

UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JOSE RODRIGUEZ HERNANDEZ
Petitioner,

v.

Civil Action No. 1:26-cv-289

CHARLOTTE COLLINS, Warden,
T. Don Hutto Detention Center

KRISTI NOEM,
in her official capacity as Secretary of the U.S.
Department of Homeland Security

MIGUEL VERGARA, Director of San Antonio
Field Office U.S. Immigration and Customs
Enforcement;

PAMELA BONDI, Attorney General of the
United States, in their official capacities,

SIRCE E. OWEN, Acting Director of the
Executive Office for Immigration Review

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

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COMES NOW, Petitioner *Jose Rodriguez Hernandez*, through undersigned counsel, respectfully submits this Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 and states the following.

I. INTRODUCTION

1. This is a petition for a writ of habeas corpus challenging the unlawful detention of Petitioner Jose Rodriguez Hernandez, a native and citizen of Mexico, who is currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at the T. Don Hutto Detention Center in Taylor, Texas.

2. Respondents assert that Mr. Rodriguez Hernandez is detained pursuant to 8 U.S.C. § 1225 as an “applicant for admission.” Section 1225 governs the inspection and detention of individuals seeking admission at the border or shortly after entry, including those placed into expedited removal proceedings. It does not authorize detention without access to a bond hearing for individuals who were not placed into expedited removal, were not apprehended at or near the time or place of entry, and whose arrests occurred years after their last entry into the United States.

3. Nevertheless, the Department of Homeland Security (“DHS”) has adopted a policy of applying § 1225 to individuals apprehended in the interior of the United States long after entry, notwithstanding the separate detention framework established by 8 U.S.C. § 1226(a). That interpretation has been expressly adopted by the Executive Office for Immigration Review (“EOIR”) through binding administrative precedent. In *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals held that Immigration Judges lack jurisdiction to conduct bond hearings for individuals detained as applicants for admission under

§ 1225, regardless of the length of their prior presence in the United States or the circumstances of their apprehension.

4. As a result of DHS detention policy and binding EOIR precedent, Petitioner has no meaningful administrative avenue to challenge his continued detention. Any request for a bond hearing before an Immigration Judge would be denied for lack of jurisdiction as a matter of law pursuant to BIA precedent. Likewise, any request for discretionary release from ICE would be futile because DHS maintains that it lacks authority to release individuals detained under § 1225. The agency's position forecloses individualized custody review altogether.

5. Federal district courts have repeatedly rejected DHS's interpretation and held that § 1225 does not govern the detention of individuals apprehended in the interior long after entry. Courts have instead recognized that such individuals are detained pursuant to § 1226(a), which requires an individualized bond hearing before a neutral decisionmaker. Because DHS policy and EOIR precedent render bond proceedings unavailable as a matter of law, exhaustion of administrative remedies is not required, and habeas relief is the only mechanism by which Petitioner may challenge his continued detention.

6. Petitioner therefore seeks a writ of habeas corpus ordering Respondents to either release him from DHS custody or provide an individualized bond hearing consistent with 8 U.S.C. § 1226(a) and the Due Process Clause.

PARTIES

7. **Petitioner Jose Rodriguez Hernandez** is a noncitizen currently detained by U.S. Immigration and Customs Enforcement ("ICE") at the T. Don Hutto Detention Center, Taylor, Texas. He is in the physical custody of Respondents and he challenges the legality of that custody through this petition for writ of habeas corpus.

8. **Respondent Charlotte Collins**, Warden, T. Don Hutto Detention Center, is Petitioner's immediate custodian and is sued in her official capacity.

9. **Respondent Miguel Vergara**, Field Office Director, ICE ERO San Antonio Field Office, is responsible for detention and release decisions for individuals held at Hutto and is sued in his official capacity.

10. **Respondent Kristi Noem**, Secretary of the U.S. Department of Homeland Security, oversees ICE and is sued in her official capacity.

11. **Respondent Pamela Bondi**, Attorney General of the United States, oversees EOIR and is sued in her official capacity.

12. **Respondent Sirce E. Owen** is the Acting Director of the Executive Office for Immigration Review ("EOIR"), the agency within the Department of Justice that administers the immigration courts and the Board of Immigration Appeals. Immigration Judges are bound by precedential decisions of the Board of Immigration Appeals, including *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which Respondents invoke to deny bond jurisdiction and which renders administrative custody review unavailable to Petitioner. Respondent Owen is sued in her official capacity.

JURISDICTION

13. This action is brought pursuant to 28 U.S.C. § 2241, as Petitioner is in custody under color of federal authority and seeks relief from unlawful detention.

14. This Court has jurisdiction under 28 U.S.C. § 2241 and 28 U.S.C. § 1331, as Petitioner's claims arise under the Constitution, the INA, and the APA.

The Suspension Clause guarantees the availability of habeas review. U.S. Const. art. I, § 9, cl. 2.

VENUE

15. Venue is proper in the Western District of Texas, Austin Division, because Petitioner is detained at the T. Don Hutto Detention Center in Williamson County, Texas, which is within this District and Division.

REQUIREMENTS OF 28 U.S.C. § 2243

16. The writ of habeas corpus is “available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004)(citing U.S. Const., Art I, § 9, cl. 2). “The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). “A district court’s habeas jurisdiction,” therefore, “includes challenges to immigration-related detention.” *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *3–6 (D. Nev. Sept. 17, 2025) (quoting *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001)).

17. Pursuant to 28 U.S.C. § 2243, a court may grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the respondents. *Id.* If an order to show cause is issued, respondents should generally be required to file a return “within three days unless for good cause additional time . . . is allowed.” *Id.*

STATEMENT OF FACTS

18. This habeas action challenges the unlawful detention of Petitioner Jose Rodriguez Hernandez, a native and citizen of Mexico (Exh. 1.), who is currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at the T. Don Hutto Detention Center in Taylor, Texas. The ICE Online Detainee Locator System¹ currently does not show that the Petitioner is detained in the T. Don Hutto Detention Center or any other ICE facility. Notwithstanding that

¹ Available online at: <https://locator.ice.gov/odls/#/search>

discrepancy, undersigned counsel has received multiple telephone calls from Petitioner originating from the T. Don Hutto Detention Center, and Petitioner has confirmed that he remains detained at that facility.

19. Petitioner is detained under a theory of mandatory detention without bond (Exh. 2.), notwithstanding multiple favorable *prima facie* determinations based on Petitioner's pending Form I-360 Violence Against Women Act (VAWA") Petition. Exh. 3.

20. Petitioner last entered the United States on or about May 1, 2015, and has remained in the United States since that time. Petitioner's date of last entry and presence in the United States are reflected in his Form I-485, Application to Register Permanent Residence or Adjust Status (Exh. 4.); however, there are no official DHS records which confirm this information.

21. Petitioner was previously married to Michelle Mondragon (Exh. 5.), a United States citizen. Petitioner was married to Michelle Mondragon from August 4, 2017 until their divorce on May 8, 2023. Exh. 6.

22. On July 17, 2019, the Petitioner became the beneficiary on an I-130 petition (Exh. 7) which became the basis of an immigrant visa case with the National Visa Center (Exh. 8) as well as an Application for Provisional Unlawful Presence Waiver, Form I-601A, with USCIS. (Exh. 9). Petitioner was unable to successfully acquire any of these immigration benefits.

23. During the marriage and period of cohabitation, Mr. Rodriguez Hernandez was subjected to abuse by his United States citizen spouse. The abuse occurred primarily within the marital residence in Cedar Creek, Texas, while the parties were living together.

24. On March 12, 2024, Mr. Rodriguez Hernandez filed Form I-360 as a VAWA self-petitioner. U.S. Citizenship and Immigration Services accepted the petition and issued a receipt confirming the filing date. Exh. 10

25. On March 28, 2024, U.S. Citizenship and Immigration Services transferred the Form I-360 petition to another USCIS office and stated that the receiving office had assumed jurisdiction over the case.

26. While the Form I-360 remained pending, USCIS issued an initial prima facie determination finding that Plaintiff had established a prima facie case for classification under the Violence Against Women Act self-petitioning provisions.

27. After USCIS did not adjudicate the petition within the initial prima facie validity period, USCIS issued a separate prima facie determination extension notice dated May 22, 2025, stating that the request for an extension of the prima facie determination had been reviewed and granted. Exh. 3.

28. USCIS stated that the prima facie determination was valid for 180 days, with an expiration date of November 18, 2025. In the same notice, USCIS stated that a final decision on the Form I-360 was not expected to be issued before the expiration of the 180-day period and represented that, if the petition were not adjudicated, an automatic extension would issue within sixty days of the expiration date.

29. As of the date of filing, USCIS has not issued a final decision on Mr. Rodriguez Hernandez's Form I-360 petition nor has it issued another extension.

30. In January 2026, Petitioner was arrested at his home by ICE as a collateral consequence of immigration enforcement and taken into custody. Petitioner remains detained without a bond hearing.

31. On January 22, 2026, Removal Proceedings were docketed. However, the Petitioner has not been provided a copy of the Record of Deportable/Inadmissible Alien, Form I-213.

32. Plaintiff is scheduled for a master calendar hearing on February 6, 2026, at 8:30 a.m., before Immigration Judge Eric J. Tijerina at the Pearsall Immigration Court.

EXHAUSTION OF LEGAL REMEDIES

33. Petitioner has exhausted all available administrative remedies, or, in the alternative, exhaustion is excused because no meaningful administrative remedy exists and further pursuit of agency relief would be futile.

34. The Government classifies Petitioner as an “applicant for admission” detained pursuant to 8 U.S.C. § 1225. Under binding administrative precedent, Immigration Judges lack jurisdiction to conduct bond hearings for individuals detained under § 1225. In *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals held that custody redetermination proceedings are categorically unavailable to applicants for admission detained under § 1225, regardless of the individual’s length of prior residence in the United States or the circumstances of arrest.

35. Because Immigration Judges are divested of bond jurisdiction as a matter of law, Petitioner cannot obtain custody review through the Executive Office for Immigration Review. Requiring Petitioner to request a bond hearing would therefore serve no purpose and would be denied for lack of jurisdiction, not based on any discretionary or factual determination.

36. Likewise, administrative release from ICE is unavailable. DHS maintains that individuals detained under § 1225 are subject to mandatory detention and that the agency lacks authority to release such individuals on bond or conditional parole in the absence of specific statutory authorization. As a result, any request for discretionary release from ICE would be futile.

37. Where an agency's interpretation of the governing statute forecloses relief categorically, exhaustion is not required. Petitioner has no administrative mechanism through which to challenge the legality of his detention or to obtain an individualized custody determination. Habeas corpus is therefore the only available and effective means to test the legality of Petitioner's continued detention.

38. Accordingly, exhaustion of administrative remedies is either satisfied or excused, and this Court has jurisdiction to adjudicate Petitioner's habeas claims.

LEGAL FRAMEWORK

39. Noncitizens are entitled to due process of law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003). While the Constitution applies to all persons within the United States, the breadth and scope of substantive and procedural due process afforded to noncitizens depends on the applicable statutory context in which the government acts. For example, Congress has long distinguished between noncitizens seeking initial admission to the United States and those who have entered the country and developed substantial connections within it, and the Supreme Court has repeatedly recognized that noncitizens already present in the United States possess significantly greater procedural and substantive due process protections than recent arrivals or applicants for admission.

40. Such distinction is embedded in the structure of the Immigration and Nationality Act ("INA") as amended by the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996² and, more recently, by the Laken Riley Act of 2025.³ The INA authorizes civil immigration detention through separate statutory provisions that apply to different

² Pub. L. No. 104--208, Div. C, §§ 302--03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009- 585. Section 1226(a).

³ Pub. L. No. 119-1, 139 Stat. 3 (2025)

categories of noncitizens. Where detention is authorized—or even required—by statute, it must also comport with the Due Process Clause. Courts evaluate the constitutionality of civil detention procedures under the balancing framework set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). That analysis requires consideration of the private interests affected by the government’s action, the risk of erroneous deprivation of those interests under the procedures used and the probable value of additional safeguards, and the government’s interests, including fiscal and administrative burdens. In the immigration context, courts recognize that detention implicates not only physical liberty, but also family integrity, employment, and the ability to meaningfully participate in removal proceedings, particularly for noncitizens who have established long-term residence in the United States.

41. The INA contains four primary statutory provisions governing the detention of noncitizens by DHS. Section 236(a) of the INA, codified at 8 U.S.C. § 1226(a), governs the discretionary detention of noncitizens who have been arrested pursuant to a warrant pending a decision on removability and authorizes release on bond or conditional parole. Section 236(c), codified at 8 U.S.C. § 1226(c), mandates detention for a narrowly defined class of noncitizens who are removable based on specified criminal convictions or terrorism related grounds. Section 235(b) of the INA, codified at 8 U.S.C. § 1225(b), governs the mandatory detention of applicants for admission, including certain noncitizens apprehended at or near the border or otherwise treated as applicants for admission, pending removal proceedings. Finally, section 241(a) of the INA, codified at 8 U.S.C. § 1231(a), governs detention following the entry of a final order of removal during the statutory removal period and authorizes continued detention beyond that period in limited circumstances. Two of these provisions are plainly inapplicable to Petitioner’s detention: Sections 1226(c) and 1231(a).

42. Section 1226(c) does not apply because Petitioner has never been convicted of a crime, has never been charged with any offense, and is not alleged to be removable on any criminal or terrorism related ground. No party contends that Section 1226(c) applies to the case at hand.

43. Section 1231(a) is likewise inapplicable because Petitioner is not subject to a final order of removal and remains in pending removal proceedings. No party contends that Section 1231(a) applies to the case at hand.

44. Against this legal framework, the Court must determine which of the two remaining statutory detention provisions govern Petitioner's custody and whether the procedures employed comport with due process. As demonstrated below, Petitioner's detention is governed by 8 U.S.C. § 1226(a), not § 1225(b). Respondents' effort to subject Petitioner to mandatory detention rests on a misapplication of the INA that contradicts their own custody determinations, collapses the statutory distinction between arriving noncitizens and those apprehended in the interior, and deprives Petitioner of an individualized custody determination required by the Fifth Amendment.

ARGUMENT

45. As set forth below, 8 U.S.C. § 1226(a) governs Petitioner's detention. Respondents' continued detention of Petitioner without an individualized custody determination violates the Due Process Clause of the Fifth Amendment under *Mathews v. Eldridge* and controlling district court authority. Immediate release is therefore the appropriate habeas remedy. In the alternative, at a minimum, Petitioner must be afforded an individualized custody determination hearing that provides a meaningful opportunity to be heard before a neutral adjudicator.

46. Respondents instead rely on 8 U.S.C. § 1225(b) to justify the Petitioner's detention. Section 1225(b) governs the mandatory detention of applicants for admission, a category that

Congress defined to encompass noncitizens seeking entry at the border or otherwise undergoing the admission process.

47. Additionally, a plain reading of the statutory text confirms that § 1225(b)(2)(A) contains three independent and conjunctive requirements: (1) the individual must be an “applicant for admission,” (2) the individual must be seeking admission, and (3) an examining immigration officer must make a contemporaneous determination that the individual is “not clearly and beyond a doubt entitled to be admitted.” Those requirements foreclose Respondents’ assertion that the Petitioner as well as every other noncitizen present in the United States without admission is automatically subject to mandatory detention.

48. Furthermore, Respondents’ interpretation of § 1225(b) renders the Laken Riley Act superfluous. If § 1225(b)(2)(A) already mandates detention without bond for all noncitizens present in the United States without admission, regardless of the circumstances of apprehension or duration of residence, then the Laken Riley Act adds no new detention authority and performs no operative function. Courts avoid statutory interpretations that render later-enacted legislation meaningless, particularly where Congress acted to expand mandatory detention only in specific and defined circumstances.

49. Characterizing Petitioner as an applicant for admission stretches § 1225(b) beyond its text, structure, and historical application. The INA does not contemplate that a noncitizen who has resided openly in the United States for years remains perpetually “seeking admission.” As a matter of statutory interpretation and settled detention practice, § 1225(b) cannot govern Petitioner’s detention.

50. Courts have rejected the Government's recent interpretation of § 1225(b)(2)(A) as mandating detention without bond for all noncitizens charged with entry without inspection regardless of the duration of residence.

51. In *Vazquez*, the court held that applying § 1225(b)(2)(A) to interior residents contravenes the statutory structure, legislative history, and decades of agency practice under § 1226(a). *Vazquez*, 2025 WL 2676082, at *3–6. The court further explained that such an interpretation would erase the statutory distinction between arriving noncitizens and those already present in the United States, subjecting long-term residents to mandatory detention without individualized process and undermining core due process protections. *Id.*

52. In *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d --, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), amended and superseded by reconsideration by --F. Supp. 3d--, 2025 WL 3713987 (Dec. 18, 2025), the court certified a nationwide class action for “Bond Eligible” noncitizens. *Id.* at 15. Specifically, the Court found that

“[a]ll noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.”

Id. at 15.

CLAIMS FOR RELIEF

COUNT I: Violation of Fifth Amendment Right to Due Process

53. The above paragraphs are realleged and incorporated herein.

54. 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, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

55. The Department of Homeland Security is detaining Petitioner under “mandatory detention” authority reserved for aliens who are in the process of entering the United States, 8 U.S.C. § 1225. Respondents have determined that Petitioner is ineligible for bond and must be detained due to a recent change in policy, despite having resided in the United States for more than three years without being detained.

56. The Executive Office for Immigration Review issued a precedential decision holding that immigration judges unequivocally have no jurisdiction to entertain granting bond in Petitioner’s exact circumstances, *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

57. Petitioner was not arriving in the United States at the time of detention and he had been in the United States for more than three years. His detention is therefore unlawful because he is being subjected to mandatory detention provisions which did not apply to him at the time of his detention.

58. Petitioner’s detention is unlawful and his immediate release is appropriate.

COUNT II: Violation of 8 U.S.C. § 1226(a)

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

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

61. Section 1225(b)(2) does not govern the detention of noncitizens apprehended in the interior of the United States long after their last entry and who were not placed in expedited removal under § 1225(b)(1). In these circumstances, the INA’s detention framework is § 1226(a),

which authorizes release on bond or conditional parole and provides for custody redetermination by an Immigration Judge.

62. Respondents' application of § 1225(b)(2) to deny Petitioner any bond hearing or individualized custody review is contrary to the INA and unlawfully deprives Petitioner of the process required under § 1226(a).

COUNT III: Violation of the Administrative Procedure Act Unlawful Denial of Bond

63. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein. In the alternative to habeas relief, and to the extent the Court determines this claim is properly considered under 28 U.S.C. § 1331, Respondents' application of § 1225(b)(2) to categorically deny Petitioner access to a bond hearing or custody redetermination, notwithstanding that § 1226(a) governs his detention, is arbitrary, capricious, and not in accordance with law. 5 U.S.C. § 706(2).

PRAYER

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter and maintain jurisdiction to the extent necessary to ensure Respondents' compliance with any order this Court may issue;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) Declare that Petitioner's is detained 8 U.S.C. 1226 and the deprivation of any meaningful way for him to challenge his detention violates the INA, APA, and the Due Process clause of the Fifth Amendment;
- (4) Issue a Writ of Habeas Corpus requiring that Respondents immediately release the Petitioner in order to preserve the status quo ante, or, in the alternative, provide a custody redetermination hearing before an impartial Immigration Judge within 14 days in which the government bears the burden of showing that the Petitioner is a flight risk or a danger to the community at large.
- (5) Set aside Respondents' unlawful detention policy under the APA, 5 U.S.C. § 706(2);
- (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"); and,
- (7) Order further relief as this Court deems just and appropriate.

RESPECTFULLY SUBMITTED,

/s/ Jesus Dario Elizondo

Jesus Dario Elizondo, Esq.

OK Ba #: 32987

TX Bar #: 24145421

Admission to the Western District of Texas: PENDING

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

I represent the Petitioner, and I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 5th Day of February 2026

/s/ Jesus Dario Elizondo

Jesus Dario Elizondo, Esq.

OK Ba #: 32987

TX Bar #: 24145421

Admission to the Western District of Texas: PENDING

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