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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Nicolas CHILEL MONSON,

Petitioner,

v.

Markwayne MULLIN, Secretary, Department of Homeland Security; Todd LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement (ICE); Todd BLANCHE, Acting Attorney General of the United States; Gregory J. ARCHAMBEAULT, Field Office Director, San Diego, ICE Field Office; and WARDEN, Imperial Regional Detention Center.

Respondents.

Civil Case No.: '26CV3261 LL DDL

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Nicolas Chilel Monson ("Petitioner") has been detained by immigration authorities for more than 10 months, since July 2, 2025.

2. Petitioner is a noncitizen who is detained at the immigration detention facility in Imperial, California. He is in pending removal proceedings and is charged with having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

3. Petitioner is being held without the right to a bond hearing before an immigration judge, in violation of the statute at 8 U.S.C. § 1226(a), based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which holds that individuals charged with having entered the United States without inspection are ineligible for bond redetermination hearings before an immigration judge, relying on the statute at 8 U.S.C. § 1225(b)(2)(A). However, detention of Petitioner without permitting a bond redetermination before an immigration judge is in violation of the general bond provision at 8 U.S.C. § 1226(a).

4. Petitioner seeks an order from this Court finding that 8 U.S.C. § 1225 does not authorize his detention and ordering that Respondents immediately release him from custody. Alternatively, the Court should find that Petitioner is detained pursuant to 8 U.S.C. § 1226(a) and order Respondents to provide Petitioner with a bond hearing before an immigration judge under 8 U.S.C. § 1226(a) within seven days. Alternatively, the Court should also find that prolonged detention of Petitioner violates Due Process and order his release.

JURISDICTION AND VENUE

5. 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 judgment); United States Constitution Article I, Section 9 (Suspension Clause).

6. Venue properly lies within the Southern District of California under 28 U.S.C. § 1391, because this is a civil action in which Respondents are agencies of the United

States, Petitioner is detained in this District, and a substantial part of the events or omissions giving rise to this action occurred in the District.

PARTIES

7. Petitioner Nicolas Chilel Monson is in pending removal proceedings and is currently detained at the immigration detention center in Imperial, California.

8. 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 and oversees ICE, which is responsible for Petitioner's detention. Respondent Mullin has ultimate custodial authority over Petitioner. He is sued in his official capacity.

9. Respondent Todd Lyons is the Acting Director of ICE and has authority over the operations of ICE. In that capacity and through his agents, Respondent Lyons has broad authority over the operation and enforcement of the immigration laws. Respondent Lyons is sued in his official capacity.

10. Respondent Todd Blanche is the Acting Attorney General of the United States. He is responsible for the Department of Justice and is sued in his official capacity.

11. Respondent Gregory J. Archambeault is the Field Office Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, he is the custodian of all persons held at the ICE facilities in the San Diego Field Office. He is Petitioner's immediate custodian and is responsible for his detention. He is sued in his official capacity.

12. The Warden of the Imperial Regional Detention Center, where Petitioner is detained, has immediate physical custody of Petitioner and is sued in their official capacity.

LEGAL BACKGROUND

13. The Immigration and Nationality Act (INA) prescribes three basic forms of detention for noncitizens in removal proceedings.

14. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge (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).

15. 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).

16. Last, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

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

18. 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).

19. Following 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).

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

21. On September 5, 2025, the Board of Immigration Appeals issued a precedent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), finding that noncitizens who entered the United States without inspection were ineligible for bond redetermination hearings because they were seeking admission, and fell within 8 U.S.C. § 1225(b)(2)(A).

22. This legal theory that noncitizens who entered the United States without admission or parole are ineligible for bond hearings has been overwhelmingly rejected by the district courts. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *9 (W.D. Wash. Sept. 30, 2025); *Andres Rodas-Dieguez Petr., v. Kristi Noem, Sec., Dept. of Homeland Sec., et al., Respondents.*, No. 3:26-CV-00976-RBM-MMP, 2026 WL 549910, at *1 (S.D. Cal. Feb. 26, 2026); *Maciel v. Noem*, No. 1:26-CV-01318-DC-CKD (HC), 2026 WL 496948, at *5 (E.D. Cal. Feb. 23, 2026); *Everaldino Pereira Dos Santos, v. Moises Becerra, et al.*, No. 26-CV-01423-GPC-VET, 2026 WL 701588 (S.D. Cal. Mar. 12, 2026); *Oswaldo Chavez-Castanon v. Gregory J. Archambeault, et al.*, No. 26-CV-01235-BAS-BLM, 2026 WL 673589, at *1 (S.D. Cal. Mar. 10, 2026); *Edwin Galeano Escobar, v. Kristi Noem, et al.*, No. 26-CV-480 JLS (MSB), 2026 WL 673821, at *3 (S.D. Cal. Mar. 10, 2026); *Cozme Villegas Solano, v. Kristi Noem, et al.*, No. 26-CV-01278-BAS-DDL, 2026 WL 675564, at *1 (S.D. Cal. Mar. 10, 2026); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *3 (C.D. Cal. Sept. 8, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256, at *9 (E.D. Cal. Sept. 9, 2025); *Vasquez Garcia v. Noem*, 3:25-cv-02180-DMS-MMP (SD. Cal. Sept. 3, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS) C.D. Cal. Aug. 26, 2025); *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-ODW-DFM (C.D. Cal. Aug. 15, 2025); *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025),

judgment entered sub nom Maldonado Bautista v. Santacruz[1]; *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *2 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at *6 (D. Minn. Aug. 27, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) *Rodriguez v. Bostock,* 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025).

23. The Board's interpretation defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

24. 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, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

25. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

26. 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

[1] The government's appeal in *Maldonado Bautista* is pending before the Ninth Circuit Court of Appeals. No. 5:25-CV-01873-SSS-BFM, Dkt #96. On March 6, 2026, the Ninth Circuit stayed the district court's February 18 order and stayed the December 18 orders outside the Central District. *Lazaro Maldonado Baustista v. United States Department of Homeland Security, et al.,* No. 26-1044 (9th. Cir.), Dkt #5.1, 17.

inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

27. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner who is alleged to have entered the United States without admission or parole.

FACTS

28. Petitioner Nicolas Chilel Monson has been assigned A Number [redacted] Petitioner has no criminal history.

29. He was arrested by immigration authorities and placed in removal proceedings on July 2, 2025. He is detained at the Imperial detention center and has been issued a Notice to Appear which alleges that he entered the United States without inspection or admission. 8 U.S.C. § 1182(a)(6)(A)(i).

30. Petitioner is in pending removal proceedings. The Immigration Judge ordered removal on August 27, 2025, and his appeal is pending before the Board of Immigration Appeals.

31. However, according to the policy of the Executive Office for Immigration review, which houses immigration judges, he is not eligible for a bond redetermination hearing before an immigration judge in light of the Board of Immigration Appeals' precedent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as he is charged with having entered the United States without inspection or admission.

32. On August 15, 2025, the Immigration Judge denied Petitioner's bond request based on lack of jurisdiction, stating "applicant for admission."

33. It is futile for Petitioner to exhaust his administrative remedies because the Executive Office for Immigration Review refuses to hold bond hearings in reliance on *Matter of Yajure Hurtado.*

CAUSES OF ACTION

COUNT I

Detention Without Statutory Basis

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

35. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted or paroled.

36. Where Respondents incorrectly assert that Petitioner is detained under 8 U.S.C. § 1225(b)(2) and do not claim any valid basis for his detention, he must be immediately released. *See Maciel v. Noem*, No. 1:26-CV-01318-DC-CKD (HC), 2026 WL 496948, at *5 (E.D. Cal. Feb. 23, 2026) ("Here, Respondents contend that Petitioner was detained in December 2025 pursuant to section 1225(b)(2)(A) and have explicitly denied that he was detained under section 1226, or any other basis. Because Respondents do not assert any alternative basis for Petitioner's detention, and do not provide any extenuating circumstances that would warrant Petitioner's continued unlawful detention pending a bond hearing, the court finds that the appropriate relief is Petitioner's immediate release."). S*ee also Andres Rodas-Dieguez Petr., v. Kristi Noem, Sec., Dept. of Homeland Sec., et al., Respondents.*, No. 3:26-CV-00976-RBM-MMP, 2026 WL 549910, at *1 (S.D. Cal. Feb. 26, 2026) ("The Court also agrees that Petitioner is entitled to immediate release"); *Xianjin Zheng, Petr., v. Jeremy Casey, in his official capacity as Warden of Imperial Regl. Adult Detention Facility, et al., Respondents.*, No. 3:26-CV-01110-RBM-BLM, 2026 WL 559780, at *1 (S.D. Cal. Feb. 27, 2026) (granting immediate release, citing *Maciel v. Noem*, No. 1:26-CV-01318-DC-CKD (HC), 2026 WL 496948, at *5 (E.D. Cal. Feb. 23, 2026))

COUNT II

Violation of 8 U.S.C. § 1226(a)

Unlawful Denial of Right to Bond Hearing

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

38. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted or paroled. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.

39. The application of § 1225(b)(2) to bar Petitioner from receiving a bond redetermination hearing before an immigration judge violates the Immigration and Nationality Act. If his detention is found to be proper under § 1226(a), a bond hearing before a neutral adjudicator in compliance with the statute and regulations is required.

COUNT III

Violation of the Administrative Procedure Act

Unlawful Denial of Right to Bond Hearing

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

41. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to grounds of inadmissibility because they originally entered the United States without inspection 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.

42. The application of § 1225(b)(2) to bar Petitioner from receiving a bond redetermination hearing before an immigration judge is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

COUNT IV

Violation of Procedural Due Process

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

44. 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).

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

46. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

CAUSES OF ACTION

COUNT V

(Violation of Due Process: Prolonged Detention)

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

48. The Fifth Amendment entitles noncitizens to due process in removal proceedings. *Reno v. Flores*, 507 U.S. 292, 306, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993).

49. The Constitution establishes due process rights for "all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

50. Due process bars the Respondents from detaining noncitizens for an unreasonably prolonged period without a bond hearing. *Black v. Decker*, 103 F.4th 133,

143 (2d Cir. 2024). Due Process requires a hearing when detention becomes unreasonable. *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020).

51. To determine whether mandatory detention has become unreasonable, the Court looks to "the total length of detention to date, the likely duration of future detention, and the delays in the removal proceedings caused by the petitioner and the government." *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022).

52. "Courts have found detention over seven months without a bond hearing weighs toward a finding that it is unreasonable." *Amado v. United States Dep't of Just.*, No. 25CV2687-LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025).

53. The mandatory detention provision at 8 U.S.C. § 1225(b) as applied to Petitioner violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;
b. Declare that detention of Petitioner under 8 U.S.C. § 1225(b) is unlawful;
c. Alternatively, declare that detention of Petitioner without a bond hearing violates the INA, APA, and Due Process;
d. Issue a writ of habeas corpus requiring that Defendants release Petitioner immediately;
e. Alternatively, issue a writ of habeas corpus requiring that Defendants provide the bond hearing to which he is entitled within 7 days;
f. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and
g. Order further relief as this Court deems just and appropriate.

Dated: May 27, 2026

Respectfully Submitted,

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