UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Irbin Josue Navarrete Hernandez, Petitioner, v. Jeffrey Crawford, Warden, Farmville Detention Center Washington Field Office Director, Enforcement and Removal Operations, Immigration and Customs Enforcement Kristi Noem, Secretary, U.S. Department of Homeland Security Pamela Bondi, Attorney General of the United States Respondents.	)	Civil Action No. 1:26-cv-107

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Irbin Josue Navarrete Hernandez[1] ("Petitioner") is being unlawfully detained without a bond hearing by U.S. Immigration and Customs Enforcement ("ICE"). This is based on a recent policy change by the U.S. Department of Homeland Security ("DHS") and U.S. Department of Justice ("DOJ") that purported to reinterpret the detention statutes to deny bond to people apprehended within the United States who had not been admitted on a visa. The

[1] Petitioner's name in his Executive Office for Immigration Review casefile is spelled "Irving Navarrete-Hernandez."

government's new practice conflicts with Supreme Court precedent, over a century of consistent statutory tradition, and almost 40 years of consistent agency practice under the current statutes. The new policy has been found unlawful by dozens of district court decisions, including in this district. Petitioner asks the Court to order his release or order that he be provided a bond hearing and decision based on the merits of his case before an immigration judge.

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
2. Venue is proper under 28 U.S.C. § 1391(c)(1) because Petitioner is detained at an ICE facility in Farmville, Virginia.

THE PARTIES

3. Petitioner Irbin Josue Navarrete Hernandez is a citizen of El Salvador. He is currently detained at the Farmville Detention Center in Respondents' custody.
4. Respondent Jeffrey Crawford is the warden of the Farmville Detention Center and is the immediate custodian of Petitioner.
5. Respondent Washington Field Office Director is responsible for the implementation and enforcement of the Immigration and Nationality Act, and they oversee Petitioner's detention by ICE. They are a legal custodian of Petitioner.
6. Respondent Kristi Noem is the Secretary of Homeland Security, and she is responsible for the administration, implementation, and enforcement of immigration laws under 8 U.S.C. § 1103.

7. Respondent U.S. Attorney General oversees the immigration court system, which is denying Respondent a bond hearing.

8. All Respondents are sued in their official capacities.

FACTUAL ALLEGATIONS

9. Petitioner is a native and citizen of El Salvador. He entered the United States without inspection as a minor in 2020. He was not and has not been admitted or paroled by an immigration officer. Petitioner has remained in the United States since that time.

10. Prior to being detained, Petitioner had resided in Maryland for over five years.

11. In July 2025, officers from Immigration and Customs Enforcement ("ICE") arrested Petitioner and transported him to an ICE facility.

12. Petitioner was transferred to the Farmville Detention Center, where he is currently being held.

13. On August 4, 2025, Petitioner filed a motion for bond with the United States Immigration Court in Annandale, Virginia.

14. The Annandale Immigration Court conducted a bond hearing on August 12, 2025, and upon consideration of the motion, an immigration judge ordered that Petitioner be released from custody under a bond of $10,000.

15. The Department of Homeland Security appealed the immigration judge's decision to the Board of Immigration Appeals.

16. On September 5, 2025, the Board of Immigration Appeals ("BIA") published *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The decision proclaimed that any person who entered the United States without inspection is detained under 8 U.S.C. § 1225(b)(2) and ineligible for release on bond. This would mandate the detention of thousands or

millions of people who have been living peacefully in the United States, some of them for decades.

17. On September 29, 2025, an immigration judge denied Petitioner's asylum application and ordered that he be removed from the United States.[2] However, the removal order is not final because he appealed it to the Board of Immigration Appeals, which is currently pending. 8 C.F.R. § 1241.1(a), (c).

18. In Petitioner's bond case, the Board of Immigration Appeals issued a decision on November 20, 2025, vacating the immigration judge's decision to grant bond. The Board's decision was not based on the merits of whether Petitioner posed a flight risk or a danger to the community. Rather, the Board held that under *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220-28 (BIA 2025), the immigration judge lacked the authority to grant bond based on 8 U.S.C. § 1225(b)(2)(A) because Petitioner is present in the United States without admission.

FIRST CAUSE OF ACTION:
VIOLATION OF 8 U.S.C. § 1226(A) AND ASSOCIATED REGULATIONS

19. Petitioner incorporates the foregoing paragraphs by reference.

20. While *Matter of Yajure Hurtado* holds that Petitioner is detained under 8 U.S.C. § 1225(b), and thus subject to mandatory detention, Petitioner is actually detained under 8 U.S.C. § 1226(a). The expedited removal statute at 8 U.S.C. § 1225(b)(2) does not apply to Petitioner. Rather, his detention is governed by 8 U.S.C. § 1226(a), meaning that he is entitled to a bond hearing. Thus, he has been unlawfully denied a bond hearing.

21. The Supreme Court recognized in *Jennings v. Rodriguez* that § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders

[2] Neither Petitioner's asylum application nor his removal order are at issue in this case.

and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." 583 U.S. 281, 297, 187 (2018). By contrast, § 1226 detention relates to people "inside the United States" and "present in the country." *Id.* at 288.

22. There are clear statutory signals that § 1225(b) is only concerned with "inspection" of travelers arriving in the United States.[3] The term "inspection" is not defined in the Immigration and Nationality Act. However, numerous statutes, regulations, and agency precedents discuss "inspection" in the context of admission processes at ports of entry.[4] This supports the conclusion that § 1225 is limited temporally and geographically to the inspection process of travelers arriving at the border.

23. Section 1225 and its implementing regulations use present and present progressive verbs, referring to people who are actively arriving and seeking admission. Section 1225(b)(1) is limited to presently "arriving" noncitizens and those apprehended within two years of entry, and § 1225(b)(2) is limited to those in the process of "seeking admission." Likewise, the regulation at 8 C.F.R. § 1.2 addresses noncitizens who are presently "coming or attempting to come into the United States at a port-of-entry." These word choices show that § 1225 does not apply to people like Petitioner who were apprehended in the interior years after entry because they are no longer in the process of arriving or seeking admission to the United States.

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[3] 8 U.S.C. § 1225 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"); 8 U.S.C. §§ 1225(b)(1)-(2) (referring to "inspection" in their titles); 8 U.S.C. § 1225(D)(1) (authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being brought into the United States").
[4] See, e.g., 8 U.S.C. §§ 1187(h)(2)(B)(i), 1225(a); 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I. & N. Dec. 285 (BIA 2010)

24. By contrast, 8 U.S.C. § 1226 clearly includes individuals who have not been admitted. While § 1226(a) generally permits bond to be granted, § 1226(c) disqualifies noncitizens with certain criminal convictions. Some of these exceptions are specifically targeted at noncitizens who have not been admitted. Section 1226(c) provides that a person is ineligible for bond if they are inadmissible due to criminal convictions or terrorism.[5] The grounds of inadmissibility only apply to people who have not been admitted. There would be no need to exempt certain unadmitted people from bond if all unadmitted people were already ineligible for bond under section 1225. When "Congress has created specific exceptions" to a rule, it proves the general applicability of the rule. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

25. Congress recently passed the Laken Riley Act, which added another exception to bond eligibility that applies only to unadmitted people.[6] Under the government's reading, the contentious public debate and passage of the Laken Riley Act was pointless and redundant because all unadmitted people were already ineligible for bond. But "[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) (citations omitted).

26. Longstanding statutory and regulatory authority confirms that § 1225 does not apply to people apprehended within the interior of the United States more than two years after entry. The last major revision to the detention framework was in 1996 when Congress passed the

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[5] 8 U.S.C. § 1226(c)(1) (exempting from bond any alien who "is inadmissible by reason of having committed any offense covered in 8 U.S.C. § 1182(a)(2)" or who "is inadmissible under 8 U.S.C. § 1182(a)(3)(B).").

[6] 8 U.S.C. § 1226(c)(1)(E), as amended by Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025) (disqualifying from bond any noncitizen who "is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title" and has an inchoate offense of theft, assault on a law enforcement officer, or causing death or serious bodily injury.).

Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996. IIRIRA maintained nearly a century of statutory tradition of allowing people inside the United States to seek release on bond.[7] Immediately after the passage of IIRIRA, the former Immigration and Naturalization Service issued a regulation confirming the tradition of providing bond hearings to people apprehended inside the United States who had not been admitted to the country.[8] That interpretation has held steady for decades, across administrations, until recently. *Rodriguez v. Bostock* , 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025).

27. The United States Solicitor General recently affirmed the traditional position to the Supreme Court. *Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at *4 n.9 (D. Mass. July 24, 2025) (citing the United States Solicitor General's representation to the Supreme Court at oral argument that "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.").

28. In July 2025, DHS and DOJ colluded to upend this century-long tradition, even though DOJ is supposed to operate the immigration courts independently of the ICE prosecutors

[7] See 34 Stat. 904-905, § 20 (1907) (providing for release on bond for noncitizens alleged to have entered the United States unlawfully); 39 Stat. 874, 890-91, §§ 19, 20 (1917) (similar); 66 Stat. 163, §§ 241(a)(2), 242(a) (1952) (last codified at 8 U.S.C. § 1252(a)(1) (1994)) (providing for release on bond, including for noncitizens alleged to have entered the United States without inspection).

[8] Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.").

housed at DHS.[9] The immigration courts have been subjected to political interference on this issue and have not been left to operate in a normal, orderly fashion. Unsurprisingly, a few months later the Board of Immigration Appeals issued a decision purporting to adopt this new practice as precedent. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 216 (BIA 2025) (holding that "Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.").

29. Dozens of district courts, including this Court, have ruled against *Matter of Yajure Hurtado* and held that petitioners apprehended in the interior of the United States years after entry are eligible for bond under § 1226. *See, e.g.*, *Elias Fuentes v. Crawford*, 1:25-cv-2471 (E.D. Va. Jan. 6, 2025) (Nachmanoff, J.); *Servellon Martinez v. Lyons*, 1:25-cv-1792 (E.D. Va. Nov. 7, 2025) (Nachmanoff, J.); *Hasan v. Crawford*, 1:25-cv-1408 (E.D. Va. Sept. 19, 2025) (Brinkema, J.). An appendix is attached detailing 46 such decisions from other district courts throughout the country.

30. The application of § 1225(b)(2) to Petitioner violates the Immigration and Nationality Act.

SECOND CAUSE OF ACTION:
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT UNLAWFUL DENIAL OF BOND

31. Petitioner incorporates the foregoing paragraphs by reference.

32. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they originally entered the United States without inspection. Such noncitizens are detained

[9] Interim Guidance Regarding Detention Authority for Applicants for Admission, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applicationsfor-admission, July 8, 2025 (DHS announcing change of practice "in coordination" with DOJ).

under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

33. Nonetheless, the immigration judges in the Annandale Immigration Court have a pattern and practice of applying § 1225(b)(2) and *Matter of Yajure Hurtado* to individuals like Petitioner.

34. The application of § 1225(b)(2) is arbitrary, capricious, and not in accordance with the law, and it therefore violates the Administrative Procedure Act. *See* 5 U.S.C. § 706(2).

THIRD CAUSE OF ACTION:
UNCONSTITUTIONAL DETENTION IN VIOLATION OF THE FIFTH AMENDMENT

35. Petitioner incorporates the foregoing paragraphs by reference.

36. "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).

37. Civil immigration detention is only permissible where it bears a "reasonable relation to the purpose for which the individual was committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Zadvydas*, 533 U.S. at 690. Those purposes are limited: preventing flight and protecting the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

38. No court, immigration or otherwise, has ever determined that Petitioner poses either a flight risk or a danger to the community. To the contrary, an immigration judge found that he did *not* pose any such risk. Absent a finding that Petitioner poses such a risk, Petitioner's detention no longer bears a reasonable relation to the purpose for which he was committed. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Zadvydas*, 533 U.S. at 690.

39. Respondents' actions detaining Petitioner reflect that the detention is for a punitive purpose, rather than for civil processing.

40. Accordingly, Petitioner's continued detention, in the absence of finding that he is either a flight risk or a danger to the community, constitutes a deprivation of liberty without due process of law. The Court should order Petitioner's release.

PRAYER FOR RELIEF

Therefore, Petitioner respectfully asks this Court to grant the following relief:

1) Assume jurisdiction over this matter;
2) Issue an order to show cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;
3) Declare that Petitioner's continued detention without an individualized bond hearing to determine whether he poses a flight risk or a danger to the community violates the Due Process Clause of the Fifth Amendment;
4) Issue a Writ of Habeas Corpus ordering the Respondents to release Petitioner from custody; hold a hearing if warranted; determine that Petitioner's detention is not justified because the government has not established by clear and convincing evidence that he presents a risk of flight or a danger to the community in light of the available alternatives;
5) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;
6) Declare that Petitioner's continued detention is unconstitutional and unlawful, as it is not reasonably related to any valid purpose of immigration detention and violates the Fifth Amendment guarantee of due process;
7) Declare that Respondents' conduct violates the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706, as arbitrary, capricious, and not in accordance with law;

8) In the alternative, should the Court determine that immediate release is not warranted, order Respondents to provide Petitioner an individualized bond hearing before an impartial immigration judge within 14 days, at which the government bears the burden to justify continued detention by clear and convincing evidence;

9) Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and

10) Grant such other relief that the Court deems just and proper.

Dated: January 14, 2026

Respectfully submitted,

//s// John W. Goodman
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Appendix: District Court Decisions Classifying Unadmitted Noncitizens as Detained Under 8 U.S.C. § 1226(a)

1. *Gomes v. Hyde*, 1:25-cv-11571, 2025 WL 1869299 (D. Mass. July 7, 2025)
2. *Martinez v. Hyde*, 1:25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025)
3. *Dos santos v. Noem*, 1:25-cv-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025)
4. *Romero v. Hyde*, 1:25-cv-11631, 2025 WL 2403827 (D. Mass. Aug. 19, 2025)
5. *Doe v. Moniz*, 1:25-cv-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025)
6. *Sampiao v. Hyde*, 1:25-cv-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)
7. *Hilario rodriguez v. Moniz*, no. 25-12358 (D. Mass. Sept. 18, 2025)
8. *Chogllo Chafla v. Scott*, 2:24-cv-437 to -439, 2025 WL 2688541 (D. Me. Sept. 2, 2025)
9. *Jimenez v. FCI berlin, warden*, 1:25-cv-326, 2025 WL 2639390 (D.N.H. Sept.8, 2025)
10. *Lopez Benitez v. Francis*, 1:25-cv-5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025)
11. *Samb v. Joyce*, 1:25-cv-6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025)
12. *Leal-Hernandez v. Noem*, 1:25-cv-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025)
13. *Hasan v. Crawford*, 1:25-cv-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025)
14. *Kostak v. Trump*, 3:25-cv-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025)
15. *Lopez Santos v. Noem*, 3:25-cv-1193 (W.D. La. Sept. 11, 2025)
16. *Lopez-camps v. Raycroft*, 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 28, 2025)
17. *Pizarro Reyes v. Raycraft*, 2:25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025)
18. *Beltran barrera v. Tindall*, 3:25-cv-541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025)
19. *Singh v. Lewis*, 4:25-cv-96 (W.D. Ky. Sept. 22, 2025)
20. *Campos Leon v. Forestal*, 1:25-cv-1174, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025)
21. *Maldonado v. Olson*, 0:25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025)
22. *O.E. v. Bondi*, 0:25-cv-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025)
23. *Garcia Jimenez v. Kramer*, 4:25-cv-3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025)
24. *Anicasio v. Kramer*, 4:25-cv-3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025)
25. Jacinto v. Trump, 4:25-cv-3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025)
26. *Carmona-lopez v. Trump*, 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025)
27. *cortes fernandez v. Lyons*, 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025)

28. *Palma Perez v. Berg*, 8:25-cv-494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025)
29. *lorenzo Perez v. Kramer*, 4:25-cv-3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025)
30. *Ozuna Carlon v. Kramer*, 4:25-cv-3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025)
31. *Genchi Palma v. Trump*, 4:25-cv-3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025)
32. *Duenas Arce v. Trump*, 8:25-cv-520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025)
33. *Hernandez Marcelo v. Trump*, 3:25-cv-94 (S.D. Iowa Sept. 10, 2025)
34. *Arrazola-Gonzalez v. Noem*, 5:25-cv-1789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025)
35. *Zaragoza Mosqueda v. Noem*, 5:25-cv-2304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025)
36. *rosado v. Figueroa*, 2:25-cv-2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (report and recommendation later adopted by district judge)
37. *Maldonado Vasquez v. Feeley*, 2:25-cv-1542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025)
38. *Jimenez v. Bostock*, 3:25-cv-570, 2025 WL 2430381 (D. Or. Aug. 22, 2025)
39. *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025)
40. *Hernandez Nieves v. Kaiser*, 3:25-cv-6921, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025)
41. *Caicedo Hinestroza v. Kaiser*, 3:25-cv-7559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025)
42. *Salcedo Aceros v. Kaiser*, 3:25-cv-6924, 2025 WL 2637503 (N.D. Cal. Sept.12, 2025)
43. *Vasquez Garcia v. Noem*, 3:25-cv-2180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025)
44. *Rodriguez Vasquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025)
45. *Garcia Cortes v. Noem*, 1:25-cv-2677 (D. Colo. Sept. 16, 2025)
46. *Zalazar v. Dedos*, 1:25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025)