

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 ALEXANDRIA DIVISION

4 Nelson Enrique Funez Contreras,
5 c/o Immigrants First PLLC
6 9401 Centreville Rd, Suite 204
7 Manassas, VA 20110

8 Petitioner,

9 v.

10 Todd M. Lyons, Acting Director, Immigration
11 Customs and Enforcement; Joseph Simon,
12 Acting Field Office Director of Washington
13 Field Office, Enforcement and Removal
14 Operations, Immigration and Customs
15 Enforcement; Kristi NOEM, Secretary, U.S.
16 Department of Homeland Security; Pamela
17 BONDI, U.S. Attorney General, US
18 Department of Justice; Paul Perry,
19 Superintendent of the Caroline Detention
20 Facility

21 Respondents.
22
23
24

Civil Action No. 1:25-cv-01929

**AMENDED PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1
2 1. Petitioner, Nelson Enrique Funez Contreras, is in the physical custody of
3 Respondents at the Caroline Detention Facility in Bowling Green, Virginia. He now faces
4 unlawful detention because the Department of Homeland Security (DHS) and the Executive
5 Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory
6 detention.

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

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

15 4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or
16 Board) issued a precedent decision, binding on all immigration judges, holding that an
17 immigration judge has no authority to consider bond requests for any person who entered the
18 United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
19 The Board determined that such individuals are subject to detention under 8 U.S.C. §
20 1225(b)(2)(A) and therefore ineligible to be released on bond.

21 5. Petitioner's detention on this basis violates the plain language of the Immigration
22 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
23
24

1 previously entered and are now residing in the United States. Instead, such individuals are
2 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.
3 That statute expressly applies to people who, like Petitioner, are charged as inadmissible for
4 having entered the United States without inspection.

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

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

10 11 JURISDICTION

12 8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
13 Caroline Detention Center in Bowling Green, Virginia.

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

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

19 20 VENUE

21 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
22 500 (1973), venue lies in the United States District Court for the Eastern District of Virginia, the
23 judicial district in which Petitioner currently is detained.

1 12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
2 Respondents are employees, officers, and agencies of the United States, and because a
3 substantial part of the events or omissions giving rise to the claims occurred in the Eastern
4 District of Virginia.

5
6 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

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

17
18 **PARTIES**

19 15. Petitioner Nelson Enrique Funez Contreras is alleged to be a citizen of Honduras
20 who has been in immigration detention since October 20, 2025. After arresting Petitioner, ICE
21 did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the
22 Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

1 16. Respondent Todd M. Lyons is the Acting Director of ICE. In his official capacity,
2 he oversees all ICE operations nationwide, including detention and removal decisions. He is
3 responsible for setting and enforcing ICE policy and may authorize or delay removal of
4 noncitizens in ICE custody.

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

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

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

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

21. Paul Perry is the Superintendent of the Caroline Detention Facility, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official 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).

1 28. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining
2 that, in general, people who entered the country without inspection were not considered detained
3 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
4 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
5 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

6 29. Thus, in the decades that followed, most people who entered without inspection
7 and were placed in standard removal proceedings received bond hearings, unless their criminal
8 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent
9 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”
10 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
11 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
12 “restates” the detention authority previously found at § 1252(a)).

13 30. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
14 rejected well-established understanding of the statutory framework and reversed decades of
15 practice.

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

21 32. On September 5, 2025, the BIA adopted this same position in a published
22 decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the

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

1 United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are
2 ineligible for IJ bond hearings.

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

6 34. Even before ICE or the BIA introduced these nationwide policies, IJs in the
7 Tacoma, Washington, immigration court stopped providing bond hearings for persons who
8 entered the United States without inspection and who have since resided here. There, the U.S.
9 District Court in the Western District of Washington found that such a reading of the INA is
10 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not
11 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d
12 1239 (W.D. Wash. 2025).

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

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[e] 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 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.

39. 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.

40. 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).

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

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

43. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioner, and any attempt to raise such claims would be futile. See *Flores-Powell*,

1 677 F. Supp. 2d at 463 (holding “exhaustion is excused by the BIA’s lack of authority to
2 adjudicate constitutional questions and its prior interpretation” of the relevant statute).

3 44. There is no statutory requirement for Petitioner to exhaust administrative
4 remedies. Accordingly, there is no requirement for Petitioner to further exhaust administrative
5 remedies before pursuing this Petition. *See Portela-Gonzalez v. Sec’y of the Navy*, 109 F.3d 74,
6 (1st Cir. 1997) (explaining that, where statutory exhaustion is not required, administrative
7 exhaustion not required in situations of irreparable harm, futility, or predetermined outcome).

8
9 **FACTS**

10 45. Petitioner, Nelson Enrique Funes Conteras (REDACTED), has resided in the
11 United States since October 20, 2010 and lives in the Commonwealth of Virginia.

12 46. Petitioner is now detained at the Caroline Detention Facility, where he has been
13 detained since October 20, 2025.

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

18 48. Petitioner currently resides in Harrisonburg, Virginia with his partner and seven
19 children, two of whom are United States citizens. Petitioner contributes to society with his work
20 in construction. Petitioner is the primary breadwinner, and his detention prevents his family from
21 meeting their financial needs. His ongoing detention causes extreme hardship to his entire
22 family.

49. Upon information and belief, Petitioner does not have any criminal convictions. Petitioner pays his taxes. Members of his community vouch for his good moral character and strong worth ethic.

50. Petitioner is pursuing immigration relief. He is currently in removal proceedings under INA § 212(a)(6)(A)(i), 8 U.S.C. 1182(a)(6)(A)(i), as an alien present without admission. Petitioner is pursuing relief via EOIR-42B, cancellation of removal based on his two United States citizen children. Thus, Petitioner has a viable pathway to lawful permanent residence.

51. Following Petitioner's arrest and transfer to the Caroline Detention Facility, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

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

53. Upon information and belief, Petitioner is not mandatorily detainable under 236(c), based on legal arguments Petitioner is prepared to make after this initial petition.

54. As a result, Petitioner remains in detention. Without relief from this court, he 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

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

1 56. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
2 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
3 relevant here, it does not apply to those who previously entered the country and have been
4 residing in the United States prior to being apprehended and placed in removal proceedings by
5 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to
6 § 1225(b)(1), § 1226(c), or § 1231.

7 57. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued
8 detention and violates the INA.

9
10 **COUNT II**
11 **Violation of the Bond Regulations**

12 58. Petitioner incorporates by reference the allegations of fact set forth in preceding
13 paragraphs.

14 59. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-
15 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.
16 Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the
17 agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present
18 without having been admitted or paroled (formerly referred to as [noncitizens] who entered
19 without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323
20 (emphasis added). The agencies thus made clear that individuals who had entered without
21 inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. §
22 1226 and its implementing regulations.

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

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

3
4 **COUNT III**
5 **Violation of Due Process**

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

8 63. The government may not deprive a person of life, liberty, or property without due process
9 of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,
10 detention, or other forms of physical restraint—lies at the heart of the liberty that the
11 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

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

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

15 **PRAYER FOR RELIEF**

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

- 17 a. Assume jurisdiction over this matter;
- 18 b. Order that Petitioner shall not be transferred outside the Commonwealth of
19 Virginia while this habeas petition is pending;
- 20 c. Issue an Order to Show Cause ordering Respondents to show cause why this
21 Petition should not be granted within three days;
- 22
23
24

- 1 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
2 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
3 1226(a) within seven days;
- 4 e. Declare that Petitioner's detention is unlawful;
- 5 f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
6 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
7 law; and
- 8 g. Grant any other and further relief that this Court deems just and proper.

9 DATED this 2nd day of November, 2025.

10 

11 David Sung Won Kim, Esq.
12 *Attorney for Petitioner*
13 Immigrants First, PLLC
14 9401 Centreville Rd, Ste 204
15 Manassas, VA 20110
16 (P) 703-342-8212
17 (F) 703-335-5755
18 (E) davidkim410@gmail.com
19
20
21
22
23
24