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

VIRGILIO GONZALEZ HENRIQUEZ, *Petitioner*, v. JOSEPH SIMON, in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Washington Field Office; KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; PAMELA BONDI, in her official Capacity as Attorney General of the United States, *Respondents*.	)	Case No. _____

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner, Virgilio Gonzalez Henriquez, has been residing in the United States since approximately 2005.

2. In or around October 21, 2025, he was apprehended by Immigration and Customs Enforcement ("ICE"). He is currently detained by immigration authorities at the Farmville Detention Center.

3. The basis for Petitioner's detention is his presence in the United States without admission or parole. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

4. It is futile for Petitioner to request a bond hearing before the immigration court in light of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

6. *Matter of Yajure Hurtado* articulates a new agency policy that all persons who entered the United States without inspection, regardless of how long they have lived in the United States or how far they were apprehended from the border, are deemed applicants for admission and are thus ineligible for a bond hearing under 8 U.S.C. § 1225(b)(2)(A) (stating that an applicant "seeking admission" shall be detained for a removal proceeding).

7. This decision reflects an ICE memorandum, issued in July 2025, instructing its attorneys to coordinate with the Department of Justice, the agency housing the Executive Office for Immigration Review ("EOIR"), to reject custody redetermination hearings for applicants who arrived in the United States without documents.[1]

8. The agencies' reading of the Immigration and Nationality Act's ("INA's") detention provisions is a violation of the statute and due process. As multiple jurists of this Court have concluded, § 1225(b)(2)(A) does not apply to individuals, like Petitioner, who are present in the United States. *Hasan v. Crawford*, __ F.Supp.3d __, No. 1:25-cv-1408, 2025 U.S. Dist. LEXIS 184734 (E.D. Va. 2025); *Escobar v. Perry*, No. 3:25cv758, 2025 U.S. Dist. LEXIS 212098 (E.D. Va. Oct. 27, 2025); *Hernandez v. Crawford*, No. 1:25-cv-01565, 2025 U.S. Dist. LEXIS 204978 (E.D. Va. Oct. 16, 2025); *Singh v. Lyons*, No. 1:25-cv-01606, 2025 U.S. Dist. LEXIS 203804 (E.D. Va. Oct. 14, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382, 2025 U.S. Dist. LEXIS

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[1] *The Washington Post* (Jul. 15, 2025) https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/

194069 (E.D. Va. Sept. 30, 2025); *Quispe v. Crawford*, No. 1:25-cv-1471, 2025 U.S. Dist. LEXIS 194070 (E.D. Va. Sept. 29, 2025). Instead, such individuals are subject to detention under a different statute, § 1226(a), and are eligible for release on bond. *See id.*

9. Accordingly, Petitioner requests that this Court grant his petition for habeas corpus and require that Respondents release him or provide him the bond hearing to which he is entitled. Petitioner furthermore requests that this Court set aside Respondents' unlawful detention policy under the Administrative Procedure Act ("APA").

JURISDICTION & VENUE

10. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory judgment); and United States Constitution Article I, Section 9 (Suspension Clause).

11. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district.

THE PARTIES

12. Petitioner is a citizen of El Salvador who entered the United States in or around August of 2005. He is currently detained at the Farmville Detention Center in Farmville, Virginia.

13. Respondent, Joseph Simon, is the Field Office Director of the ICE Enforcement and Removal Operations Washington Field Office and is the federal agent charged with overseeing all ICE detention centers in Virginia. Mr. Simon is a legal custodian of Petitioner. He is sued in his official capacity.

14. Kristi Noem is the Secretary of the U.S. Department of Homeland Security. DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity.

15. Pamela Bondi is the Attorney General of the United States. She oversees the immigration court system, which is housed within EOIR and includes all IJs and the Board of Immigration Appeals ("BIA"). She is sued in her official capacity.

LEGAL BACKGROUND

16. Relevant to this case, the INA includes two provisions that primarily govern the detention of noncitizens.

17. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are 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).

18. 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).

19. 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).

20. 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 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).

21. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. 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)).

22. Respondents have enacted a policy that turns this well-established understanding on its head and violates the INA's statutory scheme.

23. To that end, in July 2025, ICE released a memorandum instructing its attorneys to coordinate with EOIR to reject bond hearings for applicants who arrived in the United States without documents.

24. Thereafter, on September 5, 2025, the BIA published *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, which confirms that EOIR is taking the position that noncitizens who entered the United States without admission or parole are ineligible for IJ bond hearings.

25. As *Matter of Yajure Hurtado* is binding on IJs, it represents the widespread position that EOIR is applying across the United States.

26. EOIR's interpretation defies the INA.

27. The plain text of the provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

28. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States."

29. 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 8 U.S.C. § 1182(a)(6)(A)(i) makes clear that, by default, such people are afforded a bond hearing under subsection (a). 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.

30. Respondents' interpretation of § 1225(b)(2)(A)—as applying to all individuals who are in the United States without admission or parole—renders 8 U.S.C. § 1226(c)(1)(E) superfluous.

31. On the contrary, § 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 heading of § 1225(b) indicates that it specifically applies at the point of "inspection for applicants for admission."

32. EOIR's interpretation of the INA's detention framework also upends "decades of immigration practice" and contradicts Supreme Court precedent. *Mahamudul Hasan*, 2025 U.S. Dist. LEXIS 184734, at *21-24 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (stating that the government can "detain certain aliens seeking admission into the

country under §§1225(b)(1) and (b)(2)" and "detain certain aliens already in the country pending the outcome of removal proceedings under §§1226(a) and (c)")).

33. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner.

FACTS

34. Petitioner is a native and citizen of El Salvador who entered the United States in or around August 2005. Upon entering the United States, he was not detained by ICE.

35. Petitioner has no criminal history in the United States.

36. He maintains steady employment in West Lauren Construction, LLC, where he has been employed for the last eight years.

37. On the weekends, he attends church meetings with his adult daughter and his four grandchildren, three of whom are United States citizens. He is a dedicated father and grandfather, who looks out for his family and devotes his life to them.

38. On or around October 21, 2025, a police officer stopped Petitioner while he was in the passenger seat of his co-worker's truck, driving to work. Because his coworker made a turn on a closed-off road, the officer stopped them and later turned them over to ICE.

39. Any request for a bond hearing before the immigration court is futile.

CAUSES OF ACTION

COUNT ONE

Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Bond Hearing

40. Petitioner repeats, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

41. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens who are subject to inadmissibility as being present in the United States without admission or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.

42. The application of § 1225(b)(2) to bar Petitioner from receiving a bond hearing before an IJ violates the INA.

COUNT TWO

Violation of 8 U.S.C. § 1357(a)(2)
Warrantless Arrest

43. Petitioner repeats, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

44. Under *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), agencies are bound to follow their own rules that affect the fundamental rights of individuals. *See Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

45. Under 8 U.S.C. § 1357(a)(2), immigration officers may only arrest an individual without a warrant if the officer "has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest."

46. Respondents have failed to show that, at the time of Petitioner's arrest, they had "reason to believe" that he was is the country in violation of law and was a flight risk.

47. Respondents' arrest of Petitioner without a warrant violated the INA.

COUNT THREE

Violation of the Administrative Procedure Act

48. Petitioner repeats, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

49. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens who are subject to inadmissibility as being present in the United States without admission or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

50. Under 8 U.S.C. § 1357(a)(2), immigration officers may only arrest an individual without a warrant if the officer "has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest."

51. The application of § 1225(b)(2) to bar Petitioner from receiving a bond hearing before an IJ, as well as ICE's warrantless arrest, is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT FOUR

Violation of Due Process

52. Petitioner repeats, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

53. 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 (2001).

54. Petitioner has a fundamental interest in liberty and being free from official restraint. Respondents' warrantless arrest of Petitioner, as well as their detention of him without a bond hearing to determine whether he is a flight risk or danger to others, violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's warrantless arrest of Petitioner, as well as Respondents' refusal to allow him a bond redetermination hearing before an IJ, violates the INA, APA, and Due Process;

(3) Issue a writ of habeas corpus requiring that Respondents release him or provide the bond hearing to which he is entitled within 7 days;

(4) Set aside Respondents' unlawful detention policy under the APA, 5 U.S.C. § 706(2);

(5) Order further relief as this Court deems just and appropriate.

Respectfully submitted,

/s/ Ivan Yacub
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I affirm, under penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Afirmo bajo pena de perjurio que las declaraciones precedentes son verdades y correctas según mi conocimiento, información y creencia.

Jennifer Gonzalez
Mr. Gonzalez Henriquez's Daughter
Hija del Sr. Gonzalez Henriquez

11/05/2025
Date
fecha