

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YUNIOR JOEL RODRIGUEZ PEREZ,	)	
<i>Petitioner,</i>	)	Civ. No.
	)	
-against-	)	EMERGENCY PETITION
	)	FOR WRIT OF HABEAS
PAUL ARTETA, Sheriff, Orange County,	)	CORPUS AND
KENNETH GENALO, New York City Field	)	COMPLAINT FOR
Office Director, U.S. Immigration and	)	DECLARATIVE AND
Customs Enforcement; KRISTI NOEM,	)	INJUNCTIVE RELIEF
U.S. Secretary of Homeland Security;	)	
PAMELA BONDI, U.S. Attorney General,	)	
<i>Respondents.</i>	)	

PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner Yunior Joel Rodriguez Perez ("Mr. Rodriguez"), a 22-year-old citizen and national of Honduras, challenges his unlawful detention by Respondents at 110 Wells Farm Road, Goshen, New York. Petitioner is neither a flight risk nor a danger to the community. He now faces unlawful detention because the Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have concluded that he is subject to mandatory detention.

2. Mr. Rodriguez filed an affirmative application for asylum with U.S. Citizenship and Immigration Services (“USCIS”) on or about October 29, 2020.

3. Mr. Rodriguez subsequently filed a Form I-360 Petition for Special Immigrant Juvenile Status (“SIJS”) with DHS. USCIS granted the petition and simultaneously granted deferred action, which meant that DHS would defer removal proceedings against Mr. Rodriguez while he waited for an immigrant visa number, which routinely takes up to five years from the date on which USCIS grants a SIJS petition.

4. DHS terminated its deferral of removal action against Mr. Rodriguez after his 2025 arrest in Orange County, New York for driving while intoxicated. DHS Immigration and Customs Enforcement (“ICE”) detained Mr. Rodriguez and initiated removal proceedings against him by filing a Notice to Appear (“NTA”) in the New York, New York Immigration Court. The NTA charges Mr. Rodriguez with entering the United States without admission or inspection and without being in possession of a valid visa, in violation of 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I).

5. Based on a new policy announced in an internal memo on July 8, 2025, ICE has taken the position that any person whom it charges under 8 U.S.C. § 1182(a)(6)(A)(i) is subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

6. On September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a precedential 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. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The BIA 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. Accordingly, the New York, New York Immigration Court has taken the position that it does not have the authority to make a custody determination for individuals such as Mr. Rodriguez.

7. In 2025, the United States District Court for the Central District of California held that *Yajure Hurtado* violated the plain language of the Immigration and Nationality Act (“INA”), and granted declaratory relief to the petitioner, finding that he is properly detained under 8 U.S.C. § 1226(a) and is therefore eligible for release on bond. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403 C.D. Cal. Nov. 25, 2025). Shortly thereafter, the Central District of California granted class certification to noncitizens like Mr. Rodriguez, who entered without inspection or admission and were improperly classified by DHS and the EOIR as aliens seeking admission and denied access to a custody redetermination hearing.

8. Despite the plain language of *Maldonado Bautista*, the EOIR persisted throughout November, December, and January 2025 in denying custody redetermination hearings to individuals charged with inadmissibility under § 1182(a)(6)(A)(i).

9. During approximately the first 10 days of 2026, the New York City Immigration Court responded to the holding in *Maldonado Bautista* by conducting custody redetermination hearings for individuals within the class certified by the court in *Maldonado Bautista*. But by about January 12, 2026, immigration judges reversed course and announced that *Maldonado Bautista* was not binding on immigration courts outside the Central District of California.

10. Mr. Rodriguez has been in ICE custody at Orange County Correctional Facility in Goshen, New York since November 19, 2025.

11. This morning, Mr. Rodriguez that he is about to be transferred to a new facility in a new jurisdiction, most likely Texas or Louisiana.

12. The New York, New York Immigration Court will lose administrative control over Mr. Rodriguez's removal and detention matters if he is transferred to a facility other than Orange County Jail or Brooklyn Metropolitan Detention Center.

13. DHS's detention of Mr. Rodriguez is based on his classification as an alien seeking admission violates the plain language of the Immigration and Nationality Act ("INA," "the Act") (codified at Title 8 of the United States Code). Section 1225(b)(2)(A) of the Act does not apply to individuals like Mr. Rodriguez who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. The latter statute expressly applies to people who, like Mr. Rodriguez, are charged as inadmissible for having entered the United States without inspection.

14. Respondents' recent reinterpretation of the legal authority for detention is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Mr. Rodriguez.

15. Mr. Rodriguez seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

PARTIES

16. Yunior Joel Rodriguez Perez, a citizen of Honduras, entered the United States as a minor in 2019 and has lived in Orange County, New York since then. He is currently detained at 110 Wells Farm Road in Goshen, New York.

17. Respondent Paul Arteta is named in his official capacity as the Sheriff of Orange County, New York. In this capacity, he is responsible for the administration of Orange County Jail, where Mr. Rodriguez is detained pursuant to the jail's contract with ICE. He is therefore Mr. Rodriguez's direct custodian.

18. Respondent Kenneth Genalo is named in his official capacity as Field Office Director for the New York City field office of ICE. In this capacity, Respondent Genalo is responsible for the administration and management of ICE Enforcement and Removal Operations ("ERO") in New York City and exercises control over Mr. Rodriguez's custody. He is therefore a legal custodian of Mr. Rodriguez.

19. Respondent Kristi Noem is named in her official capacity as United States Secretary of Homeland Security. In this capacity, Respondent Noem is responsible for the administration of federal immigration law pursuant to 8 U.S.C. § 1103(a). She routinely conducts business in the Southern District of New York, and she is legally responsible for pursuing Mr. Rodriguez's detention and removal. As such, she is a legal custodian of Mr. Rodriguez.

20. Respondent Pamela Bondi is named in her official capacity as United States Attorney General. In this capacity, Respondent Bondi is the most senior official in the U.S. Department of Justice and as such has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

She routinely conducts business in the Southern District of New York, and she is legally responsible for pursuing Mr. Rodriguez's detention and removal. Therefore she is a legal custodian of Mr. Rodriguez.

JURISDICTION AND VENUE

21. This action arises under the Fifth and Fourteenth Amendments to the United States Constitution.

22. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, Art. I 9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, and 28 U.S.C. § 1361. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. 1651.

23. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against its agencies' officers, who are sued in their official capacities. *See* 5 U.S.C. § 702.

24. Venue is proper in this District under 28 U.S.C. § 1391 because Mr. Rodriguez is detained in this district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

25. There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention. Since Congress is silent on the issue, courts have applied a judicially created requirement that, generally, a petitioner must exhaust his administrative remedies before seeking federal court intervention. *See*

Monestime v. Reilly, 704 F.Supp.2d 453, 456. (S.D.N.Y.2010) (“A habeas petitioner generally must exhaust administrative remedies before seeking federal court intervention.”)

26. However, courts may waive a judicially created exhaustion requirement where pursuing administrative remedies would be futile or where the agency has predetermined the issue before it. *Monestime*, 704 F.Supp.2d at 456 (“[E]xhaustion is not required where it would be futile or where the agency has predetermined the issue before it.”); *see also Cave v. E. Meadow Union Free Sch. Sch. Dist.*, 514 F.3d 240, 249 (2d Cir. 2008) (“The exhaustion requirement is excused when exhaustion would be futile because the administrative procedures do not provide an adequate remedy.”). In this case, exhaustion of administrative remedies would be futile because the BIA has already determined that non-citizens who entered without inspection are ineligible for bond, irrespective of when they entered or how long they have resided in the United States.

STATEMENT OF FACTS

27. Mr. Rodriguez is a ww-year-old native and citizen of Honduras. He entered the United States without inspection on June 16, 2019. He was granted Special Immigrant Juvenile Status by USCIS and is waiting for an immigrant visa number to become available so that he may apply to adjust his status to that of lawful permanent resident. On November 19, 2025 ICE arrested Mr. Rodriguez and initiated removal proceedings against him in the New York, New York Immigration

28. ICE takes the position that Mr. Rodriguez is detained pursuant to 8 U.S.C. § 1225(b)(2)(A), as an alien seeking admission.

29. ICE never sought to detain Mr. Rodriguez prior to December 2025.

LEGAL FRAMEWORK

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

31. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an im. 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).

32. 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).

33. 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).

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

35. 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).

36. 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).

37. 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)).

38. 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.

39. 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.

40. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, holding 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.

41. 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.

42. 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).

43. 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 Mr. Rodriguez.

44. 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]."

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). 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.

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.

47. 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.

48. § 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).

49. 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.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

50. Mr. Rodriguez incorporates by reference the allegations of fact set forth in the preceding paragraphs.

51. 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.

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

COUNT II

Violation of the Bond Regulations

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

54. In 1997, after Congress amended the INA through IIRIRA, EOIR and the former Immigration and Naturalization Service issued an interim rule to interpret and apply. 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.

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

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

COUNT III
Violation of Due Process

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

58. 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).

59. Mr. Rodriguez has a fundamental interest in liberty and being free from official restraint.

60. The government’s detention of Mr. Rodriguez without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates [his/her/their] right to due process.

PRAYER FOR RELIEF

WHEREFORE, Mr. Rodriguez requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Mr. Rodriguez's removal or transfer outside the jurisdiction of this Court and the United States pending adjudication of this petition;
- (3) Declare Mr. Rodriguez's ongoing prolonged detention by Respondents to be unconstitutional and a violation of the INA, its implementing regulations, the APA, and the *Accardi* doctrine;
- (4) Order Mr. Rodriguez's immediate release;
- (5) Award Mr. Rodriguez his costs and reasonable attorney fees; and
- (6) Order such other relief as this Court may deem just and proper.

Respectfully submitted,

Dated: New York, New York
February 2, 2026

/s/ Edgar Loy Fankbonner
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I submit this verification on behalf of Petitioner because I am Petitioner's attorney. I have discussed the events described in the Petition with Petitioner's immigration attorney and with a member of his immediate family, and I am familiar with his immigration history and the filings therein. On this basis, 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 and upon information and belief.

Dated: New York, New York
February 2, 2026

/s/ Edgar Loy Fankbonner
Attorney for Petitioner