

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARVIN EDUARDO PEREZ Y PEREZ,

Petitioner,

v.

TODD M. LYONS, in his official capacity as
Acting Director for United States Immigration
and Customs, Enforcement; Kristi NOEM, in
her official capacity as Secretary, U.S.
Department of Homeland Security; Pamela
BONDI, in her official U.S. Attorney General;
WARDEN OF the ERO EL PASO CAMP
EAST MONTANA, in his official capacity,

Respondents.

Case No.: 3:26-cv-153

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Marvin Eduardo Perez y Perez is in the physical custody of Respondents at the ERO El Paso Camp East Montana ICE Detention Facility. He now faces unlawful detention because the Department of Homeland Security (DHS), in direct collaboration with the Executive Office of Immigration Review (EOIR), the adjudicative body with jurisdiction over immigrants, have concluded that Petitioner is subject to mandatory detention.

2. Petitioner is charged with 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 a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). – i.e., those who entered 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) 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) and does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to 8 U.S.C. § 1226(a), which allows immigration judges to give a bond to those detained under that statute. that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, 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 within three days where the government bears the burden of proof.

JURISDICTION

8. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 22 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

9. 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

10. Petitioner is currently detained at Camp East Montana in El Paso, Texas. Venue lies in the United States District Court for the Western District of Texas, which is the judicial district in which Petitioner currently is detained.

11. 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 Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court should 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*; *Yassine v. Charlotte Collins, Warden at the T. Don Hutto Residential Ctr.*, No. 1:25-CV-00786-ADA-SH, 2025 U.S. Dist. LEXIS 136550, at *2-3 (W.D. Tex. July 7, 2025).

13. 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 restraint or

confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added) (overruled on other grounds).

PARTIES

14. Petitioner Marvin Eduardo Perez y Perez is a citizen of Guatemala who has been in immigration detention since September 26, 2025. Petitioner worked as a long-haul truck driver and was arrested at a weigh station in Indiana. After arresting Petitioner and transferring him to the ERO El Paso Camp East Montana, ICE did not set bond. Petitioner filed a motion to redetermine bond on November 14, 2025; the motion was denied by an IJ pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Petitioner filed a second motion to redetermine bond pursuant to *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) on November 26, 2025; this motion has not been ruled on. Petitioner has resided in the United States since 2003. He has no criminal record.

15. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

16. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

17. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is

responsible for apprehension, incarceration, and removal of noncitizens from the United States and as such Acting Director Lyons is a legal custodian of Petitioner. He is sued in his official capacity.

18. Respondent Warden of the is the officer-in-charge of ERO El Paso Camp East Montana. He has immediate physical custody of Petitioner. He is sued in his official capacity.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. Petitioner is not required to exhaust his administrative remedies to bring this petition as there is no statutory requirement to do so. *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 U.S. Dist. LEXIS 206751, at *13-15 (W.D. Tex. Oct. 21, 2025).

20. To the extent that Petitioner is required to exhaust his administrative remedies, Petitioner applied for bond in front of an immigration judge, but this request was denied citing *Matter of Yajure Hurtado*. Any effort to appeal this would be futile.

FACTS

21. Petitioner entered the United States without inspection in 2003 and currently resides in Chicago, Illinois. He previously resided in Los Angeles, California.

22. Petitioner is married and has three U.S. citizen children aged four, nine, and 14 for whom he is the primary provider. He works as a long-haul truck driver for Asher Movers Local & Long Distance, where he has received stellar reviews from customers who mention him personally in their online comments. Petitioner pays his taxes every year and has no criminal record.

23. Petitioner was arrested while working at his job as a truck driver. On or about September 26, 2025, Petitioner and four other men were apprehended at a weigh station in Indiana. Petitioner has been detained at the ERO El Paso Camp East Montana since his arrest.

24. On October 27, 2025, DHS placed Petitioner in removal proceedings before the El Paso, Texas Immigration Court pursuant to 8 U.S.C. § 1229(a). 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. A true and accurate copy of the Notice to Appear commencing proceedings is attached as **Exhibit A**

25. Petitioner's detention has inflicted profound harm on his family, particularly his wife and his three U.S. citizen children who are experiencing emotional and developmental hardship in his absence. Petitioner's wife is struggling to manage her anxiety over her husband's prolonged detention and the family's precarious financial situation while providing a stable presence for her children, the younger of whom do not understand why their father is detained and fear that he will never come home. Petitioner is close with his extended family, including four siblings and several U.S. citizen nieces and nephews, who are also suffering due to his detention.

26. Petitioner is also a beloved member of his Chicago, IL community. He is active in his children's school, which awarded him the "Man of the Month" certificate for his volunteer work. He serves as the Men's Ministry Leader at his church, the North Central Hispanic Region Church of God. His deportation would cause lasting trauma and grief, not only within his household but across the broader Chicago, IL community that values his contributions. His case exemplifies the urgent need to consider family unity in detention decisions.

27. Following Petitioner's arrest and transfer to the ERO El Paso Camp East Montana on September 26, 2025, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

28. Petitioner applied for bond before an immigration judge. On November 14, 2025, an immigration judge denied his application citing lack of jurisdiction due to *Matter of Yajure Hurtado*. A true and accurate copy of the order denying bond is attached as **Exhibit B**.

29. Petitioner's unlawful detention cannot be litigated before that BIA, who, as the Lyons memorandum implies, was involved with the DHS's July 8, 2025 decision to make its reading an agency policy to adopt the DHS's position wholesale, because such efforts would be futile.

30. 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.

LEGAL FRAMEWORK

I. STATUTES OF DETENTION

31. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

32. 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 detained under 8 U.S.C. § 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).

33. 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).

34. 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).

35. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

36. 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).

37. Following the enactment of the IIRIRA, the EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under 8 U.S.C. § 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).

38. 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)).

39. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to discretionary

detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b). During oral argument on November 30, 2016, then-Solicitor General Ian Gershengorn stated: “If they are not detained within 100 miles of the border or within 14 days... then they are under 1226(a) and not 1226(c)” and further clarified, in response to a question concerning “an alien who has come into the United States illegally without being admitted [and] who takes up residence 50 miles from the border,” the Government responded, “The answer is they are held under 1226(a) and that they get a bond hearing...” Transcript of Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. ____ (2018) (No. 15-1204). DHS reiterated that such individuals “would be held under 1226(a)” and cited the administrative record to support that position. *Id.* These statements reflect DHS’s prior litigation stance that § 1226(a) governs detention for noncitizens who have entered and are residing in the United States, a position directly contrary to the agency’s current interpretation applying § 1225(b)(2)(A) to such individuals. Having prevailed in *Jennings* after taking this position, they should be estopped from taking the contrary position now simply because their political or litigation interests have changed. Estoppel in this case is necessary to preserve the predictability inherent in the rule of law and due process under the Fifth Amendment, as well as to protect the integrity of the judicial system.

40. 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.

41. 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 applied regardless of when a person was apprehended and affected those who have resided in the United States for months, years, and even decades.

42. On September 5, 2025, the BIA adopted this same position in a published decision, *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 subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

43. Since then, most federal courts have rejected this new interpretation. *Ordonez-Lopez v. United States Dep't of Homeland Sec.*, No. EP-25-CV-470-KC, 2025 U.S. Dist. LEXIS 221975, at *5-6 (W.D. Tex. Nov. 7, 2025), including several courts in the Western District of Texas. *Pereira-Verdi v. Lyons*, No. 5:25-CV-01187 (W.D. Tex. Oct. 10, 2025); *Mendoza-Menjivar v. Bondi*, No. 1:25-CV-2060-DAE, 2026 U.S. Dist. LEXIS 8644, at *7-*19 (W.D. Tex. Jan. 12, 2026).

44. Indeed, according to the factual allegations contained in the NTA, the DHS themselves determined that Petitioner had entered the U.S. under the INA and thus falls under § 1226(a), not § 1225(b). **Exhibit A.**

45. 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).

46. 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. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States and were not free to mingle with the general population after being free

from official restraint. 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).

47. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who were encountered in the interior of the country years after entry.

II. Violation of the Due Process Clause of the United States Constitution

48. "The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time." *Ordonez-Lopez v. United States Dep't of Homeland Sec.*, No. EP-25-CV-470-KC, 2025 U.S. Dist. LEXIS 221975, at *7 (W.D. Tex. Nov. 7, 2025) (cleaned up)

49. "To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976)." *Ordonez-Lopez* U.S. Dist. LEXIS 221975, at *7 (cleaned up). These factors include: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* citing *Mathews*, 424 U.S. at 335.

50. As to the first factor, courts in this district have stated two important principles. First, the interest in being free from physical detention is the most elemental of liberty interests. *Ordonez-Lopez*, 2025 U.S. Dist. LEXIS 221975, at *7-8. In addition, noncitizens acquire a

protectable liberty interest when they spend years establishing a life in the interior of the United States, regardless of their citizenship status. *Id.* at *8. Petitioner has been in this country since 2003 without inspection. He is married and three U.S. Citizen children. Therefore, this factor weighs heavily in favor of the Petitioner.

51. As to the second factor, the Court considers whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks. As noted above, prior to 2025, immigration judges regularly evaluated whether individuals, such as Petitioner who entered without inspection, were a flight risk and/or a danger to persons or property, even while their removal proceedings were pending. "This is precisely the type of proceeding that would give Ordonez-Lopez an opportunity to be heard and to receive a meaningful assessment of whether he is dangerous or likely to abscond, and it would greatly reduce the risk of an erroneous deprivation of his liberty." *Ordonez-Lopez*, 2025 U.S. Dist. LEXIS 221975, at *10. Therefore, this factor also weighs in favor of the Petitioner.

52. Finally, courts consider the governmental interest. While the government has an interest in mitigating the risk of flight and any danger to persons or property, these issues can be addressed during a bond hearing. Therefore, this factor also favors Petitioner.

53. For these reasons, Petitioner can demonstrate that Respondents have violated Petitioner's due process rights and that the only remedy to provide Petitioner with a bond hearing.

CLAIMS FOR RELIEF

COUNT I

Violation of INA § 236(a) (8 U.S.C. 1226(a))

54. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

55. 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 received an I-220A and who were subsequently accused by DHS of having “entered” the United States. Those actions by DHS, followed by the Petitioner’s concession to those charges before EOIR, represent a quasi-judicial determination by an agency which precludes further litigation of the issue unless new, material, and previously unavailable facts emerge. Such noncitizens continue to be detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

56. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II

Violation of the 8 C.F.R. §§ 236.1, 1236.1, and 1003.19

57. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

58. In 1997, after Congress amended the INA through ITRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

59. Nonetheless, pursuant to *Matter of Yajure Hurtado*, both EOIR as well as ICE have a policy and practice of applying § 1225(b)(2) to individual like Petitioner.

60. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Violation of the Due Process Clause of the Fifth Amendment of the U.S. Constitution

61. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

62. 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).

63. Petitioner has a fundamental interest in liberty and being free from official restraint.

64. The government’s detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk of a danger to others violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the Western District of Texas while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) in which the government bears the burden of proof;
- e. Declare that Petitioner’s detention is unlawful;

- f. Grant the Writ of Habeas Corpus ordering Respondents to release Mr. Perez y Perez on his own recognizance, parole, or reasonable conditions of supervision, or, in the alternative, order the Respondents to conduct a bond hearing under which it correctly applies the statutes and no longer mis-classifies him as subject to mandatory detention;
- g. Award the Petitioner reasonable costs and attorneys' fees under the Equal Access to Justice Act, as amended, 28 U.S.C. §2412
- h. Grant any other and further relief that this Court deems just and proper.

DATED: January 25, 2026

Respectfully submitted,

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*Pro Hac Vice Application
Forthcoming*

28 U.S.C. § 2242 VERIFICATION STATEMENT

I submit this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I verify that the statements made in this Verified Petition for a Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: January 24, 2026
Long Beach California

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