

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

CHRISTIAN DAVID ORTIZ
MONTAGUANO,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department
of Homeland Security,

Todd M. Lyons, Acting Director of
Immigration and Customs Enforcement,

U.S. Immigration and Customs
Enforcement,

Mary De Anda-Ybarra, Director, El Paso
Field Office Immigration and Customs
Enforcement, and

Warden, Director of the El Paso Camp
East Montana

Respondents.

Case No. 3:26-cv-00112

**VERIFIED PETITION
FOR WRIT OF
HABEAS CORPUS PURSUANT
TO U.S.C. § 2241 OR ORDER
TO SHOW CAUSE WITHIN
THREE DAYS**

**REQUEST FOR EMERGENCY
TEMPORARY RESTRAINING
ORDER**

INTRODUCTION

1. Petitioner, Christian David Ortiz Montaugano, ("Petitioner"), by and through counsel, hereby files this petition for a writ of habeas corpus and a complaint for declaratory and injunctive relief to require U.S. Immigration and Customs Enforcement ("ICE") to release Petitioner from ICE detention or in the alternative to enjoin Petitioner's transfer to a facility outside of Minnesota and provide Petitioner with a bond hearing.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (federal employee mandamus action); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2241 (habeas corpus); Art. I, § 9, c. 2 of the U.S. Constitution (“Suspension Clause”); 5 U.S.C. § 702 (waiver of sovereign immunity); and 28 U.S.C. § 2201 (Declaratory Judgment Act).

3. Federal question jurisdiction exists because Petitioner seeks to challenge Petitioner’s custody as a violation of the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

4. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by the Department of Homeland Security (“DHS”). *Denmore v. Kim*, 538 U.S. 510 516-17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-41 (2018); and *Nielsen v. Preap*, 139 S. Ct. 954, 961-63 (2019).

5. Venue lies in the U.S. District Court for the Western District of Texas because Petitioner is detained in that district. *See* 28 U.S.C. § 2241(a); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004).

PARTIES

6. Petitioner is a citizen of Ecuador and a resident of Minneapolis, Hennepin County, Minnesota being detained by ICE in Minnesota. Petitioner is under the direct control of the Respondents and has no scheduled release date. Petitioner is detained under

the jurisdiction of the U.S. Immigration and Customs Enforcement at the ERO El Paso Camp East Montana Facility in El Paso, Texas.

7. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Petitioner.

8. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the District of Minnesota, supervises the Fort Snelling ICE Field Office, and is legally responsible for pursuing Petitioner's detention and removal. As such, Respondent Noem is a legal custodian of Petitioner.

9. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention.

10. Respondent U.S. Immigration and Customs Enforcement ("ICE") is a component agency of DHS.

11. Respondent Mary De Anda-Ybarra is being sued in her official capacity as the Field Office Director for the El Paso Field Office for Immigration and Customs Enforcement. Respondent Anda-Ybarra is a legal custodian of Petitioner.

12. Respondent Warden is sued in his/her official capacity as the officer or agent in charge of the El Paso Camp East Montana Detention Service Center. Respondent Warden or another acting in the capacity of the person in charge of the El Paso Camp East Montana Detention Service Center, is a legal custodian of Petitioner.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

13. Petitioner is a resident of Minneapolis, Minnesota, and a citizen of Ecuador. Petitioner has lived in the United States since July of 2023. Petitioner is an indigenous

 who was 

 Following this attack, Petitioner, his wife, and three children fled Ecuador in hope of a safer life.

14. Subsequent to his entry into the United States in July 2023, Petitioner was apprehended and released with a future status hearing before the New York Immigration Court. Petitioner is afraid of returning to Ecuador and hopes to present an application for humanitarian relief from deportation at his April 2027 status hearing.

15. Petitioner lives with his wife and three minor children in Minneapolis Minnesota and is the main provider for his family. Petitioner works in Minnesota, pays taxes to the United States and Minnesotan governments, and has a spotless criminal record.

16. Petitioner was arrested at gunpoint by a group of individuals in front of his home as he prepared to leave for work. Petitioner attempted to console his wife and four-year-old daughter, who heard from inside their home, as Petitioner was handcuffed and pushed against his car. Petitioner was searched and detained with excessive force at gunpoint despite his voluntarily surrender. The men who detained and searched Petitioner

at gunpoint are believed to be agents of Respondent ICE. Petitioner hopes to speak with his children, particularly his daughter who was heard crying during Petitioner's detention, to reassure to them that he is safe.

17. Petitioner was subsequently taken into custody into the Fort Snelling immigration building in St. Paul, Minnesota. At some point following being taken into custody at the Fort Snelling immigration building, Petitioner was flown and transferred to the ERO El Paso Camp East Montana in El Paso, Texas.

18. This arrest is part of an operation in Hennepin County and Ramsey County called "Operation Metro Surge." This operation has involved hundreds of masked, unidentified individuals in unmarked vehicles (many with illegally covered or mismatched license plates) holding themselves out as ICE agents but largely refusing to identify themselves by name or to present warrants, physically assaulting pedestrians, pepper spraying and arresting citizen observers, hitting passersby with vehicles, and generally attempting to take as many immigrants as possible into custody, regardless of the constitutionality of their actions. *See, e.g., Compl., Tincher et. al. v. Noem*, No. 0:25-cv-04669. (D. Minn. 12/17/2025).

19. At the time of this filing, to the best of the undersigned's knowledge, Petitioner is in federal detention in in El Paso, Texas at the ERO El Paso Camp East Montana facility.

20. The undersigned used ICE's online detainee locator system to attempt to track whether Petitioner had been transferred. At the time of this filing, ICE's online system

indicates only that Petitioner is in ICE custody, without any location information. *See* locator.ice.gov/odls/#/results.

21. Petitioner poses no risk to society and has strong connections to the community.

22. Petitioner respectfully seeks the opportunity to return home and to continue following the legal processes set up by Congress and DHS for immigrants to seek status in this country.

23. Pending the adjudication of his Petition, Petitioner further seeks an order restraining the Respondents from transferring Petitioner to a location outside of the State of Minnesota, so that Petitioner may remain within the jurisdiction of this Court and accessible to Petitioner's legal counsel and family support networks.

STANDARD OF LAW

24. Petitioner's detention is not governed by 8 U.S.C. § 1225(b)(2)(A). The Court in *Maldonado Bautista* has already ruled that the detention of noncitizens such as Petitioner, who are within the Bond Eligible Class, is not governed by 8 U.S.C. § 1225(b)(2)(A) but instead is governed by 8 U.S.C. § 1226(a). *Maldonado Bautista*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

25. In the alternative, this court can independently hold, as many others already have across the country and in this District, that the detention of the Petitioner in this case is governed by 8 U.S.C. § 1226(a) rather than § 1225(b)(2)(A). *See, e.g., Fabian-Granados v. Bondi*, 2026 WL 90061, at *8 (W.D.Tex., 2026) (granting release); *Membreno v.*

Thompson, 2026 WL 93980, at *5 (W.D.Tex., 2026) (same); *Fadeev v. Lyons*, 2026 WL 93147, at *5 (W.D.Tex., 2026) (same); *Campuzano v. Noem*, 2026 WL 90062, at *9 (W.D.Tex., 2026) (same); *Diaz v. Lyons*, 2026 WL 94645, at *6 (W.D.Tex., 2026) (same).

26. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings. Of these, the two forms of detention relevant to this case are described at 8 U.S.C. §§ 1226(a) and 1225(b)(2).

27. 8 U.S.C. § 1226 “authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of [Section 240] removal proceedings.” *Jennings*, 583 U.S. at 289. Individuals detained under Section 1226(a) are generally entitled to a bond hearing at the outset of their detention. See 8 C.F.R. §§ 1003.19(a), 1236.1(d).

28. On the other hand, 8 U.S.C. 1225(b)(2) provides that a person alleged to be an “applicant for admission” who is “seeking admission” and whom an “examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted” is subject to mandatory detention – that is, detention without the right to a bond hearing. See 8 U.S.C. § 1225(b)(2)(A).

29. 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 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

30. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole

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).

31. Thus, in the decades that followed, most people who entered without admission or parole were arrested under 8 U.S.C. § 1226(a), placed in standard removal proceedings, and received bond hearings, unless their criminal history rendered them ineligible. 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 Immigration Judge 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)).

32. On July 8, 2025, ICE, “in coordination with” the Department of Justice, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.

33. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” claims that all persons who entered the United States without admission or parole shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory detention 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.

34. On September 5, 2025, the Board of Immigration Appeals (BIA) adopted this same position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission who are “seeking admission” and are ineligible for IJ bond hearings.

35. Even before the decision in *Maldonado Bautista*, court after court had rejected ICE’s new policy and EOIR’s new interpretation. See, e.g., *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Vazquez v. Bostock*, 3:25-cv-05240-TMC, 2025 U.S. Dist. LEXIS 193611, (W.D. Wash. Sept. 30, 2025); *Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, 2025 U.S. Dist. LEXIS 175767 (E.D. Mich. Sept. 9, 2025) (citing District Court cases around the country rejecting this interpretation).

36. Courts have resoundingly rejected DHS’s and EOIR’s new interpretation because it defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

37. Subsection 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].”

38. Just this year, Congress amended 8 USC §1226(c)(1) to add subparagraph (E) in the Laken Riley Act. The amendment provided that certain noncitizens who entered without inspection and who are charged with or convicted of certain crimes are ineligible for bond under § 1226(a)’s default bond provision. Subparagraph (E)’s reference to such people makes clear that, by default, noncitizens who entered without inspection but did not

have the criminal history described by the Laken Riley Act are entitled to 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)). Further, “when 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). 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.

39. 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, 583 U.S. at 287.

40. The mandatory detention provision in 8 U.S.C. § 1225(b)(2)(A) reads: “[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.”

41. Section 1225(b), according to its text, applies to “applicants for admission” who are “seeking admission.” This text, including the use of the present tense in “seeking

admission”, indicates that section 1225(b) is applicable only to noncitizens who are actively seeking admission into the United States. See *Gonzalez Ramos v. Dedos*, No. 1:25-cv-00975-MLG-KRS, 2025 WL 3653928, at *3 (D.N.M. Dec. 17, 2025) (“Noncitizens, like [Petitioner], ‘who reside in the country for decades are not ‘seeking admission.’ They are ‘no longer keeping to enter the United States (lawfully or otherwise)’ – they are already here.”) (citations omitted); see also *Melchor-Rios v. Ortiz*, Case No. 2:25-cv-01055-WJ-GJF, 2025 WL 3764775, at *2 (D.N.M. Dec. 30, 2025) (“Whether the detention of individuals like Petitioner, who previously entered and currently reside in the United States, is governed by the discretionary detention provisions of § 1226(a) or the mandatory detention provisions of § 1225(b), is a question that has been answered in near-unison by district courts nationwide: § 1226(a) governs.”) (collecting cases).

42. Accordingly, the mandatory detention provision of § 1225(b)(2) cannot apply to people like Petitioner. At the time of her most recent detention on January 8, 2026, she had already entered the United States and had been residing in the country for over five years as she awaited the outcome of her asylum case. She was not actively seeking admission.

43. Under these circumstances, it would be absurd to consider Petitioner to be “seeking admission” at the time of his most recent apprehension. See *Contreras Maldonado v. Cabezas*, No. 25– 13004, 2025 WL 2985256 (D.N.J. Oct. 23, 2025) (finding the “invocation of 1225(b) as applied to Petitioner,” a former UC who had resided in the United States for years, to be “inconsistent with the statutory framework distinguishing between entry-based and interior detention authority”).

44. In any event, this Court owes no deference to *Matter of Yajure Hurtado* under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). See also *Melchor-Rios v. Ortiz*, 2025 WL 3764775, at *2 (rejecting and noting many other cases rejecting the BIA's statutory interpretation in *Matter of Yajure Hurtado*). Thus, even if this court finds that Petitioner is not a Bond Denial Class Member of Maldonado Baustista, it may still independently hold, as many others already have across the country, that the detention of the Petitioner in this case is governed by 8 U.S.C. § 1226(a) rather than § 1225(b)(2)(A).

45. Accordingly, no matter whether this Court finds that Petitioner is a Bond Eligible Class Member of Maldonado Bautista, his ongoing detention without access to bond is contrary to the clear meaning of the detention provisions of the INA.

46. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The "Great Writ" has been referred to by United States Courts as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). A petitioner may seek a writ of habeas corpus when their custody violates the U.S. Constitution or a federal law. 28 U.S.C. § 2241(c)(3).

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

48. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [immigrants], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

49. Only under certain circumstances are immigrants subject to ongoing detention without a bond hearing. See, e.g., 8 U.S.C. § 1226(c) (individuals with certain criminal convictions may be detained without a bond hearing for the pendency of removal proceedings) and 8 U.S.C. § 1225(b)(2) (authorizing mandatory detention of immigrants seeking admission from outside the United States, who are “not clearly and beyond a doubt entitled to be admitted.”).

50. In order to bring a detained individual under the purview of 8 U.S.C. § 1226(c), an individual’s criminal conviction must be one enumerated in the INA under 8 U.S.C. §§ 1182(a)(2), 1182(a)(3)(B), 8 U.S.C. §§ 1227(a)(2)(A)(i-iii), and 8 U.S.C. §§ 1227(a)(2)(B-D).

51. These specified offenses include crimes of moral turpitude, violations of laws regulating controlled substances, terroristic activities, firearm offenses, espionage, treason, and other serious crimes. *Id.* Crimes of moral turpitude do not apply in situations where the maximum sentence for the crime was less than one year, and the person was sentenced to less than six months of imprisonment. 8 U.S.C. § 1182(a)(2)(A)(ii)(III).

52. Petitioner has never been convicted of any crime, including any that would bring Petitioner under the purview of 8 U.S.C. § 1226(c).

53. Otherwise, the “default rule” is that 8 U.S.C. § 1226(a) and its implementing regulations apply to immigrants “already present in the United States” and subject to pending removal proceedings. *Jennings*, 583 U.S. at 303.

54. Here, Petitioner fits the ‘default rule’: Petitioner has been in the United States for more than three years and does not have criminal convictions that fall under the purview of 8 U.S.C. § 1226(c). Thus, Petitioner is entitled to release.

55. Immigration detention is civil in nature, and as a result Congress must have expressly authorized it by statute, and the detention must be reasonably related to its statutory purpose. *Zadvydas v. Davis*, 533 U.S. 678, 687, 690 (2001) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

56. A noncitizen seeking only to challenge the legality of their detention, not the substance of their removal proceedings in immigration court, may properly ask a federal court to find jurisdiction over such a request pursuant to 28 U.S.C. § 2241.

57. When a habeas petitioner’s detention is without legal basis, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the “typical remedy” for “unlawful executive detention”).

58. Here, where detention is unlawfully based on 8 U.S.C. § 1225, which does not apply to Petitioner, release is an appropriate remedy.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Declare that Petitioner is a Bond Class Member under *Maldonado Bautista*;

- c. Declare that Petitioner's arrest and detention violates the Due Process Clause of the Fifth Amendment, the INA, and implementing regulations;
- d. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner, under the same conditions as existed prior to his detention;
- e. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner immediately unless they provide a bond hearing under 8 U.S.C. § 1226(a) within five days, at which hearing Respondents will bear the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk;
- f. Issue an Order prohibiting Respondents from seeking a stay of any order granting bond by the Immigration Judge, including by filing a form EOIR-43 (Notice of Service Intent to Appeal Custody Redetermination) or a motion for emergency stay;
- g. Issue an Emergency Temporary Restraining Order prohibiting Respondents from removing Petitioner from the United States or transporting Petitioner out of this jurisdiction during the pendency of this petition;
- h. Issue an Order to Show Cause ordering Respondents to explain why this Petition should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 USC § 2243;
- i. Issue an Order prohibiting Respondents from re-detaining Petitioner without a pre-deprivation hearing before this Court where the government bears the burden of justifying re-detention by clear and convincing evidence;

j. Grant any other and further relief that this Court deems just and proper.

Dated: January 21, 2026

Respectfully submitted,

/s/ E. Michelle Drake

E. Michelle Drake (Bar. No. 0387366)

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because his current detention makes him unable to submit one on his own behalf. Upon information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 21, 2026

By: /s/ E. Michelle Drake
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CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant, the undersigned certifies and states that the true and correct copies of this Verified Petition for Writ of Habeas Corpus Pursuant to U.S.C. § 2241 or Order to Show Cause Within Three Days and Request for Emergency Temporary Restraining Order will be served upon all counsels of record via the online CM/ECF system, on or before January 21, 2026.

Dated: January 21, 2026

/s/ E. Michelle Drake
E. Michelle Drake