UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

BYRON MARTINEZ KUVI and ADRIAN RODRIGUEZ SERRANO,
Petitioners,

v.

KEVIN RAYCRAFT, in his official capacity as Acting Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, in her official capacity as U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.

Case No.

Hon.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This petition arises from the U.S. government's new policy—which contradicts both the plain language of the Immigration and Nationality Act (INA) and decades of agency practice—of erroneously interpreting the INA to mandate detention without the possibility of bond for noncitizens who entered the United States without inspection, even if they have been residing here for years.

2. This policy has led to the unlawful detention of countless noncitizens nationwide. Dozens of habeas corpus petitions for their release have been filed in jurisdictions across the country (including over 50 cases in the Western District and Eastern District of Michigan).

3. Virtually every merits decision in those cases the Court has found for the petitioners, either granting them a bond hearing or ordering their immediate release.

4. Petitioners have all been unlawfully detained without the possibility of bond in furtherance of this policy.

5. Each Petitioner was taken into immigration custody, in some cases after being arrested by immigration authorities and in other cases after local law enforcement contacted immigration authorities following a routine traffic stop.

6. Respondents placed each of them in civil immigration removal proceedings, alleging that they had entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

7. Petitioners are currently in the physical custody of Respondents at various immigration detention centers that fall under the purview of the Detroit Field Office of Immigration and Customs Enforcement (ICE), which has responsibility for immigration detention centers in Michigan and Ohio.

8. Under 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond, Petitioners are entitled to a bond determination. That statute expressly applies to people who, like some of the Petitioners, are residing in the United States but are charged as inadmissible for having initially entered the United States without inspection. In accordance with 8 U.S.C. § 1226(a), the Department of Homeland Security (DHS) and Executive Office of Immigration Review (EOIR) have for decades provided bond determinations and bond hearings to people like Petitioners who have been living in the United States but allegedly entered without inspection.

9. Other Petitioners were granted parole pursuant to 8 U.S.C. § 1182(d)(5)(A), which provides for parole into the United States "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Moreover, the granting of parole by Respondents determines that Petitioners were

not a flight risk or danger; further, there is nothing before the Court to suggest that the humanitarian reason or public benefit that justified these Petitioners' parole no longer applies.

10. However, pursuant to a new governmental policy announced on July 8, 2025,[1] Petitioners are now being unlawfully detained without bond. The new policy instructs all ICE employees to no longer apply 8 U.S.C. § 1226(a) to people charged with being inadmissible under § 1182(a)(6)(A)(i)—i.e., those who initially entered the United States without inspection. The memo emphasizes that applicants for admission are ineligible for bond hearings, which is applied across the "applicants for admission" category, not limited to EWI and therefore including paroled cases.

11. Instead, under the new policy, ICE employees are to subject people like Petitioners to mandatory detention without bond under § 1225(b)(2)(A)—a provision that has historically been applied only to recent arrivals at the U.S. border—no matter how long they have resided in the United States.[2]

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[1] ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission (Jul. 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission [https://perma.cc/8SP7-TDDD].

[2] On November 25, 2025 Federal District Court Judge Sunshine Sykes in the case of *Maldonado Bautista et al v Santacruz Jr et al 5:25-cv-01873-SSS-BFM* in the Central District of California ruled that the *Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025) was unconstitutional and a nationwide class was granted. It is

12. Detaining Petitioners without bond is plainly contrary to the statutory framework of the INA and contrary to both agency regulations and decades of consistent agency practice applying § 1226(a) to people like Petitioners. It also violates their right to due process by depriving them of their liberty without any consideration of whether such a deprivation is warranted.

13. Accordingly, Petitioners seek a writ of habeas corpus requiring that they be immediately released from custody unless Respondents provide them a bond hearing under § 1226(a) within seven days.

14. Petitioners are not challenging any discretionary denial of bond; they are challenging the legal determination that they are not eligible for bond under § 1226(a) in the first place.

JURISDICTION

1. Petitioners are in the physical custody of Respondents. Petitioners are detained at the various detention centers in Michigan.

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

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anticipated that this order will most likely be appealed by the government and has not yet been accepted by the Detroit or Cleveland Immigration Courts.

3. 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

4. Venue is proper in the Western District of Michigan under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Petitioners are detained in immigration detention facilities in the Western Michigan at the direction of, and are in the immediate custody of Respondent Kevin Raycraft. See Roman v. Ashcroft, 340 F.3d 314, 320–21 (6th Cir. 2003).

5. 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.

REQUIREMENTS OF 28 U.S.C. § 2243

6. The Court must grant the petition for a 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, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

7. 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).

PARTIES

8. Petitioner Byron Martinez Kuvi is a citizen of Ecuador who has resided in the United States since 2023. He has been in immigration detention at the North Lake Detention Center since 2026. After taking custody of Petitioner, ICE did not set bond. Petitioner's immigration counsel advised him that seeking a bond hearing would be futile, as judges at the Detroit Immigration Court are currently deeming even individuals who were granted parole subject to mandatory detention under 8 U.S.C. § 1225(b) (2).

9. Petitioner Adrain Rodriguez Serrano is a citizen of Mexico who has resided in the United States since 1999. He has been in immigration detention at the North Lake Detention Facility, Baldwin, Michigan since late 2025. After taking custody of Petitioner ICE did not set bond. Petitioner's immigration counsel advised him that seeking a bond hearing would be futile, as judges at the Detroit Immigration Court are currently deeming individuals who were granted parole subject to mandatory detention under 8 U.S.C. § 1225(b) (2).

10. Respondent Kevin Raycraft is the Acting Director of the Detroit Field

Office of ICE's Enforcement and Removal Operations Division. As such, Acting Director Raycraft is Petitioners' immediate custodian and is responsible for Petitioners' detention and removal. He is named in his official capacity.

11. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioners' detention. Ms. Noem has ultimate custodial authority over Petitioners and is sued in her official capacity.

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

13. 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 are component agencies. She is sued in her official capacity.

14. 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.

FACTS

Petitioner Byron Martinez Kuvi

15. Petitioner Byron Martinez Kuvi is Ecuadorian, has resided in the United States since 2023, and his A# is [redacted]

16. Petitioner was arrested by ICE in Grand Rapids. They arrested him and subsequently transferred him to North Lake Detention, where he remains detained.

17. DHS placed Petitioner in removal proceedings before the Detroit Immigration Court pursuant to 8 U.S.C. § 1229a.

18. Following the initiation of removal proceedings, ICE either did not conduct a custody determination or chose to continue detaining him without providing an opportunity to post bond or be released under other conditions.

19. Petitioner is clearly neither a flight risk nor a danger to the community, as demonstrated by:

a. Having no criminal history.

b. His pending asylum application filed for which he has been awaiting an immigration court date.

20. Petitioner is actively working with his immigration attorney and has strong claims for immigration relief based on his asylum application.

21. Without relief from this court, he faces the prospect of months, or even years, in immigration custody.

Petitioner Adrian Rodriguez Serrano

22. Petitioner is Mexican, has resided in the United States since 1999,

and his A# [redacted]

23. Petitioner was arrested by ICE in Grand Rapids while he was going to work; he was stopped by individuals who did not verbally identify themselves. They arrested him and subsequently transferred to the North Lake Detention Center, where he remains detained.

24. Petitioner is in removal proceedings before the Detroit Immigration Court pursuant to 8 U.S.C. § 1229a.

25. Following the initiation of removal proceedings, ICE either did not conduct a custody determination or chose to continue detention without providing an opportunity to post bond or be released under other conditions.

26. He is clearly neither a flight risk nor a danger to the community, as demonstrated by:

a. No criminal history.

b. His pending asylum application filed for which he has been awaiting an immigration court date.

27. He is actively working with his immigration attorney and has strong claims for immigration relief based on his asylum application.

28. Without relief from this court, he faces the prospect of months, or even years, in immigration custody.

LEGAL FRAMEWORK

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

30. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens who are in removal proceedings. *See* 8 U.S.C. § 1229a. *See also Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (explaining that § 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings"). Under § 1226(a), individuals who are taken into immigration custody pending a decision on whether they are to be removed can be detained but are generally entitled to seek release on bond.[3] The bond may be set by ICE itself as part of an initial custody determination, *see* 8 C.F.R. § 1236.1(c)(8), and/or the individual may seek a bond hearing in immigration court at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Section 1226(a) is the statute that, for decades, has been applied to people like Petitioners who have been living in the United States and are charged with inadmissibility under § 1182(a)(6)(A)(i).

31. Second, the INA provides for mandatory detention of certain recently arrived noncitizens, namely those subject to expedited removal under 8 U.S.C. § 1225(b)(1), and other recent arrivals seeking admission under § 1225(b)(2). *See Jennings*, 583 U.S. at 287, 289 (explaining that § 1225(b)(2)'s mandatory detention

[3] Section § 1226 contains an exception for noncitizens who have been arrested, charged with, or convicted of certain crimes, who are subject to mandatory detention without bond. 8 U.S.C. § 1226(c). **That exception does not apply to any of the Petitioners here.**

scheme applies "at the Nation's borders and ports of entry" to noncitizens "seeking admission into the United States."). Section 1225(b)(2) is the statute that Respondents have suddenly decided is applicable to people like Petitioners.

32. Third, the INA also provides for detention of noncitizens who have already been ordered removed, *see* 8 U.S.C. § 1231. Section 1231 is not relevant here.

33. This case challenges Respondents' erroneous decision that Petitioners are subject to mandatory detention without bond under §1225(b)(2), rather than being bond-eligible under § 1226(a).

34. 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, 582–583, 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).

35. Following the 1996 enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not 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. 10,312, 10,323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for

admission, [noncitizens] **who are present without having been admitted or paroled** (formerly referred to as aliens who entered without inspection) **will be eligible for bond and bond redetermination.**") (Emphasis added).

36. Thus, in the three decades that followed, people who entered without inspection or paroled and were subsequently placed in removal proceedings received bond hearings if ICE chose to detain them, unless their criminal history rendered them ineligible.

37. 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. However, on July 8, 2025, ICE, "in coordination with" the Department of Justice, suddenly announced a new governmental policy that rejected the well-established understanding of the statutory framework and reversed decades of agency 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 or paroled are "applicants for admission," and thus are subject to mandatory detention without bond under § 1225(b)(2)(A).

40. This new policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even for decades or since infancy.

41. In decision after decision, federal courts—both nationwide and here in the Western District and in the Eastern District of Michigan—have rejected Respondents' sudden reinterpretation of the statutory scheme, and have instead held that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States.

42. Indeed, this Court and other courts throughout the country have rejected Respondents' argument that *any noncitizen*, regardless of whether they are already present and residing in the United States, is "an alien seeking admission" subject to mandatory detention under § 1225. *See Cf., e.g.*, *Salgado Mendoza v. Noem*, No. 1:25-cv-1252, 2025 WL 3077589, at *6 (W.D. Mich. Nov. 4, 2025); *Ruiz Mejia v. Noem*, No. 1:25-cv-1227, 2025 WL 3041827, at *5–6 (W.D. Mich. Oct. 31, 2025) ; *De Jesus Ramirez v. Noem*, No. 1:25-cv-1261, 2025 WL 3039266, at *5 (W.D. Mich. Oct. 31, 2025) ; *Escobar-Ruiz v. Raycraft*, No. 1:25-cv-1232, 2025 WL 3039255, at *5 (W.D. Mich. Oct. 31, 2025); *Marin Garcia v. Noem*, No. 1:25-cv-1271, 2025 WL 3017200, at *5 (W.D. Mich. Oct. 29, 2025); *Cervantes Rodriguez v. Noem*, No. 1:25-cv-1196, 2025 WL 3022212, at *6 (W.D. Mich. Oct. 29, 2025); *Puerto-Hernandez v. Lynch*, No. 1:25-cv-1097, 2025 WL 3012033, at

*9 (W.D. Mich. Oct. 28, 2025); *Rodriguez Carmona v. Noem*, No. 1:25-cv-1131, 2025 WL 2992222, at *6 (W.D. Mich. Oct 24, 2025).

43. Also s*ee, e.g., Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 25-CV-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, --- F. Supp. 3d. ---, 2025 WL 2084238 (D. Mass. July 24, 2025); Order, *Maldonado Bautista v. Santacruz Jr.*, No. 25-CV-1873 (C.D. Cal. July 28, 2025), Dkt. 14;[4] *Rosado v. Figueroa et al.*, No. 25-CV-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, --- F. Supp. 3d. ---, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); Order, *Gonzalez v. Noem*, 25-CV-2054 (C.D. Cal. Aug. 13, 2025), Dkt. 12; *Dos Santos v. Noem*, No. 25-CV-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, --- F. Supp. 3d. ---, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 25-CV-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, --- F. Supp. 3d. ---, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce,* No. 25 Civ. 6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 25-CV-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); Order, *Ruben Benitez et al. v. Noem et al.*,

[4] *Maldonado Bautista et al. v. Santacruz Jr. et al.* is also a putative class action seeking only declaratory relief for the class. The proposed class, which would include Petitioners, has now been certified on November 25, 2025. Ultimately, however, Petitioners may still require a writ of habeas corpus from this Court even if they obtain declaratory relief in *Maldonado Bautista*.

25-CV-2190 (C.D. Cal. Aug. 26, 2025), Dkt. 11; *Larysa Kostak v. Trump et al.*, 25-CV-1093 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Diaz Diaz v. Mattivelo*, No. 25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025); *Francisco T. v. Bondi*, No. 25-CV-03219, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Lopez-Campos v. Raycraft*, --- F.Supp.3d. ---, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Garcia v. Noem*, No. 25-CV-02180, 2025 WL 2549431 (S.D. Ca. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921, 2025 WL 2533110 (N.D. Cal., Sept. 3, 2025); *Doe v. Moniz*, No. 25-CV-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-CV-326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Mosqueda v. Noem*, No. 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hinestroza v. Kaiser*, No. 25-CV-07559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, No. 25-CV-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Guzman v. Andrews*, No. 25-CV-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez Santos v. Noem*, No. 25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Polly Kaiser et al.*, No. 25-CV-5624, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); Order, *Lamidi v. FCI Berlin, Warden*, No. 25-CV-297 (D.N.H. Sept. 15, 2025), Dkt. 14; *Garcia Cortes, v. Noem et al.*, No. 25-CV-02677, 2025 WL

2652880 (D. Colo. Sept. 16, 2025); *Maldonado Vazquez v. Feeley et al.,* No. 25-CV-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Velasquez Salazar v. Dedos et al.*, No. 25-CV-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Hasan v. Crawford*, No. 25-CV-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Yumbillo v. Stamper*, No. 25-CV-00479, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Beltran Barrera v. Tindall*, No. 25-CV-541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Chogllo Chafla v. Scott*, No. 25-CV-00437, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Giron Reyes v. Lyons*, No. 25-CV-4048, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Brito Barrajas v. Noem et al.*, No. 25-CV-00322, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Lepe v. Andrews*, No. 25-CV-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Hernandez Lopez v. Hardin*, No. 25-CV-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Zumba v. Noem*, No. 25-CV-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Tocagon v. Moniz*, No. 25-CV-12453, 2025 WL 2778023 (D. Mass. Sept. 29, 2025); *Romero-Nolasco v. McDonald*, No. 25-CV-12492, 2025 WL 2778036 (D. Mass. Sept. 29, 2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Barrios v. Shepley*, No. 25-CV-00406, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Quispe-Ardiles v. Noem*, No. 25-CV-01382, 2025

WL 2783800 (E.D. Va. Sept. 30, 2025); *Rodriguez v. Bostock*, No. 25-CV-05240, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025).[5]

44. This list is undoubtedly incomplete. As the media has reported, the government's new no-bond policy has "led to dozens of recent rulings from gobsmacked judges who say the administration has violated the law and due process rights .... The pile up of decisions is growing daily." Kyle Cheney and Myah Ward, *Trump's New Detention Policy Targets Millions Of Immigrants. Judges Keep Saying It's Illegal*, Politico (Sept. 20, 2025, at 4:00 PM ET), https://www.politico.com/news/2025/09/20/ice-detention-immigration-policy-00573850.

45. In recent days, the Western District of Michigan has at least three times rejected Respondents' interpretation of the INA and granted writs of habeas corpus to detained individuals similarly situated to the Petitioners in the instant case. For example, *see Guevara Arevalo v. Lynch et al,* and *Puerta Marin v. Lynch et al.*

46. The Western District is not alone, as the Eastern District of Michigan has, at least twice, rejected Respondents' interpretation of the INA and granted

[5] *But see Chavez v. Noem*, No. 25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (denying request for *ex parte* temporary restraining order on grounds that the petitioners' motion did not raise "serious questions going to the merits."); *Vargas Lopez v. Trump*, No. 25-CV-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (denying habeas petition primarily due to "the mistakes in the Petition, including the failure of Vargas Lopez to attach certain referenced exhibits.").

writs of habeas corpus to detained noncitizens to whom Respondents denied a bond hearing. On August 29, 2025, Judge Brandy McMillion granted a writ of habeas corpus to an identically situated petitioner, concluding that "There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for . . . years and was already within the United States when apprehended and arrested during a traffic stop, and not upon arrival at the border." *Lopez-Campos*, --- F.Supp.3d. ---, 2025 WL 2496379, at *8. And on September 9, 2025, Judge Robert White issued the same relief to another identically situated petitioner, reasoning that "the legislative history and agency guidance . . . in conjunction with the statutory interpretation" clearly entitles the petitioners to a bond hearing under § 1226(a). *Pizarro Reyes*, No. 25-CV-12546, 2025 WL 2609425, at *8.

47. On September 5, 2025, the BIA issued a precedential decision that rejected the overwhelming consensus of the federal courts. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision held that all noncitizens who entered the United States without admission or parole are ineligible for bond hearings before an IJ.

48. The *Yajure Hurtado* decision—like the government policy it seeks to uphold—defies the INA. As Judge Robert White wrote—after noting that federal district courts are not bound by agency interpretations of statutes—the BIA's

reasoning is unpersuasive and "at odds with every District Court that has been confronted with the same question of statutory interpretation." *Pizarro Reyes*, 2025 WL 2609425, at *7. *See also Sampiao*, 2025 WL 2607924, at *8 n.11 (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Beltran Barrera*, No. 25-CV-541, 2025 WL 2690565, at *5 (same); *Chogllo Chafla*, No. 25-CV-00437, 2025 WL 2688541, at *7-8 (same).

49. As court after court has explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioners here.

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, paroled, etc.. *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*, 779 F. Supp. 3d at 1256-57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

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 and those who have been paroled.

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). *See Jennings*, 583 U.S. at 287 (explaining 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.").

54. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people who have already entered and were long residing in the United States at the time they were apprehended by immigration authorities and detained.

55. Because § 1226(a), not § 1225(b), is the applicable statute, Petitioners' detention without eligibility for bond is unlawful.

56. Petitioners seek relief from this Court because any months-long appeal to the BIA of an IJ's decision denying bond would be futile. A new request for a bond hearing is likewise futile. First, the agency's position is clear: both IJs

and future panels of the BIA are following the *Yajure Hurtado* decision even after the *Maldonado Bautista* decision (see supra foot note 2). Further, the new governmental policy was issued "in coordination with DOJ," which oversees the immigration courts, including the BIA—up to and including the ability of the Attorney General to modify or overrule decisions of the BIA, *see* 8 C.F.R. § 1003.1(h). It is therefore unsurprising that the BIA has (erroneously) held that persons like Petitioners are subject to mandatory detention under § 1225(b)(2)(A), rather than being bond-eligible under § 1226(a). Moreover, in the numerous identical habeas corpus petitions that have been filed nationwide, EOIR and the Attorney General are often respondents and have consistently affirmed via briefing and oral argument that individuals like Petitioners are applicants for admission and subject to detention under § 1225(b)(2)(A). *See, e.g., Huerta Morales v. Raycraft,* No. 1: 25-cv-1842 (W.D. Mich. Dec 29, 2025)*;* Resp. to Pet., *Lopez Campos v. Raycraft*, No. 25-CV-12546 (E.D. Mich. Aug. 9, 2025), Dkt. 9; Resp. to Pet., *Pizarro Reyes v. Raycraft*, No. 25-CV-12546 (E.D. Mich. Aug. 27, 2025), Dkt. 4.

57. Second, by the time the BIA could even issue an appeal—a process that typically takes at least six months, *Rodriguez*, 779 F. Supp. 3d at 1245, and in many cases roughly a year, *id.*—the harm of Petitioners' unlawful detention will be impossible to remediate. Nor will the downstream effects of continued detention be

remediable: Petitioners' family and community will be left without a caretaker, breadwinner, and contributor for months.

58. Third, neither IJs nor the BIA have the authority to decide constitutional claims. *See Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006). Here, Petitioners claim not only that Respondents are unlawfully detaining them without bond hearings under an inapplicable statute, but also that such detention violates Petitioners' constitutional right to due process if the government seeks to deprive them of their liberty.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

1. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

2. Respondents are unlawfully detaining Petitioners without bond pursuant to the mandatory detention provision at 8 U.S.C. § 1225(b)(2).

3. Section 1225(b)(2) does not apply to Petitioners, who previously entered the country and has long been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents.

4. Respondents' application of § 1225(b)(2) to Petitioners results in Petitioners' unlawful detention without the opportunity for a bond hearing and violates the INA.

5. Instead, Petitioners should be subject to the detention provisions of § 1226(a) and are therefore entitled to a custody determination by ICE, and if custody is continued, to a custody redetermination, i.e., a bond hearing, by an immigration judge.

COUNT II
Violation of Due Process

6. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

7. 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).

8. Petitioners have a fundamental interest in liberty and being free from official restraint.

9. The government's detention of Petitioners without an opportunity for a custody determination or bond hearing to decide whether they are a flight risk or danger violates Petitioners' right to due process.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that Respondents release Petitioners from custody or, in the alternative, provide Petitioners with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days;

c. Enjoin Respondents from transferring Petitioners from the jurisdiction of this District pending these proceedings;

d. Declare that 8 U.S.C. § 1226(a)—and not 8 U.S.C. § 1225(b)(2)(A)—is the appropriate statutory provision that governs Petitioners' detention and eligibility for bond because Petitioners are not a recent arrival "seeking admission" to the United States, and instead were already residing in the United States when apprehended and charged as inadmissible for having allegedly EWI or paroled;

e. Award Petitioners 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

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

Dated: February 20, 2026

Respectfully submitted,

/s/Richard Kessler

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