reference all preceding paragraphs.

55. Substantive due process protects individuals from arbitrary or excessive government action that "shocks the conscience" or bears no reasonable relation to legitimate governmental objectives. *County of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998); *United States v. Salerno*, 481 U.S. 739, 746 (1987).

56. Petitioner's continued detention—despite his lack of criminal history, deep family ties in the United States, and eligibility for relief under § 1229b(b)(1)—

serves no legitimate governmental purpose. It is punitive in nature and grossly disproportionate to any interest in ensuring his appearance or protecting the community.

57. By detaining Petitioner indefinitely without individualized consideration or statutory basis, Respondents have acted in an arbitrary and conscience-shocking manner that violates the substantive component of the Due Process Clause. See *Zadvydas*, 533 U.S. at 690–701; *Hasan*, 2025 WL 2682255.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this habeas action pursuant to 28 U.S.C. § 2241;

b. Enjoin Petitioner's transfer outside the Eastern District of Virginia while this Petition is pending, to preserve the Court's jurisdiction;

c. Issue an Order to Show Cause directing Respondents to show cause why the writ should not issue within three (3) days, or within such shorter period as the Court deems appropriate under 28 U.S.C. § 2243;

d. Grant the writ of habeas corpus and order Petitioner's immediate release, or in the alternative, require that Respondents provide Petitioner a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven (7) days of the Court's order;

e. Declare Petitioner's detention unlawful under the Immigration and Nationality Act and the Fifth Amendment; and

f. Award such other and further relief as this Court deems just and proper, including any relief necessary to effectuate Petitioner's prompt release.

DATED this 16th day of October, 2025.

Respectfully submitted,

/s Lysandra Pachuta

Lysandra Pachuta, Bar #77162
Pachuta & Kammerman PLLC
3541 Chain Bridge Road, Suite 208
Fairfax, VA 22030
P : (703) 822-4701
F: (703) 822-4703
lpachuta@pklegal.com
Attorney for Petitioner