

JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Oscar Diaz Juan

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Robert A. Ratliff
Brennan, Manna and Diamond, llc
200 Public Square, Ste. 1850

DEFENDANTS

Todd Lyons, Acting Director USCIS
Kristi Noem, Secretary, DHS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business in This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☒ 2 | Incorporated and Principal Place of Business in Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☒ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability LABOR ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement	☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 2241

Brief description of cause:
Unlawful detention in violation 4th and 5th Amendment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/10/2025

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

OSCAR DIAZ JUAN,

Petitioner,

v.

TODD M. LYONS, Acting Director,
Immigration and Customs Enforcement,

KRISTI NOEM, Secretary, United States
Department of Homeland Security;

DAREN K. MARGOLIN, Director
Executive Office for Immigration Review

EMERGENCY HEARING REQUESTED

**EX PARTE TEMPORARY
RESTRAINING ORDER REQUESTED**

Case No.:

**EMERGENCY PETITION
FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241,
WRIT OF MANDAMUS PURSUANT TO 28 U.S.C. § 1361, AND
EX PARTE TEMPORARY RESTRAINING ORDER UNDER FED. R. CIV. P. 65(b)**

COMES NOW, Petitioner herein, Oscar Diaz Juan, by and through undersigned counsel of record and hereby submits this Petition challenging his ongoing, unconstitutional detention at the Butler County Jail, Hamilton, Ohio.

INTRODUCTION

Petitioner respectfully submits this Emergency Petition. Like countless others ensnared in the Department of Homeland Security's (DHS) sweeping mandatory detention policy, Petitioner is a

Mexican national who involuntarily entered the United States without inspection. He entered the United States approximately 19 years ago, by crossing the southern border of the United States without inspection. He was not apprehended at arrival.

On October 15, 2025, Petitioner was arrested at his home without an immigration arrest warrant. This occurred approximately 19 years after his arrival in the United States. He now faces removal proceedings and has been denied a full custody redetermination hearing to which he is unequivocally entitled under 8 U.S.C. § 1226(a).

There are countless federal rulings, including the nationwide class certification in *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20 & 25, 2025) ("*Bautista*"), that have declared this policy unlawful. Yet EOIR persists, citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The *Yajure Hurtado* decision is not entitled to the deference of this Court post-*Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024). Petitioner's detention, compounded by a warrantless arrest, violates the Immigration and Nationality Act (INA), the Fifth Amendment, and the Fourth Amendment. Immediate intervention is essential to halt irreparable harm.

Petitioner seeks: (1) an emergency temporary restraining order (TRO) under Fed. R. Civ. P. 65(b) for immediate release or an immediate custody redetermination hearing conducted under the standards for such hearings applicable prior to DHS policy re-interpretation; (2) habeas relief under 28 U.S.C. § 2241 declaring the detention unlawful; and (3) mandamus under 28 U.S.C. § 1361 compelling EOIR compliance with *Bautista* ruling.

I. JURISDICTION AND VENUE

This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus for unlawful custody), § 1361 (mandamus to compel agency duties), § 1651 (All Writs Act to aid

jurisdiction), § 1331 (federal question), and Article I, § 9, cl. 2 (Suspension Clause). See *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (habeas preserves review of immigration detention); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (core habeas in district of confinement).

Venue lies in the Southern District of Ohio, where Petitioner is detained at Butler County Jail, 705 Hanover Street, Hamilton, OH, 45011, triggering exclusive habeas jurisdiction. *Padilla*, 542 U.S. at 443; *Hamama v. Adducci*, 946 F.3d 875 (6th Cir. 2020). The immediate custodian Todd M. Lyons, Acting Director of Immigration and Customs Enforcement exercises day-to-day control here, anchoring personal jurisdiction. Additional Respondents (DHS Secretary Noem, EOIR Director Margolin) are sued in their official capacities for policy enforcement and oversight. The All Writs Act empowers orders against out-of-district actors like EOIR (headquartered in Falls Church, Va., but directing the Cleveland Immigration Court Judges) to enforce binding rulings and avert harm. See *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 172-73 (1977).

No exhaustion via a BIA appeal should be required as EOIR remedies are futile amid systemic non-compliance, and prolonged detention inflicts irreparable injury. *De Macedo Mendes v. Hyde*, No. 25-cv-627-JJM-AEM (D.R.I. Dec. 5, 2025) ("Rhode Island order") (granting release without exhaustion).

II. FACTUAL BACKGROUND

Petitioner was born in Mexico on  He entered the United States sometime in the year 2006. Immigration Court documents state only at "an unknown date and time." He entered the United States without inspection and not at a designated port of entry. He was accompanied by his wife, and infant son.

Petitioner owns a home in Dayton, Ohio. He resides in that home with his wife, three United States citizen children and his eldest son, a Mexican national, and also similarly detained.

On October 15, 2025, pursuant to a search warrant which named other family members, and executed at the family home, Petitioner was removed from his home, questioned and arrested by ICE agents. During this event, Petitioner's United States citizen son and daughter were held at gunpoint on the front lawn of the residence. Petitioner's United States citizen son, a student at the University of Dayton, was additionally handcuffed. No immigration arrest warrant has been filed. No independent assessment of Petitioner's flight risk at the time of his arrest was completed.

Petitioner filed a request for custody redetermination with the Immigration Court on November 21, 2025. On November 25, 2025, the Immigration Judge denied Respondent's request citing a lack of jurisdiction under the mandatory detention policies of DHS. (Ex. A)

On November 20, 2025, Judge Sykes of the Central District of California, granted partial summary judgment, vacating DHS mandatory detention policy as contrary to the INA, Fifth Amendment, and APA (Ex. B, Dkt. 81, 2025 WL 3289861, at *11). Five days later, Judge Sykes certified a nationwide class and extended declaratory relief. Those rulings held that Class members like Petitioner are detained under § 1226(a) and entitled to bond hearings (Ex. C, Dkt. 82, 2025 WL 3288403, at *9). Yet EOIR defies this. To date, "...225 judges have ruled in more than 700 cases" that this mandatory detention practice is illegal. See Rhode Island order (Ex. D, *Macedo Mendes v. Hyde*, 1:25-cv-00627, D. RI Dec. 5, 2025) (applying *Bautista*, ordering release).

III. LEGAL ARGUMENTS

This case exemplifies a brazen agency rebellion against lawful federal court orders. EOIR, demonstrating unwarranted deference too and conspiratorial allegiance with DHS, clings to an unlawful policy and defunct BIA precedent, denying Petitioner the bond hearing that federal courts have mandated nationwide.

A. Count I: Unlawful Detention Under the INA and Due Process (28 U.S.C. § 2241)

Petitioner's saga traces the policy's inhumane and inapplicable practices when denying individualized case assessment. Petitioner did cross the border without a lawful entry. At the time of that entry, and all times subsequent, until July 8, 2025, Petitioner was entitled to a full custody redetermination hearing in Immigration Court. He has resided in the community without incident for approximately 19 years. Petitioner owns a home. Petitioner has three United States citizen children, the oldest of which is currently attending college. He is neither a flight risk or a danger to the community.

Petitioner was arrested, without an immigration arrest warrant, far from any border and not as an "applicant for admission" under § 1225(b)(2). Under *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018), Petitioner falls under § 1226(a)'s discretionary regime, mandating a bond hearing. The *Bautista* rulings confirm this by finding partial summary judgment which declared the policy "unlawful" and "contrary to law," vacating it for class members (Ex. B at *11); certification extended this declaratory relief nationwide to class members, binding EOIR to provide hearings without awaiting injunction (Ex. C at *9). See *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 170 (2000) (declarations compel compliance).

EOIR's current practice requires Immigration Judges to deny custody redetermination jurisdiction by claiming no "class-wide declaratory judgment" with "preclusive effect" is baseless, and contradictory to the EOIR Policy Memo 25-42, issued August 22, 2025 which purportedly confirms the independent judgement and discretion of Immigration Judges. (Exhibit E)

Yajure Hurtado's "plain language" treatment of § 1225(b)(2)(A) does not warrant deference post-*Loper Bright*. It is the Courts, not agencies, charged with interpreting statutes like the INA. *Loper-Bright*, 144 S. Ct. at 2273 ("[C]ourts must exercise their independent judgment"). The Rhode Island order rejected *Yajure Hurtado* outright, confirming § 1226(a) governs interior detainees (Ex. E at 4).

Indefinite detention without the ability for Immigration Judge review flouts Due Process. Noncitizens merit individualized review to assess flight risk or danger. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In the Sixth Circuit, habeas compels such relief. *Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018). Petitioner's continued custody permitted by EOIR's defiance creates irreparable harm, demanding release or an immediate bond hearing.

B. Count II: Writ of Mandamus to Compel EOIR Compliance (28 U.S.C. § 1361)

EOIR has a clear, non-discretionary duty to provide § 1226(a) bond hearings to *Bautista* class members. Its systemic refusal satisfies every element for mandamus relief. *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380 (2004).

C. Upon Remand, Immigration Judges Must Apply Pre-Policy Discretionary Bond Standards (the § 212(c) Non-Retroactivity Principle)

Even if EOIR conducts a § 1226(a) bond hearing on remand from this Court, the hearing will be meaningless unless the Immigration Judge applies the same discretionary standards that governed before the July 8, 2025 DHS policy and *Matter of Yajure Hurtado*.

The Supreme Court and the circuits have already rejected the precise maneuver DHS and EOIR will attempt. When Congress repealed former INA § 212(c) in 1996, the Executive Branch argued that the new statutory regime justified harsher discretionary standards for any remaining or analogous relief. The Supreme Court and lower courts squarely held otherwise:

- *INS v. St. Cyr*, 533 U.S. 289, 326 (2001) barred retroactive application of the repeal and required preservation of pre-repeal eligibility and standards for those who acted in reliance on the old law.
- *Judulang v. Holder*, 565 U.S. 42, 60–64 (2011) struck down the BIA's post-repeal "comparable-grounds" rule as arbitrary precisely because it narrowed the equitable discretion that had existed under § 212(c).
- *Restrepo v. Ashcroft*, 365 F.3d 615, 620–21 (7th Cir. 2004) and *Attia v. Gonzales*, 553 F.3d 509, 514–15 (6th Cir. 2009) required Immigration Judges to grant relief "as liberally" as they

had before the statutory change.

- The BIA itself retreated in *Matter of C-V-T*, 22 I&N Dec. 7, 16 (BIA 1998) and *Matter of K-F-C*, 26 I&N Dec. 661, 664–65 (BIA 2015), acknowledging that post-repeal analogs must mirror the pre-repeal balance of equities.

The parallel in the context of bond hearings is exact. The DHS policy and *Yajure Hurtado* have effectively repealed § 1226(a) bond hearings for EWI noncitizens by instructing IJs to treat the mere fact of entry without inspection as presumptive flight risk or danger.

Judge Sykes vacated that policy and restored § 1226(a) hearings for the certified class. Under *St. Cyr* and *Judulang*, restoration of the hearing necessarily restores the pre-policy discretionary standards. Immigration Judges may not retroactively impose a post-policy presumption of danger simply because the entrant is EWI. They must weigh the traditional factors, length of residence in the United States, family ties, employment history, and rehabilitation, exactly as they did before the July 8, 2025 policy shift, for all individuals that entered prior to July 8, 2025. Anything less renders the hearing illusory and violates the non-retroactivity principle that the Supreme Court has enforced for a quarter century.

IV. EMERGENCY RELIEF IS WARRANTED

Petitioner faces irreparable harm every additional day in detention. He has overwhelming equities and no criminal history. Respondents can articulate no flight risk or danger. Immediate release or a genuine bond hearing under pre-policy standards is required.

V. PRAYER FOR RELIEF

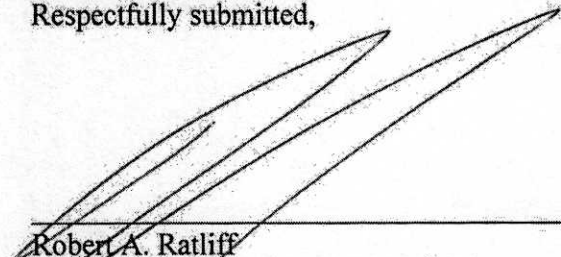
Petitioner respectfully requests that this Court:

- a. Issue an ex parte temporary restraining order under Fed. R. Civ. P. 65(b) directing Respondents to release Petitioner immediately or, alternatively, to produce him for a bond hearing under 8 U.S.C. § 1226(a) within ten (10) days, applying only pre-July 8, 2025 discretionary standards.

- b. Grant the writ of habeas corpus and declare the current detention unlawful.
- c. Issue a writ of mandamus compelling EOIR to conduct the required bond hearing under July 8, 2025 policy standards for all entrants entering the United States prior to July 8, 2025..
- d. Award costs and fees under the Court deems just.

Respectfully submitted this 10th day of December, 2025.

Respectfully submitted,



Robert A. Ratliff
Brennan, Manna and Diamond, LLC
200 Public Square, Suite 1850
Cleveland, OH 44114
(216) 658-2323

VERIFICATION

I, Robert A. Ratliff, Counsel for Petitioner, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: 12/10/, 2025

Signed: _____

Robert A. Ratliff

CERTIFICATE OF SERVICE

I hereby certify that on this, the 10th day of December 2025, I have caused to be served via email and first class, United States Mail a copy of this pleading with all exhibits to the United States Attorney's office for the Southern District of Ohio on behalf of the following Respondents,

EOIR Director
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

USCIS Director
5900 Capital Gateway Drive,
Camp Springs, MD 20588-0009

Secretary, DHS
Office of General Counsel, DHS
2707 MLK, Jr. Ave SE
Washington, DC 20528-0485

United States Attorney General
USDOJ
950 Pennsylvania Ave., NW
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United States Attorney, SD OH
303 Marconi Blvd.
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Signed: _____

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