FILED
U.S. District Court
District of Kansas
05/13/2026
Clerk, U.S. District Court
By: SND Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

JUAN CARLOS AGUAYO-RODRIGUEZ,

Petitioner,

v.

Samuel OLSON, Field Office Director, Chicago Field Office, U.S. Immigration and Customs Enforcement; Markwayne MULLIN, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Todd BLANCHE, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; JACOB WELSH, Warden, Chase County Jail,

Respondents.

Case No. 26-3130-JWL

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Juan Carlos Aguayo-Rodriguez is in the physical custody of Respondents pursuant to immigration detention authority exercised by the Department of Homeland Security ("DHS") and U.S. Immigration and Customs Enforcement ("ICE").

2. This is an action for habeas corpus relief under 28 U.S.C. § 2241 challenging Petitioner's unlawful detention without access to a bond hearing under 8 U.S.C. § 1226(a).

3. Petitioner has resided continuously in the United States since approximately 2004 and has substantial family and community ties within the United States.

4. Petitioner is the father of three children, including two United States citizen children, who depend upon him emotionally and financially.

5. Petitioner has established substantial equities in the United States, including longstanding residence, employment history, family support obligations, and pending immigration relief before the Immigration Court.

6. Petitioner is presently in removal proceedings before the Kansas City Immigration Court under A# [redacted]

7. Petitioner was previously granted immigration bond by the Kansas City Immigration Court on July 9, 2024 after the Immigration Court considered the same underlying criminal allegations currently being used to justify detention.

8. Following release on immigration bond, Petitioner complied with immigration proceedings and did not abscond.

9. Petitioner was later re-detained by ICE on or about April 22, 2026.

10. On May 5, 2026, Immigration Judge Justin Howard denied bond solely on jurisdictional grounds, concluding that Petitioner remained an "applicant for admission" under INA § 235(b)(2)(A) pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

11. The Immigration Court therefore refused to conduct an individualized custody determination regarding danger or flight risk.

12. Petitioner was apprehended in the interior of the United States after residing in the country for approximately twenty-two years, not at or near the border and not during any attempt to seek admission.

13. Accordingly, the governing detention statute is 8 U.S.C. § 1226(a), not § 1225(b)(2).

14. Section 1226(a) expressly authorizes discretionary detention and provides for individualized bond hearings before an Immigration Judge.

15. Respondents' refusal to provide Petitioner a bond hearing violates both the Immigration and Nationality Act ("INA") and the Due Process Clause of the Fifth Amendment.

16. Petitioner therefore seeks a writ of habeas corpus requiring Respondents to provide an individualized bond hearing under § 1226(a), or alternatively release him from custody.

JURISDICTION

17. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Midwest Regional Reception Center.

18. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

19. 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.

20. Petitioner challenges the legality of his detention, not the validity of any removal order.

VENUE

21. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Kansas, the judicial district in which Petitioner currently is detained.

22. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Kansas.

REQUIREMENTS OF 28 U.S.C. § 2243

23. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

24. 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

25. Petitioner Juan Carlos Aguayo-Rodriguez is a citizen of Mexico presently detained by ICE.

26. Respondent Samuel Olson is the Field Office Director for ICE Enforcement and Removal Operations in the Chicago Field Office. As such, Samuel Olson is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

27. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

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

29. Respondent Todd Blanche is the Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

30. 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.

31. Respondent Warden of Chase County Jail is Petitioner's immediate physical custodian. Respondent is sued in his official capacity.

LEGAL FRAMEWORK

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

33. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

34. 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).

35. 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).

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

37. 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).

38. 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).

39. 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. 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)).

40. 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.

41. 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 deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are 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.

42. The Board of Immigration Appeals subsequently adopted that interpretation in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), concluding that Immigration Judges lacked jurisdiction to conduct bond hearings for such detainees.

43. However, this Court recently rejected that interpretation in *Galdamez Orellana v. Welsh*, Case No. 26-3019-JWL (D. Kan. Mar. 13, 2026). In *Galdamez Orellana*, the Court considered whether a noncitizen who had been residing in the United States for years could nevertheless be subjected to mandatory detention under § 1225(b)(2)(A) without access to bond.

44. The Court specifically recognized that the Government historically applied § 1225(b)(2)(A) only to arriving noncitizens while allowing individuals already residing in the United States to seek release under § 1226(a).

45. After reviewing the statutory framework, legislative history, agency practice, and relevant case law, the Court concluded that individuals who have already entered and resided in the United States are not subject to mandatory detention under § 1225(b)(2)(A) merely because they are technically "applicants for admission."

46. The Court held that the phrase "seeking admission" imposes a separate statutory requirement not satisfied merely because a noncitizen entered without inspection years earlier.

47. Accordingly, the Court concluded that such detainees are governed by § 1226(a) and therefore entitled to bond hearings.

48. Petitioner's circumstances fall squarely within the reasoning of *Galdamez Orellana*.

FACTS

49. Petitioner has resided continuously in the United States since approximately 2003 and has established substantial family and community ties during that time. Petitioner entered the United States approximately in 2004 and has continuously resided in the United States for over two decades.

50. Petitioner has extensive family ties in the United States, including three children, two of whom are United States citizens. Petitioner has historically maintained employment and supported his children financially and emotionally.

51. Petitioner has pending immigration proceedings before the Kansas City Immigration Court and an Individual Hearing previously scheduled for August 2, 2027.

52. In 2024, Petitioner became the subject of Platte County, Missouri criminal proceedings identified as Case No. 24AE-CR01841-01. Those allegations stemmed from a March 24, 2024 traffic stop in Riverside, Missouri. A criminal complaint and request for warrant were subsequently filed alleging Possession of a Controlled Substance.

53. On July 9, 2024, Immigration Judge Jayme Salinardi conducted custody hearing after considering the same underlying allegations, and determined Petitioner was eligible for release from immigration custody and granted immigration bond.

54. Petitioner thereafter complied with immigration proceedings and did not abscond.

55. Subsequently, the Platte County criminal proceedings materially deteriorated in Petitioner's favor. On April 21, 2026, the Platte County Circuit Court granted Petitioner's Motion to Suppress after determining the underlying traffic stop was unlawful. Following suppression of the evidence, the State of Missouri dismissed the criminal case entirely through a Memorandum of Nolle Prosequi. Thus, no conviction resulted from the criminal allegations.

56. Despite dismissal of the criminal case and despite Petitioner previously being granted immigration bond, ICE re-detained Petitioner. On May 5, 2026, Immigration Judge Justin Howard denied bond solely because the Immigration Court concluded it lacked jurisdiction under *Matter of Yajure Hurtado*.

57. The Immigration Court did not determine that Petitioner was dangerous or a flight risk. Petitioner's immigration proceedings remain pending, and no final order of removal has been entered against him.

58. Like the petitioner in *Galdamez Orellana*, Petitioner was not apprehended at the border or while attempting entry into the United States.

59. Instead, Petitioner had already entered the United States and resided continuously within the country for approximately twenty-two years before ICE apprehended him in the interior of the United States.

60. Petitioner likewise was placed into ordinary removal proceedings under 8 U.S.C. § 1229(a).

61. Moreover, Petitioner's case presents even stronger equities supporting relief because the Immigration Court itself previously exercised bond jurisdiction and granted immigration bond to Petitioner on July 9, 2024 after considering the same underlying criminal allegations presently relied upon by DHS. Petitioner thereafter complied with release conditions and did not abscond.

62. Petitioner's longstanding residence, family relationships, and community ties weigh against any finding that he presents a flight risk.

63. Petitioner's continued detention has imposed substantial hardship on his family, including his United States citizen children.

64. Consistent with *Galdamez Orellana*, the appropriate remedy is an order requiring Respondents either to release Petitioner or to provide him a bond hearing under § 1226(a) within a prompt period established by this Court

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

66. Petitioner has not sought further administrative review of his custody because such efforts would be futile. DHS and EOIR have adopted the position that individuals in Petitioner's

circumstances are categorically subject to mandatory detention and ineligible for bond hearings. Under these circumstances, exhaustion of administrative remedies is not required for habeas review.

67. 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.

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

COUNT II

Violation of Due Process

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

70. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

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

72. The government's continued detention of Petitioner violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that Respondents release Petitioner or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14 days;

c. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

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

DATED this 13th of May, 2026.

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