UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

GUSTAVO ADOLFO PORTILLO VLLANUEVA	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No._____
	)	
ROBERT GUADIAN, in his official Capacity as the Acting Field Office Director of the Washington Immigration and Customs Enforcement Office; **MARKWAYNE MULLIN**, in his official capacity as Secretary of the U.S. Department of Homeland Security; **TODD BLANCHE**, in his official Capacity as Acting Attorney General of the United States,	)	
	)	
Respondents.	)	

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner, Gustavo Portillo Villanueva ("Mr. Portillo Villanueva"), has been residing in the United States since around August 2, 2018.

2. On April 10, 2026, he was apprehended by Immigration and Customs Enforcement ("ICE") while he attended a check-in appointment at his rehabilitation center.

3. The basis for Mr. Portillo Villanueva's detention is his presence in the United States without admission or parole and being present without valid immigration documents under 8 U.S.C. §§ 1182(a)(6)(A)(i), (a)(7)(A)(i)(I). Exhibit 1, Notice to Appear. He

remains in unlawful detention, without the opportunity for a bond hearing, under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

4. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 articulates an Executive Office for Immigration Review ("EOIR") policy that all persons who entered the United States without inspection, regardless of how long they have lived in the United States or how far they were apprehended from the border, are detained pursuant to 8 U.S.C. § 1225(b)(2)(A) and are thus ineligible for a discretionary bond hearing under § 1226(a).

5. This Board of Immigration Appeals ("BIA") decision further reflects an ICE memorandum, issued in July 2025, that instructs its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject custody redetermination hearings for applicants who arrived in the United States without documents.[1]

6. The agencies' reading of the Immigration and Nationality Act's ("INA's") detention provisions is a violation of the statute and due process. As this Court has previously concluded in numerous cases, § 1225(b)(2)(A) does not apply to individuals like Mr. Portillo Villanueva, who have been present in the United States for years. *See, e.g.*, *Portillo-Argueta v. Simon*, No. 1:25-cv-2285, 2026 U.S. Dist. LEXIS 13073, *9 (E.D. Va. Jan. 23, 2026); *Garay v. Perry*, No. 1:25-cv-2215, 2025 U.S. Dist. LEXIS 260234, *1 (E.D. Va. Dec. 10 2025); *Mahamudul Hasan v. Crawford*, No. 1:25-cv-1408, 2025 U.S. Dist. LEXIS 184734, at *21-24 (E.D. Va. Sep. 19, 2025). Instead, the detention of such individuals is governed by § 1226, which grants the Attorney General

[1] *See* "ICE declares millions of undocumented immigrant ineligible for bond hearings," *The Washington Post* (Jul. 15, 2025) https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/.

discretion to detain or release a noncitizen on bond while removal proceedings are pending. *See Hasan*, 2025 U.S. Dist. LEXIS 184734, at *21-24.

6. Accordingly, Mr. Portillo Villanueva requests that this Court grant his habeas petition and order his immediate release from detention or, in the alternative, order that he is provided a bond hearing before an immigration judge ("IJ").

JURISDICTION & VENUE

7. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory judgement); and United States Constitution Article I, Section 9 (Suspension Clause).

8. The federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by individuals challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). In *Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018), the Supreme Court again upheld the federal courts' jurisdictions to review such claims.

9. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Mr. Portillo Villanueva is detained within this district.

THE PARTIES

10. Mr. Portillo Villanueva is a 22-year-old native and citizen of El Salvador who entered the United States on August 2, 2018. He is currently detained at the Farmville Detention Center in Virginia.

11. Robert Guadian ("Mr. Guadian") is the Director of the ICE Enforcement and Removal Operations Washington Field Office, and is the federal agent charged with overseeing

most ICE detention centers in the state of Virginia. Mr. Guadian is a legal custodian of Mr. Portillo Villanueva and is sued in his official capacity.

12. Markwayne Muller is the Secretary of the U.S. Department of Homeland Security ("DHS"). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Muller is the ultimate legal custodian of Mr. Portillo Villanueva. He is sued in his official capacity.

13. Todd Blanche is the acting Attorney General of the United States. He oversees the immigration court system, which is housed within EOIR and includes all IJs and the BIA. He is sued in his official capacity.

REQUIREMENTS OF 28 U.S.C. § 2243

14. 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, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. "Habeas is the exclusive remedy for a prisoner who seeks immediate or speedier release from confinement." *Skinner v. Switzer*, 562 U.S. 521 (2011) (cleaned up); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) ("Blackstone wrote that habeas was a means to 'remov[e] the injury of unjust and illegal confinement.'") (quoting 3 W. Blackstone, Commentaries on the Laws of England 137).

16. "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. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

17. Mr. Portillo Villanueva requests the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, in light of the significant restraint on his liberty and clear Constitutional violations in this case.

LEGAL BACKGROUND

I. OVERVIEW OF THE INA'S DETENTION FRAMEWORK

18. Relevant to this case, the INA includes two provisions that primarily govern the detention of noncitizens.

19. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are 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).

20. 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 under § 1225(b)(2).

21. 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. 104208, Div. C, §§ 30203, 110 Stat. 3009-546, 3009 582 to 3009583, 3009 585.

22. Following the enactment of 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).

23. Thus, in the decades that followed, most people who entered without inspection, unless they were subject to some other detention authority, received bond hearings.

24. This 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)).

II. RESPONDENTS HAVE ENACTED A POLICY THAT VIOLATES INA'S STATUTORY SCHEME

25. In July 2025, ICE released a memorandum instructing its attorneys to coordinate with EOIR to reject bond hearings for applicants who arrived in the United States without documents.

26. Thereafter, on September 5, 2025, the BIA published *Matter of Yajure Hurtado*, 29 I&N Dec. 216, which confirms that EOIR is taking the position that noncitizens who entered the United States without admission or parole are ineligible for IJ bond hearings.

27. As *Matter of Yajure Hurtado* is binding on IJs, it represents the widespread position that EOIR is applying across the United States. EOIR's interpretation defies the INA.

28. The plain text of the provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Mr. Portillo Villanueva.

29. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States."

30. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. To that end, § 1226(c)(1)(E), which was recently added by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025), expressly

references 8 U.S.C. § 1182(a)(6)(A)(i), making clear that, by default, such people are afforded a bond hearing under subsection (a). Respondents' interpretation of § 1225(b)(2) renders § 1226(c)(1)(E) superfluous.

31. On the contrary, § 1225(b) applies to people arriving at United States 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 title of § 1225(b) indicates that it specifically applies at the point of "inspection for applicants for admission."

32. Moreover, EOIR's interpretation of the INA's detention framework contradicts Supreme Court precedent.

33. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Mr. Portillo Villanueva.

FACTS

34. Mr. Portillo Villanueva is a 22-year-old native and citizen of El Salvador.

35. On August 2, 2018, he entered the United States as a 16-year-old, unaccompanied child. He was detained pursuant to 8 U.S.C. § 1226, and was subsequently released to the custody of his father. Ex. 1.

36. Since his entry into the United States, Mr. Portillo Villanueva has resided with his family in Woodbridge, Virginia. There, he lives with his father and stepmother, his two sisters who are U.S. citizens, and his brother who is in the process of becoming a legal permanent resident through special immigrant juvenile status ("SIJS").

37. While living with his family, Mr. Portillo Villanueva contributed financially by helping to pay for utilities and food for his family. He maintained a close relationship with his

family, including regularly spending weekends together and assisting church when his work schedule would allow it.

38. Mr. Portillo Villanueva has been employed as a landscaper and heavy equipment driver for a garden design company for the last 3 years. Recently, he helped a Catholic church in Virginia, volunteering his time and skills to restore the church alongside his family members and coworkers.

39. Outside of his employment and voluntary endeavors, Mr. Portillo Villanueva has been actively involved with his family and community. He attends church and has participated in Alcoholics Anonymous ("AA"), including attending meetings regularly, since 2023.

40. Mr. Portillo Villanueva was granted SIJS status in June of 2019. He has a pending Adjustment of Status application with the Sterling, Virginia Immigration Court.

41. On April 10, 2026, Mr. Portillo Villanueva was detained by immigration authorities while he attended an AA meeting. He was subsequently transferred to the Farmville Detention Center in Virginia, where he has remained in custody since.

42. Any request for a bond hearing before the Immigration Court is futile.

CAUSES OF ACTION

COUNT ONE

Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Bond Hearing

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

44. The mandatory detention provision at 8 U.S.C. § 1225(b)(2)(A) does not apply to noncitizens who are subject to inadmissibility as being present in the United States

without admission or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.

45. Mr. Portillo Villanueva was previously arrested, detained, and released pursuant to 8 U.S.C. § 1226(a). Ex. 1. Respondents have presented no intervening change in facts that would justify reclassifying his detention authority. *See Aroca v. Mason*, No. 2:26-cv-00057, 2026 U.S. Dist. LEXIS 26337, *36 (S.D.W. Va. Feb. 9, 2026) (stating that "having once detained and released Petitioners under § 1226(a), the Government cannot now retroactively recast them as arriving 'alien[s] seeking admission'").

46. Accordingly, Mr. Portillo Villanueva's detention under 8 U.S.C. § 1225(b)(2) violates the INA.

COUNT TWO

Violation of the Administrative Procedure Act
Unlawful Denial of Bond Hearing

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

48. The mandatory detention provision at 8 U.S.C. § 1225(b)(2)(A) does not apply to noncitizens who are subject to inadmissibility as being present in the United States without admission or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

49. The application of § 1225(b)(2) to detain Mr. Portillo Villanueva is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT THREE

Violation of Due Process
Unlawful Denial of Bond Hearing

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

51. 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*, 533 U.S. at 690.

52. Mr. Portillo Villanueva has a fundamental interest in liberty and being free from official restraint. Respondents' continued detention of Mr. Portillo Villanueva violates his right to due process.

53. Accordingly, the Court should order Mr. Portillo Villanueva's immediate release from custody. *See Vasquez v. Crawford*, No. 3:26-cv-51, 2026 U.S. Dist. LEXIS 60835, *9 (E.D. Va. Mar. 23, 2026) (stating that immediate release is appropriate where a noncitizen is "detained, released, and re-detained by immigration officials").

54. Alternatively, the Court should order that he is afforded a bond hearing whether Respondents bear the burden of proof. *See Ramos v. Bondi*, No. 3:26-cv-112, 2026 U.S. Dist. LEXIS 44913, *16 (E.D. Va. Mar. 4, 2026) ("Due process considerations compel the Court to order Respondents to bear this burden of proof.").

PRAYERS FOR RELIEF

WHEREFORE, Mr. Portillo Villanueva respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Order under the All Writs Act that Mr. Portillo Villanueva not be removed from this District while this petition is pending:

(3) Issue an order requiring Respondents to show cause why this Petition should not be granted within three days;

(4) Declare that 8 U.S.C. § 1225 does not govern Mr. Portillo Villanueva's detention by U.S. immigration authorities;

(5) Set aside Respondents' unlawful detention policy under the APA, 5 U.S.C. § 706(2);

(6) Order that Respondents immediately release Mr. Portillo Villanueva with all of his personal belongings immediately or, in the alternative, provide him with a bond hearing, where DHS bears the burden of establishing that he is a flight risk and a danger to the community, within 7 days;

(7) If the Court orders Mr. Portillo Villanueva release on the immigration judge's bond, order that ICE is precluded from automatically staying the immigration judge's bond order by filing a form EOIR-43;and

(8) Order further relief as this Court deems just and appropriate

Respectfully submitted,

/s/ Ivan Yacub
IVAN YACUB
Yacub Law Office
12761 Darby Brook Ct, Ste 102
Woodbridge, VA 22192
Tel. 703 424 7506
Fax 703 533 3408
Iyacub@yacublaw.com

Attorney for Petitioner

Date: April 22, 2026

I affirm, under penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Afirmo bajo pena de perjurio que las declaraciones precedentes son verdades y correctas según mi conocimiento, información y creencia.

Sabrina
Petitioner's Step mother
Madrastra del Peticionario

4/17/26
Date
Fecha