

Sabrina Damast (CA SBN #305710 and NY SBN #5005251)
Jan Peter Weiss (FL Bar #297887)
Law Office of Sabrina Damast, Inc.
510 West 6th Street, Suite 330
Los Angeles, CA 90014
Telephone: (323) 475-8716
Emails: sabrina@sabrinadamast.com
jan@janpweissesq.com

Attorney for Petitioner

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MOISES GOMEZ MENDEZ

Petitioner,

v.

PAMELA BONDI,
in her official capacity as Attorney General,

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland Security,

U.S. DEPARTMENT OF HOMELAND SECURITY,

F. SEMAIA, in his official capacity as Warden of
Adelanto Detention Facility,

JAIME RIOS, in his official capacity as Acting
ICE Field Office Director,
Respondents.

Case No.: 5:25-cv-03401

PETITION FOR WRIT OF
HABEAS CORPUS

INTRODUCTION

1. Petitioner, Moises Gomez Mendez, is in the physical custody of Respondents at the Adelanto Detention Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.
2. Petitioner is charged with, *inter alia*, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).
3. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody consistent with new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e. those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States, 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, are charged as inadmissible for having 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. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

JURISDICTION

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Desert View Facility in in Bernardino County in Adelanto, California.
9. 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).
10. 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

1. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies win the United States District Court for the Central District of California, the judicial district in which Petitioner currently is detained.
2. 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 Central District of California.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

3. The Court must grant the petition for writ of habeas corpus “forthwith” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
4. 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 restrain or confinement.” *Fay v. Noia* 372 U.S. 391, 400 (1963)(emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yang v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000)(citation omitted).

PARTIES

5. Petitioner, Moises Gomez Mendez, a citizen and national of Guatemala who has been in immigration detention since June 4, 2025. After arresting Petitioner in Palm Beach County, Florida, and transferring him to Adelanto, California, ICE did not set a bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
6. Respondent, JAIME RIOS, is the Director of the Field Office of ICE's Enforcement and Removal Operations division. As such, JAIME RIOS is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.
7. Respondent F. SEMAIA is employed by Adelanto Detention Facility as Warden of the Adelanto Detention Facility where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.
8. Respondent, KRISTI NOEM, in their official capacity as Secretary of the U.S. Department of Homeland Security, is the head of DHS, which oversees ICE and is ultimately responsible for the unlawful detention of Petitioner.
9. Respondent, PAM BONDI, in their official capacity as Attorney General of the United States, is charged with the administration and enforcement of the immigration laws and is a proper respondent under 28 U.S.C. § 2243.

LEGAL FRAMEWORK

10. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.
11. 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).
12. 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).

13. 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).
14. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2)¹.
15. 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, 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).
16. 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 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
17. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). 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)).
18. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.
19. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

¹ Although an immigration judge ordered Petitioner removed on October 15, 2025, the removal order is not administratively final because Respondent timely filed an appeal with the Board of Immigration Appeals, who have not yet ruled on the merits of the appeal. 8 C.F.R. 1241.1(a). Therefore, the removal period in 8 U.S.C. 1231 has not begun and Petitioner is not subject to mandatory detention under that provision of the Act.

20. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.
21. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise *rejected Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.
22. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).
23. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-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).
24. 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.
25. 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].”
26. 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.
27. 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.
28. 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).

29. 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.
30. On November 25, 2025 in *Bautista v. Santacruz*, No. 5:25-cv01873-SSS-BFM, Order Granting Plaintiff Petitioners' Motion for Class Certification (C.D. Cal. Nov. 25, 2025). The Court held that the Bond Eligible Class consists of "all noncitizens in the United States without lawful status who: (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination." *See id.*
31. As a noncitizen who meets all of the class membership requirements, Petitioner is a *Bautista* class member and therefore entitled to a bond redetermination hearing.

STATEMENT OF FACTS

32. Petitioner has resided in the United States since September 15, 2001 and lives in West Palm Beach, Florida. *See Exhibit A, Copies of Petitioner's Notice to Appear and Birth Certificate with Translation.*
33. On June 4, 2025, Petitioner was arrested incident to a traffic stop during which he was charged for driving without a valid driver's license. Petitioner is now detained at the Adelanto Detention Center. *See Exhibit B, Copy of Respondent's ICE Detention Information.*
34. DHS placed Petitioner in removal proceedings before the Adelanto immigration court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.
35. Before his detention, Respondent was gainfully employed and had diligently filed and paid his taxes. In fact, Respondent and his wife, Catarina Miguel Jose, were self-employed

business owners who operated a landscaping business incorporated in the state of Florida since 2018. *See Exhibit C, Copies of Respondent's Proof of Business Incorporation, Annual Reports, and Business & Personal Tax Returns; see also, Exhibit D, Copy of Respondent's Marriage Certificate.*

36. Following Petitioner's arrest and transfer to the Adelanto detention facility, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.
37. Petitioner is not a danger to the community and is not a flight risk. In addition to the fact that Petitioner is a self-employed business owner established within his community, he is also well-regarded amongst his peers and in his community as a hard-working, wonderful, and responsible husband and friend. *See Exhibit E, Character and Reference Letters.*
38. Unfortunately, Petitioner's wife suffers from a multitude of health complications. Most [REDACTED] as a result of these circumstances, she requires constant medical care and attention for which the Petitioner contributes in a significant way, both financially as well as in providing comfort and emotional support. *See Exhibit F, Petitioner's Wife's Sworn Statement and Medical Records.*
39. Petitioner's United States Citizen Stepson, Victor Jose Mendez, Jr., has agreed to be his sponsor for immigration purposes. He is willing and able to provide financial and emotional support and will assist the Petitioner in his immigration process, including in ensuring that Respondent complies with all obligations as deemed appropriate by this Honorable Court. *See Exhibit G, Respondent's Sponsor's Sworn Affidavit, Passport, Driver's License, and 2024 Tax Return.*
40. On August 8, 2025, Petitioner requested a bond redetermination hearing before an IJ describing and expounding on the facts stated above.
41. On August 20, 2025, the Immigration Judge denied Petitioner's bond redetermination request. *See Exhibit H, Order Denying Bond.*
42. On October 16, 2025, the Immigration Judge pretermitted the Petitioner's Asylum Application, and that matter is now pending before the Board of Immigration Appeals and is therefore not a final order. *See Exhibit I, Filing Receipt for Appeal/Motion.*
43. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider Petitioner's bond request.

- 44. 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.
- 45. As of the filing of the instant petition, Petitioner has been detained for over six (6) months.
- 46. The facts stated in this petition are true and of undersigned counsel's own personal knowledge, except as to any matters stated on information and belief, and as to those matters, undersigned counsel believes them to be true. Undersigned counsel has reviewed the factual allegations contained in this petition and included a sworn declaration attesting to the same. *See Exhibit J, Declaration of Jan Peter Weiss.*

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Immigration and Nationality Act (INA)

- 47. Petitioner re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.
- 48. 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.
- 49. The application of § 1225(b)(2) to Petitioner unlawfully mandates [his/her/their] continued detention and violates the INA.

COUNT TWO

Violation of Due Process

- 50. Petitioner re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.
- 51. 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,

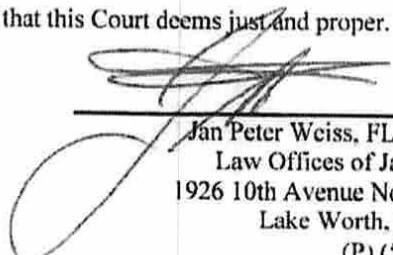
detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

53. Petitioner has a fundamental interest in liberty and being free from official restraint.
54. The government’s detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates [his/her/their] right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be transferred outside the Central District of California;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (4) Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- (5) Declare that the Petitioner’s detention is unlawful;
- (6) Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and,
- (7) Grant any other and further relief that this Court deems just and proper.



Jan Peter Weiss, FL Bar # 297887
Law Offices of Jan Peter Weiss
1926 10th Avenue North, Suite 400
Lake Worth, Florida 33461
(P) (561) 582-6401
(E) jan@janpweissesq.com

ATTORNEY FOR PETITIONER