

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Jesus Osvaldo Santos Barahona,

c/o Immigrants First PLLC
9401 Centreville Rd, Suite 204
Manassas, VA 20110

Petitioner,

v.

Todd M. Lyons, Acting Director, Immigration
Customs and Enforcement; Russell Hott, Field
Office Director of Enforcement and Removal
Operations, Washington Field Office,
Immigration and Customs Enforcement; Kristi
NOEM, Secretary, U.S. Department of
Homeland Security; Pamela BONDI, U.S.
Attorney General, US Department of Justice;
Jeffrey Crawford, Warden of the Farmville
Detention Facility

Respondents.

Civil Action No. 1:25-cv-01889

Amended

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1
2 1. Petitioner, Jesus Osvaldo Santos Barahona, is in the physical custody of
3 Respondents at the Farmville Detention Center in Farmville, Virginia. He now faces unlawful
4 detention because the Department of Homeland Security (DHS) and the Executive Office of
5 Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

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

8 3. Based on this allegation in Petitioner's removal proceedings, DHS denied
9 Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8,
10 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone
11 inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without
12 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and
13 therefore ineligible to be released on bond.

14 4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or
15 Board) issued a precedent decision, binding on all immigration judges, holding that an
16 immigration judge has no authority to consider bond requests for any person who entered the
17 United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
18 The Board determined that such individuals are subject to detention under 8 U.S.C. §
19 1225(b)(2)(A) and therefore ineligible to be released on bond.

20 5. Petitioner's detention on this basis violates the plain language of the Immigration
21 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
22 previously entered and are now residing in the United States. Instead, such individuals are
23 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.
24

1 That statute expressly applies to people who, like Petitioner, are charged as inadmissible for
2 having entered the United States without inspection.

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

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

8 9 JURISDICTION

10 8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
11 Farmville Detention Center in Farmville, Virginia.

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

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

17 18 VENUE

19 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
20 500 (1973), venue lies in the United States District Court for the Eastern District of Virginia, the
21 judicial district in which Petitioner currently is detained.

22 12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
23 Respondents are employees, officers, and agencies of the United States, and because a
24

1 substantial part of the events or omissions giving rise to the claims occurred in the Eastern
2 District of Virginia.

3
4 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

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

15
16 **PARTIES**

17 15. Petitioner, Jesus Osvaldo Santos Barahona, is alleged to be a citizen of El
18 Salvador who has been in immigration detention at the Farmville Detention Center since October
19 2, 2025. After arresting Petitioner, ICE did not set bond and Petitioner is unable to obtain review
20 of his custody by an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N.
21 Dec. 216 (BIA 2025).

22 16. Respondent Todd M. Lyons is the Acting Director of ICE. In his official capacity,
23 he oversees all ICE operations nationwide, including detention and removal decisions. He is
24

1 responsible for setting and enforcing ICE policy and may authorize or delay removal of
2 noncitizens in ICE custody.

3 17. Respondent Russell Hott is the Director of the Washington Field Office of ICE's
4 Enforcement and Removal Operations division. As such, Russell Hott is Petitioner's immediate
5 custodian and is responsible for Petitioner's detention and removal. He is named in his official
6 capacity.

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

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

14 20. Respondent Pamela Bondi is the Attorney General of the United States. She is
15 responsible for the Department of Justice, of which the Executive Office for Immigration Review
16 and the immigration court system it operates is a component agency. She is sued in her official
17 capacity. The Executive Office for Immigration Review (EOIR) is the federal agency responsible
18 for implementing and enforcing the INA in removal proceedings, including for custody
19 redeterminations in bond hearings.

20 21. Jeffrey Crawford is the Warden of the Farmville Detention Center, where
21 Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official
22 capacity.

LEGAL FRAMEWORK

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

23. 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).

24. 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).

25. 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).

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

27. 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).

28. 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 29. 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 pursuant to 8 U.S.C. § 1226(c). That practice was consistent
6 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”
7 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
8 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
9 “restates” the detention authority previously found at § 1252(a)).

10 30. 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 31. 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 subject to mandatory detention provision under § 1225(b)(2)(A). The
16 policy applies regardless of when a person is apprehended, and affects those who have resided in
17 the United States for months, years, and even decades.

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

22
23
24 ¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 33. Since Respondents adopted their new policies, dozens of federal courts have
2 rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected
3 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

4 34. Even before ICE or the BIA introduced these nationwide policies, IJs in the
5 Tacoma, Washington, immigration court stopped providing bond hearings for persons who
6 entered the United States without inspection and who have since resided here. There, the U.S.
7 District Court in the Western District of Washington found that such a reading of the INA is
8 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not
9 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d
10 1239 (W.D. Wash. 2025).

11 35. Subsequently, court after court has adopted the same reading of the INA's
12 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*,
13 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,
14 No. CV 25-11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025);
15 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,
16 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL
17 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025
18 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE,
19 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-
20 ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-
21 BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH),
22 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-
23 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).

36. 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 Petitioner.

37. 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[c] the inadmissibility or deportability of a[] [noncitizen].”

38. 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

1 creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions,
2 the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove*
3 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025
4 WL 1869299, at *7.

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

8 40. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
9 recently entered the United States. The statute's entire framework is premised on inspections at
10 the border of people who are "seeking admission" to the United States. 8 U.S.C.
11 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
12 applies "at the Nation's borders and ports of entry, where the Government must determine
13 whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583
14 U.S. 281, 287 (2018).

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

18 42. Petitioner is being irreparably harmed by his ongoing unlawful detention without
19 a bond hearing.

20 43. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims
21 raised by Petitioner, and any attempt to raise such claims would be futile. *See Flores-Powell*,
22 677 F. Supp. 2d at 463 (holding "exhaustion is excused by the BIA's lack of authority to
23 adjudicate constitutional questions and its prior interpretation" of the relevant statute).
24

FACTS

48. Petitioner is pursuing immigration relief through his pending asylum application. His asylum case is still pending. Petitioner works as a truck driver in order to support himself and his partner who relies on him financially. Petitioner has a fixed address. Upon information

1 and belief, he does not have a criminal record that makes him mandatorily detained under INA
2 section 236(c).

3 49. Following Petitioner's arrest and transfer to the Farmville Detention Center, ICE
4 issued a custody determination to continue Petitioner's detention without an opportunity to post
5 bond or be released on other conditions.

6 50. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider
7 Petitioner's bond request.

8 51. As a result, Petitioner remains in detention. Without relief from this court, he
9 faces the prospect of months, or even years, in indefinite immigration custody, separated from
10 his family and community.

11
12 **CLAIMS FOR RELIEF**

13 **COUNT I**
14 **Violation of the INA**

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

17 53. 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 inadmissibility. As
19 relevant here, it does not apply to those who previously entered the country and have been
20 residing in the United States prior to being apprehended and placed in removal proceedings by
21 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to
22 § 1225(b)(1), § 1226(c), or § 1231.

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

COUNT II
Violation of the Bond Regulations

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

56. 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.

57. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individual like Petitioner.

58. 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 Due Process

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

60. 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,

1 detention, or other forms of physical restraint—lies at the heart of the liberty that the
2 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

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

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

6
7 **COUNT VI**

8 63. An additional ground for his release can be found in the Trafficking Victims Protection
9 Reauthorization Act (TVPRA). The TVPRA reaffirms the transfer of responsibility for
10 the care and custody of unaccompanied children to the Department of Health and Human
11 Services (HHS), as provided for by the Homeland Security Act of 2002.

12
13 **PRAYER FOR RELIEF**

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

- 15 a. Assume jurisdiction over this matter;
- 16 b. Order that Petitioner shall not be transferred outside the Commonwealth of
17 Virginia while this habeas petition is pending;
- 18 c. Issue an Order to Show Cause ordering Respondents to show cause why this
19 Petition should not be granted within three days;
- 20 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
21 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
22 1226(a) within seven days;
- 23 e. Declare that Petitioner’s detention is unlawful;
- 24

1 f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
2 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
3 law; and

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

5 DATED this 28th day of October, 2025.

6 

7 David Sung Won Kim, Esq.

8 *Attorney for Petitioner*

9 Immigrants First, PLLC

10 9401 Centreville Rd, Ste 204

11 Manassas, VA 20110

12 (P) 703-342-8212

13 (F) 703-335-5755

14 (E) davidkim410@gmail.com