UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

KEVIN OLIVIER SILVA-TORUNO,

Petitioner,

v.

Case No. 2:26-cv-199

Garrett RIPA, Field Office Director of Enforcement and Removal Operations, Miami, Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; David HARDIN, Sheriff of Glades County Detention Center,

Respondents.
_____/

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner KEVIN OLIVIER SILVA-TORUNO is in the physical custody of Respondents at the Glades County 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 a 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. Instead, 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 Glades County Detention Center, in Moore Haven, Florida.

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

11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the

Middle District of Florida, the judicial district in which Petitioner currently is detained.

12. 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 Middle District of Florida.

REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "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.*

14. 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). "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." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

EXHAUSTION

15. In the instant case, exhaustion is not required because the administrative process cannot provide any relief, and Supreme Court Precedent confirms exhaustion is excused under these circumstances. Respondents will likely argue that Petitioner failed to exhaust administrative remedies because he did not first seek custody review before the Immigration Judge. That argument is incorrect for several reasons. First, the Immigration Judge and the Board of Immigration Appeals lack jurisdiction to adjudicate the statutory basis of Petitioner's detention. Second, both the Immigration Judge and the Board are bound by *Matter of Yajure Hurtado*, which requires them to deny custody jurisdiction in cases DHS classifies under section 1225(b)(2)(A). Third, the exhaustion doctrine under section 2241 is prudential, not statutory, and the Supreme Court's decision in *McCarthy v. Madigan* squarely applies here because the agency cannot provide the relief Petitioner seeks and cannot adjudicate the legal question raised. Accordingly, exhaustion is not required.

A. The Immigration Judge Lacks Jurisdiction to Consider Custody Under the Government's Classification

16. The Government consistently asserts that individuals detained under section 1225(b)(2)(A) are categorically ineligible for bond and that Immigration Judges lack jurisdiction to consider custody. In every recent case involving this issue, including *Aguilar Merino v. Field Office Director, ERO*

Miami, the Government has argued that the Immigration Judge lacks authority to review custody for individuals DHS designates as "applicants for admission." The Government cannot simultaneously insist that the Immigration Judge has no jurisdiction and then argue that Petitioner must exhaust a remedy the Government itself claims is unavailable. A remedy that the agency lacks power to provide is not one that must be exhausted.

B. The Board of Immigration Appeals Is Bound by Matter of Yajure Hurtado and Would Be Required to Affirm the Immigration Judge's Jurisdictional Denial

17. Even if Petitioner filed a custody motion, the Immigration Judge would be required under *Matter of Yajure Hurtado* to deny jurisdiction. The Board is likewise bound by this published precedent and cannot reverse or reconsider the rule it established. Thus, any administrative appeal of a bond denial would be predetermined and futile. Exhaustion is not required when the result is foreordained, and the agency cannot grant the relief requested.

C. Neither the Immigration Judge nor the Board Has Authority To Decide the Statutory Basis of Petitioner's Detention

18. Petitioner does not challenge the discretionary denial of bond. Petitioner challenges the legal authority under which he is detained. This is a pure question of statutory authority. The Immigration Courts do not possess jurisdiction to determine whether DHS applied the correct detention statute, whether DHS misclassified Petitioner's detention authority, or whether

detention must proceed under section 1226(a). These issues lie exclusively within the competency of a federal habeas court. Because the administrative bodies cannot adjudicate the question presented, exhaustion is excused.

D. *McCarthy v. Madigan* Confirms Exhaustion Is Not Required When the Agency Cannot Provide a Remedy or Decide the Legal Issue, and This Principle Applies in Habeas Cases Under Section 2241

19. *McCarthy v. Madigan*, 503 U.S. 140 (1992), although not an immigration case, is directly applicable here. *McCarthy* involved a federal prisoner who sought monetary damages for constitutional violations. The administrative grievance process at issue could not award monetary relief and lacked authority to resolve the legal claim he raised. The Supreme Court held that exhaustion was not required because the administrative body was powerless to afford the relief requested and lacked authority to decide the question presented.

20. The holding in *McCarthy* is not limited to the prison context. The Supreme Court articulated general administrative law principles governing exhaustion under section 2241. Section 2241 contains no statutory exhaustion requirement. As a result, exhaustion in habeas cases that challenge detention is governed by judge-made prudential doctrine. *McCarthy* remains binding on all federal courts unless Congress expressly displaces it. The Immigration and Nationality Act does not contain any statute requiring exhaustion for habeas

challenges to the legal basis of detention, nor does it provide any administrative mechanism for the relief Petitioner seeks.

21. *McCarthy* applies with particular force here. As in *McCarthy*, the agency's administrative structure cannot provide the relief requested. The Immigration Judge cannot grant a custody hearing if DHS claims detention is under section 1225(b)(2)(A). The Board cannot reverse because it is bound by its own precedent. Neither the Immigration Judge nor the Board can determine whether DHS used the correct detention statute. The administrative process cannot address Petitioner's legal claim, and any attempt to pursue it would be futile.

22. Thus, under *McCarthy*, exhaustion is excused because the agency lacks authority to grant relief, lacks authority to resolve the legal question presented, and could not provide an effective remedy under any circumstance.

E. Additional Government Arguments Under Sections 1252(e)(3), 1252(g), and 1252(b)(9) Are Misplaced and Do Not Bar Habeas Review

23. The Government has argued in similar cases that this Court lacks jurisdiction under sections 1252(e)(3), 1252(g), and 1252(b)(9). These provisions do not apply here.

24. First, section 1252(e)(3) applies only to systemic challenges to the implementation of section 1225(b), not to individualized habeas challenges concerning the statutory basis of a specific person's detention. Petitioner does

not challenge regulations, policies, or written directives. Petitioner challenges only how DHS applied statutory authority to him.

25. Second, section 1252(g) is inapplicable because the Supreme Court has held that it applies only to three discrete actions: the decision to commence proceedings, the decision to adjudicate cases, and the decision to execute removal orders. The legality of detention is none of these.

26. Third, section 1252(b)(9) is a channeling provision, not a jurisdiction-stripping rule. Under *Jennings v. Rodriguez*, detention challenges that question the statutory basis and duration of detention are independent of the removal process and do not fall within section 1252(b)(9).

F. Because No Administrative Avenue Exists To Address Petitioner's Claim, Habeas Review Is Proper and Necessary

27. Petitioner has no administrative remedy to challenge the statutory basis of his detention. The Immigration Judge lacks jurisdiction. The Board lacks authority to reverse. The administrative structure cannot adjudicate whether DHS applied the correct detention statute. Accordingly, exhaustion is not required and this Court possesses jurisdiction under 28 U.S.C. section 2241 to review the legality of detention.

PARTIES

28. Petitioner KEVIN OLIVIER SILVA-TORUNO is a citizen of Nicaragua who has been in immigration detention since on or about September

19, 2025. After arresting Petitioner in Miami-Dade County, Florida, ICE did not set 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).

29. Respondent Garrett Ripa is the Director of the Miami Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Ripa is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

30. 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.

31. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

32. 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.

33. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

34. Respondent David Hardin, is the Sheriff and Chief Correctional Officer of Glades County Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

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

36. 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).

37. 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).

38. 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).

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

40. 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).

41. 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).

42. 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)).

43. 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.

44. 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.

45. 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.

46. 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.

47. 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).

48. 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).

49. 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.

50. 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]."

51. 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.

52. 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.

53. 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).

54. 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.

FACTS

55. Petitioner has resided in the United States since on or about 2022 and lives in Hollywood, Florida.

56. On or about September 19, 2025, Petitioner was arrested after leaving Miami Immigration Court, after having his removal case dismissed. Upon leaving the court room, ICE/ERO agents informed him that he would have to continue his immigration process while detained and took him into custody.

57. While detained, DHS placed Petitioner in removal proceedings again and reopened his case before the Miami Krome 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. However, Petitioner has an approved I-765

Application for Employment Authorization as of September 6, 2023. (*See* Ex. A).

58. Mr. Silva-Toruno has every reason to return to the Immigration Court, as his Petition for Application for Asylum and Withholding was received and his credible fear interview with DHS was approved. Subsequently, Petitioner received another preliminary hearing after being detained, and the IJ ordered Petitioner removed to Honduras. However, the IJ's decision is currently pending appeal. Mr. Silva-Toruno has secured a custodial sponsor, that has pledged to provide support and assistance as needed throughout his immigration proceedings. Mr. Silva-Toruno is not a danger to the community, and has a valid Florida driver's license. (*See* Ex. B). Mr. Silva-Toruno has a fixed address to stay, should he be released on a monetary bond. Mr. Silva-Toruno intends to comply with any terms of release on monetary bond. Mr. Silva-Toruno will be represented by the undersigned during these proceedings. Mr. Silva-Toruno has friends and family that have pledged to provide transportation for him. Petitioner is neither a flight risk nor a danger to the community. Furthermore, Mr. Silva-Toruno has gainful employment. Petitioner has no criminal convictions or criminal record. Mr. Silva-Toruno has already been in detention for more than four (4) months, and has a one-and-a-half-year-old daughter who is a U.S. citizen and is suffering greatly because of

this. On or about 2022, Petitioner was previously released on his own recognizance. (*See* Ex. C).

59. Following Petitioner's arrest and transfer to Glades County Detention Center, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

60. Pursuant to *Matter of Yajure Hurtado*, the immigration judge lacks jurisdiction to consider Petitioner's request for bond redetermination.

61. 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.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

63. 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.

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

COUNT II

Violation of the Bond Regulations

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

66. In 1997, after Congress amended the INA through IIRIRA, 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.

67. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

68. 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 Due Process

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

70. 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).

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

72. 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 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 Middle District of Florida 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 pursuant to 8 U.S.C. § 1226(a) within seven days;
e. Declare that Petitioner's detention is unlawful;
f. 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
g. Grant any other and further relief that this Court deems just and proper.

DATED this 31st day of January, 2026.

Respectfully submitted,

By: */s/ Joel Alexis Caminero*
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I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice of electronic filing to all counsel in this case on January 31st, 2026.

/s/ Joel Alexis Caminero
Joel Alexis Caminero, Esq.
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Attorney for Petitioner