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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Nestor Jose Mosquera Gonzalez, Petitioner-Plaintiff, v. Warden, Golden State Annex, Current or Acting Office Director, ICE Fresno Field Office, Current or Acting Secretary, U.S. Department of Homeland Security, Current or Acting Director, U.S. Immigration and Customs Enforcement, Current or Acting Attorney General, U.S. Department of Justice, in their official capacities, Respondents-Defendants.	Case No. _____ **PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** Challenge to Unlawful Removal Under Color of Immigration Statutes; Request for Declaratory and Injunctive Relief, Request for Request for Release of Unlawfully Detained Person

INTRODUCTION

1. Petitioner, Nestor Jose Mosquera Gonzalez, (hereinafter "Petitioner"), by and through undersigned Counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief challenging his unlawful re-detention by the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) and seeking his immediate release.

JURISDICTION

2. 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).

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.

4. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Golden State Annex located at 611 Frontage Rd, McFarland, California. See Exhibit "A."

VENUE

5. 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 Eastern District of California, the judicial district in which Petitioner is currently is detained.

6. 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 Eastern District of California.

REQUIREMENTS OF 28 U.S.C. § 2243

7. 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.*

8. 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).

9. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued unlawful removal

results in irreparable harm.

11. No statutory exhaustion requirements apply to Petitioner's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

STATEMENT OF FACTS AND PARTIES

A. PETITIONER

12. Petitioner Nestor José Mosquera Gonzalez is a native and citizen of Venezuela. See Exhibit "B." He entered the United States with his mother on or about December 30, 2021, near San Luis, Arizona. *Id.* He entered unlawfully the United States from Mexico at a time and place other than designated by the Secretary of Homeland Security of the United States. *Id.* Following their detention by and encounter with U.S. Customs and Border Protection, both were released into the United States pursuant to INA § 212(d)(5). See Exhibit "C." After being released on parole, Petitioner was later placed in removal proceedings. See Exhibit "D."

13. On May 9, 2023, through counsel, Petitioner admitted the factual allegations and charges of removability and sought relief from removal by filing an application for asylum, withholding of removal, and protection under the Convention Against Torture. See Exhibit "E." An asylum application was filed by his mother and for him as a derivative to his mother's application, before the Houston Immigration Court. See Exhibit "F."

14. While Petitioner's removal proceedings were pending, USCIS approved

Petitioner's application for employment authorization under category (c)(8), authorizing him to work lawfully in the United States from May 30, 2023, through May 29, 2025. See Exhibit "G."

15. On February 15, 2024, after reviewing the case, the Department of Homeland Security and Petitioner jointly moved to dismiss the removal proceedings without prejudice. DHS expressly represented that it had reviewed the facts and circumstances of the case and determined that circumstances had changed such that continuation of the removal proceedings was no longer in the best interest of the Government. See Exhibit "H." That same day, the Immigration Court granted the parties' joint motion and dismissed the removal proceedings without prejudice. See Exhibit "I."

16. Following the dismissal of his removal proceedings, Petitioner remained in the United States under Temporary Protection Status ("TPS") that DHS and USCIS continued to recognize. See Exhibit "J." USCIS approved Petitioner's application for TPS after conducting the required background and eligibility review. See Exhibit "K."

17. Petitioner fully responded to USCIS's Request for Evidence by submitting the requested criminal court records. *Id.* Those records established that the Texas criminal case had been dismissed after completion of pretrial diversion, and the state court entered an order dismissing the criminal proceeding. *Id.*

18. After reviewing the criminal records and all other eligibility requirements, USCIS nevertheless, determined that Petitioner remained eligible for TPS and approved his application. The approval notice confirmed that Petitioner had been granted Temporary Protected Status and authorized him to remain in the United States during the designated TPS period. See Exhibit "K."

19. After the approval, dismissal of proceedings, and approval of TPS, Petitioner was

arrested on or about June 27, 2026 by Utah police officers. The case is currently pending. See Exhibit "L." Petitioner's counsel for his case is unable to provide the documents because they are "waiting on discovery." See Exhibit "M."

20. After Petitioner's arrest, ICE officials picked him up and transferred him to the Golden State Annex located at 611 Frontage Rd, McFarland, California. See Exhibit "A." At the time of his detention by ICE, Petitioner was not presented for a warrant for his arrest by ICE, a notice to appear, or a notice for a custody determination. See Exhibit "L." Petitioner remains in ICE's custody with no charges either served on Petitioner or even filed before the Immigration Court. See Exhibit "N."

B. RESPONDENTS

21. Respondent Jonathan Crawford is the Director of the Field Office of ICE's Enforcement and Removal Operations division. Jonathan Crawford is the immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

22. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

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

24. 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 is a component agency. She is sued in her official capacity.

25. 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.

26. Respondent Warden is employed by the GEO Group, Inc. as Warden of the Golden State Annex where Petitioner is detained. The Warden has immediate physical custody of Petitioner. The Warden is sued in his official capacity.

27. Petitioner has been re-detained without the ability to have a bond hearing prior to his re-detention because Respondents have taken a legal and policy position that noncitizens who entered the United States without inspection or admission are applicants for admission, and thus, subject to mandatory detention. See Exhibit "O" and "P."

DETENTION AUTHORITY FRAMEWORK

1. Two primary statutes govern immigration detention during removal proceedings. Section 1225 addresses detention of arriving aliens and applicants for admission, while Section 1226 governs detention of aliens already present in the United States. *Buenrostro-Mendez v. Bondi,* 2025 U.S. Dist. LEXIS 201967. Under 8 U.S.C. § 1225(b)(2), "a noncitizen 'who is an applicant for admission' shall be detained for a removal proceeding 'if the examining officer determines that. [the noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted. '" *Buenrostro-Mendez v. Bondi*, 2025 U.S. Dist. LEXIS 201967.

2. In contrast, "under 8 U.S.C. § 1226, the 'discretionary detention statute,' a

noncitizen subject to detention is entitled to procedural protections that are not afforded under the mandatory detention statute, such as the right to a bond re-determination hearing in front of an Immigration Judge." *Buenrostro-Mendez v. Bondi*, 2025 U.S. Dist. LEXIS 201967. 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).

3. The Supreme Court has clarified that these detention provisions apply in different circumstances. Section 1225(b)(2) governs "the detention of applicants for admission who are 'seeking admission' to the United States, whereas Section 1226(a) governs the detention of noncitizens who are arrested '[o]n a warrant' while present in the United States." *Dos Santos v. Noem,* 2025 U.S. Dist. LEXIS 157488. The Court explained that "U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2)" and "also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Barrios v. Shepley*, 2025 U.S. Dist. LEXIS 191139.

4. 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).

5. 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).

6. 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)).

7. 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.

8. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] 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.

9. In a May 22, 2025, unpublished decision from the Board of Immigration Appeals

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

(BIA), EOIR adopts this same position.[2] That decision holds that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bond hearings.

10. ICE and EOIR have adopted this position even though federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

11. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

12. 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]."

13. 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). As the *Rodriguez Vazquez* court explained, "[w]hen Congress

[2] *Available at* https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf.

creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

14. 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.

15. 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). Indeed, the Supreme Court has explained 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." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

16. Additionally, Courts have established that noncitizens "initially released on bond or conditional parole under § 1226(a) are entitled to a hearing before their bond or parole is revoked." *Bermeo Sicha v. Bernal*, 2025 U.S. Dist. LEXIS 169007. Multiple federal district courts have "enjoined the government from re-detaining noncitizens under these circumstances without a pre-deprivation bond hearing." *Rodriguez v. Kaiser*, 2025 U.S. Dist. LEXIS 172756.

17. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended, and the government must have afforded a pre-deprivation bond hearing before re-detaining Petitioner.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

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

COUNT II

Violation of Due Process

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

21. Petitioner's re-detention without a pre-deprivation hearing violates his Fifth Amendment due process rights. Having been previously paroled, he established a liberty interest that cannot be revoked without procedural safeguards. While the statute permits the Attorney General to "revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien," 8 USCS § 1226 this authority is subject to constitutional limitations.

22. Multiple federal courts have recognized that re-detention requires procedural protections. Courts have consistently held that "ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights." *Bermeo Sicha v. Bernal*, 2025 U.S. Dist. LEXIS 169007. The lack

of any hearing before Petitioner's re-detention in 2026 appears to violate these established constitutional requirements. Petitioner has a fundamental interest in liberty and being free from official restraint.

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

COUNT III

Violation of Due Process

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

25. 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).

26. Petitioner has a fundamental interest in liberty and being free from official restraint. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others also 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 and not re-detain him prior to a pre-deprivation hearing;

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: July 20, 2026

Respectfully submitted,
/s/ Jose Z. Marin
Jose Z. Marin
Attorney for Petitioner

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

I represent Petitioner and submit this verification on his behalf. 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.

Respectfully submitted,

_____
Jose Z. Marin
Attorney for Petitioner

Dated: July 20, 2026