

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Noe OSORIO ORTEGA,

Petitioner,

v.

Kevin RAYCRAFT, Field Office Acting
Director of Enforcement and Removal
Operations, Detroit 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 (EOIR); THE GEO
GROUP INC., facility operators; John DOE,
Warden of North Lake Correctional Facility (or
his/her successors),

Respondents.

Case No. 25-1371

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

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2 1. Petitioner NOE OSORIO ORTEGA is in the physical custody of Respondents at
3 the North Lake Correctional Facility. He now faces unlawful detention because the Department
4 of Homeland Security (DHS) have concluded Petitioner is subject to mandatory detention.

5 2. Petitioner has not been entered in the court system for the Executive Office of
6 Immigration Review and as such no allegations of inadmissibility or unlawful presence have
7 been produced by Respondents.

8 3. Consistent with a new DHS policy issued on July 8, 2025, instructing all
9 Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under
10 § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an
11 “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory
12 detention, neither DHS nor EOIR has provided an opportunity for a bond hearing since
13 Petitioner’s detention almost a week ago.

14 4. Petitioner seeks immediate release, or in the alternative, a bond redetermination
15 hearing before an Immigration Judge of the Executive Office for Immigration Review. However,
16 following *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), EOIR now declines
17 jurisdiction to consider bond for individuals deemed “applicants for admission” under §
18 1225(b)(2)(A). As a result, despite Petitioner’s twenty-six years of continuous residence in the
19 United States, deep community ties, and lack of danger or flight risk, he remains mandatorily
20 detained without any opportunity for individualized review. This categorical denial of bond
21 authority results in indefinite detention without administrative recourse, raising serious
22 constitutional concerns that warrant this Court’s intervention under 28 U.S.C. § 2241.
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24

5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. § 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, entered the United States without inspection.

6. 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.

7. Further, on October 7, 2025, the Northern District of Illinois held that ICE’s practice of issuing Form I-200 administrative warrants in the field to make arrests (i.e., “collateral arrests”) is unlawful, rendering all of those arrests warrantless. Accordingly, all of those are subject to the requirements of 8 U.S.C. § 1357(a)(2) and the Nava Warrantless Arrest Policy. *See Castanon Nava v. Dep’t of Homeland Sec., No. 1:18-cv-03757, 2025 WL 6324179 (N.D. Ill. Oct. 7, 2025).*

8. *Nava* emphasizes that community ties (e.g., home, family, employment) weigh against a finding of probable cause that the individual is likely to escape before a warrant could be obtained. And a determination of probable cause can be based only on information known or gathered at the time of arrest. The only consideration against release is the existence of a prior removal order which may be sufficient to establish probable cause that a person would be likely to escape before a warrant could be obtained under § 1357(a)(2).

9. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within fourteen (14) days.

JURISDICTION

10. Petitioner is a resident of Illinois, in the physical custody of Respondents.
Petitioner is detained at the North Lake Correctional Facility, 1805 W. 32nd Street, Baldwin, MI,
49304.

11. 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).

12. 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

13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Michigan, the Southern Division, the judicial district in which Petitioner currently is detained.

14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern Division of the Western District of Michigan.

REQUIREMENTS OF 28 U.S.C. § 2243

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

16. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or

1 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
2 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
3 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
4 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

5 **PARTIES**

6 17. Petitioner NOE OSORIO ORTEGA is a citizen of Mexico who has been in
7 immigration detention since October 30, 2025. After arresting Petitioner in Illinois, ICE did not
8 set bond; to date, an Immigration Judge has not set bond and no warrant, Notice to Appear, or
9 Notice of Deportable Alien has been produced in this case. Petitioner has resided in the United
10 States since he arrived in or around 1999.

11 18. Respondent, Kevin Raycraft, is the Director of the Detroit Field Office of ICE’s
12 Enforcement and Removal Operations Division. As such, Kevin Raycraft is Petitioner’s
13 immediate custodian and is responsible for Petitioner’s detention and removal. He is named in
14 his official capacity.

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

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

22 21. Respondent Pamela Bondi is the Attorney General of the United States. She is
23 responsible for the Department of Justice, of which the Executive Office for Immigration Review
24

1 and the immigration court system it operates is a component agency. She is sued in her official
2 capacity.

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

6 23. Respondent The Geo Group, Inc. is the private entity under contract with ICE
7 operating the North Lake Correctional Facility, where Petitioner is detained. They have
8 immediate physical custody of Petitioner. They are sued in their official capacity.

9 24. Respondent John Doe (or his/her successors) is employed by The Geo Group, Inc.
10 as Warden of the North Lake Correctional Facility, where Petitioner is detained. He has
11 immediate physical custody of Petitioner. He is sued in his official capacity.

12 13 **LEGAL FRAMEWORK**

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

16 26. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
17 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally
18 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),
19 while noncitizens who have been arrested, charged with, or convicted of certain crimes are
20 subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

21 27. Second, the INA provides for mandatory detention of noncitizens subject to
22 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission
23 referred to under § 1225(b)(2).

1 28. Last, the INA also provides for detention of noncitizens who have been ordered
2 removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

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

4 30. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
5 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
6 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section
7 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1,
8 139 Stat. 3 (2025).

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

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

21 33. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
22 rejected well-established understanding of the statutory framework and reversed decades of
23 practice.

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

7 35. In a May 22, 2025, unpublished decision from the Board of Immigration Appeals
8 (BIA), EOIR adopts this same position.² That decision holds that all noncitizens who entered the
9 United States without admission or parole are considered applicants for admission and are
10 ineligible for Immigration Judge bond hearings.

11 36. ICE and EOIR have adopted this position even though federal courts have
12 rejected this exact conclusion. For example, after Immigration Judges in the Tacoma,
13 Washington immigration court stopped providing bond hearings for persons who entered the
14 United States without inspection and who have since resided here, the U.S. District Court in the
15 Western District of Washington found that such a reading of the INA is likely unlawful and that
16 § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the
17 United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash.
18 Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D.
19 Mass. July 7, 2025) (granting habeas petition based on same conclusion).

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

² Available at <https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf>.

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

4 38. Section 1226(a) applies by default to all persons “pending a decision on whether
5 the [noncitizen] is to be removed from the United States.” These removal hearings are held under
6 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

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

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

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

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

FACTS

43. Petitioner has resided in the United States since 1999 and lives in Illinois. His late wife was an American citizen who petitioned for him on or about 2004. This petition was approved on or about 2005, after the death of his wife, but Petitioner did not know he was eligible for a waiver and residency under that petition until recently.

44. On or about October 30, 2025, Petitioner was detained in Illinois while at work. He was processed at the ICE processing facility in Broadview, IL before being transferred to the North Lake Correctional Facility in Michigan. He is being held at the ICE Detention center in Wayne County, Baldwin, MI, operated by The Geo Group, Inc.

45. DHS has not placed Petitioner in removal proceedings before the Detroit Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has not submitted any charges in this case.

46. Petitioner last entered the United States in 1999 at the age of twenty and has lived continuously in this country for over twenty years. During that time, he has built meaningful ties within his community. He remained in the United States after the death of his U.S. citizen wife. Petitioner has maintained consistent employment, paid taxes, and contributed positively through his community. He has no criminal history, has complied with all prior immigration requirements to the best of his ability, and poses neither a flight risk nor any danger to the community.

1 47. Following Petitioner's arrest and transfer to North Lake Correctional Facility, ICE
2 issued a custody determination to continue Petitioner's detention without an opportunity to post
3 bond or be released on other conditions.

4 48. Petitioner has not had any bond redetermination hearing before an Immigration
5 Judge.

6 49. To date, no Immigration Judge has issued a decision that the court lacks
7 jurisdiction to conduct a bond redetermination hearing because Petitioner was an applicant for
8 admission under § 1225(b)(2)(A).

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

12 51. Any appeal to the BIA is futile. DHS's new policy was issued "in coordination
13 with DOJ," which oversees the immigration courts. Further, as noted, the most recent
14 unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory
15 detention as applicants for admission. Finally, in the *Rodriguez Vazquez* litigation, where EOIR
16 and the Attorney General are defendants, DOJ has affirmed its position that individuals like
17 Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See* Mot.
18 to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6,
19 2025), Dkt. 49 at 27–31.

20 **CLAIMS FOR RELIEF**

21 **COUNT I**

22 **Violation of the INA**

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

53. 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.

54. Petitioner was subject to an unlawful arrest by ICE-DHS per the requirements of 8 U.S.C. § 1357(a)(2) and is in violation of the INA. See *Nava*, 2025 WL 6324179, (N.D. Ill. Oct. 7, 2025).

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

COUNT II

Violation of Due Process

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

57. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

