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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Wilmer Wilfredo Lapop Mazariegos

Petitioners(s),

v.

Markwayne Mullin, Secretary, Department of Homeland Security; David Venturella, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; Todd Blanche, Attorney General of the United States; Warden of Otay Mesa Detention Center.

Respondent(s).

Civil Case No.: **'26CV4379 AGS JAC**

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

INTRODUCTION

1. Petitioner with A# [redacted] is a noncitizen who is currently detained at the Immigration Detention Center facility in San Diego, CA.
2. Petition is charged with entering the United States without inspection pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). The Petitioner is not eligible for bond under the recent decision dated September 5, 2025 in the Immigration *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding 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) which reads:

> 8 U.S.C. § 1225(b)(2) Inspection of other aliens
> (A)In general
> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

3. However, 8 U.S.C. § 1225(b)(2)(A) does not govern individuals—such as Petitioner—who are charged with having entered the United States without inspection. Rather, such individuals fall under the detention framework of 8 U.S.C. § 1226(a) and are therefore eligible for consideration of release on bond.
4. Several courts have addressed this issue even prior to the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*. These courts have consistently held that individuals charged with entering the United States without inspection fall within the ambit of § 1226(a) and are therefore entitled to bond hearings before an Immigration Judge. Accordingly, the BIA's ruling in *Matter of Yajure Hurtado* is a violation of the statute and principles of due process.
5. As such, Petitioner seeks an order of declaratory and injunctive relief that the Petitioner be provided a bond redetermination hearing before an Immigration Judge.

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JURISDICTION AND VENUE

6. A Federal District Court is authorized to grant a writ of habeas corpus under 28 U.S.C. § 2241 where the Petitioner is "in custody under or by color of the authority of the United States... in violation of the Constitution or laws or treaties of the United States."
7. Venue is proper and it 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 and 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

8. Petitioner Wilmer Wilfredo Lapop Mazariegos, is in pending removal proceedings and is currently detained at the Otay Mesa Detention Immigration Detention Center.
9. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. Mr. Mullin is responsible for the implementation and enforcement of the Immigration and National Act ("INA") and oversees Immigration Customs Enforcement ("ICE"), which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over the Petitioner. Mr. Mullin is sued in his official capacity.
10. Respondent David Venturella is the Acting Director of ICE and has authority over the operations of ICE. In that capacity and through his agents, Mr. Venturella has broad authority over the operation and enforcement of the immigration laws. Mr. Venturella is being sued in his official capacity.
11. Repondent Todd Blanche is the Attorney General of the United States and is responsible for the Department of Justice ("DOJ") and is being sued in her official capacity.
12. Respondent is the Warden of the Otay Mesa Detention Center in San Diego, California, where the Petitioner is detained. The warden has immediate physical custody of the Petitioner and is being sued in his official capacity.

LEGAL BACKGROUND

13. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.
14. The first form of detention under 8 U.S.C. § 1226 pertains to noncitizens placed in standard, non-expedited removal proceedings before an Immigration Judge ("IJ"). See 8 U.S.C. § 1229(a). Individuals detained pursuant to § 1226(a) are entitled to a bond hearing at the commencement of their detention. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). By contrast,

noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention under § 1226(c).

15. As for the second form of detention, 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. Lastly, 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 detentions 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 Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-54, 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 IIRIRA, EOIR drafted new regulations explaining that, in general, people who have 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. Accordingly, in the decades that followed, individuals who entered the United States without inspection— unless they were subject to some other detention authority— were routinely afforded bond hearings. This practice aligned with longstanding historical procedures under which noncitizens who were not classified as "arriving" were entitled to a custody determination before an Immigration Judge or adjudicatory officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining that § 1226(a) merely "restates" the detention authority previously codified at § 1252(a)).

21. On September 25, 2025, the Board of Immigration Appeals issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that noncitizens who entered the United States without inspection are ineligible for bond redetermination hearings because they are deemed to be "seeking admission" and therefore fall within the scope of 8 U.S.C. § 1225(b)(2)(A).

22. This legal theory that noncitizens that entered the United States without admission or parole are ineligible for bond hearings has been universally rejected by several district courts. *Rodriguez v. Bostock,* No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *9 (W.D. Wash. Sept. 30, 2025); *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); *Maldonado Bautista v. Santacruz,* 5:25-CV-01873-SSS-BFM (C.D. Cal. July 28, 2025); *Carmona-Lorenzo v. Trump,* No. 4:25-CV-3172, 2025 WL 2531521, at *2 (D. Neb. Sept. 3, 2025); *Perez v. Berg,* No. 8:28-CV-494, 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 BIA's interpretation is contrary to the structure and text of the INA. The plain language of the relevant statutory provisions establishes that § 1226(a)—not § 1225(b)—governs the detention of individuals like the 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 § 1229(a), which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

25. The text of § 1226 expressly encompasses individuals charged as inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). The inclusion of such individuals in subparagraph (E) confirms that, absent mandatory detention under subsection (c), they are presumptively entitled to a bond hearing pursuant to subsection (a). Accordingly, § 1226 leaves no ambiguity that it governs the detention of individuals charged with inadmissibility to the United States, including those present without admission or parole.

26. By contrast, § 1225(b) governs individuals who present themselves at U.S. ports of entry or who have only recently entered the United States. The statutory scheme is predicated on the inspection and processing of persons deemed to be "seeking admission" to the United States. See 8 U.S.C. § 1225(b)(2)(A).

27. Accordingly, the mandatory detention provision of § 1225(b)(2) does not extend to individuals, such as Petitioner, who are alleged to have entered the United States without being admitted or paroled.

FACTS

28. Petitioner Wilmer Wilfredo Lapop Mazariegos, entered the country in or around 2022 but has been placed in removal proceedings on June 23, 2026 and has been charged with inadmissibility for having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

29. Petitioner is in pending removal proceedings and is currently detained at the Otay Mesa Detention Center.

30. Petitioner is precluded from seeking a bond redetermination hearing before an Immigration Judge pursuant to the Board of Immigration Appeals' precedential decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), because Petitioner is charged with having entered the United States without inspection or admission.

31. Petitioner is next scheduled for a hearing before an Immigration Judge in the removal case on August 5, 2026.

CAUSES OF ACTION

COUNT I

Violation of 8 U.S.C. § 1226(a)

Unlawful Denial of Bond Hearing

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

33. The mandatory detention provision set forth in 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing within the United States who are charged as inadmissible on the basis that they originally entered the United States without inspection or parole. Such individuals are instead subject to detention under 8 U.S.C. § 1226(a), unless they fall within the scope of a separate detention provision, including 8 U.S.C. § 1225(b)(1), 8 U.S.C. § 1226(c), or 8 U.S.C. § 1231.

34. The Government's application of § 1225(b)(2) to preclude Petitioner from obtaining a bond redetermination hearing before an Immigration Judge is arbitrary, capricious, and contrary to law, in violation of the Administrative Procedure Act. See 5 U.S.C. § 706(2).

COUNT II

Violation of Procedural Due Process

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

36. 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." *Zadifas v. Davis,* 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L.Ed.2d 653 (2001).

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

38. The government's detention of Petitioner without a bond redetermination hearing to determine whether Petition is a flight risk or danger to other violates Petitioner's right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court:

a. Assume jurisdiction over this matter;

b. Declare that the denial of Petitioner's access to a bond redetermination hearing before an Immigration Judge violates the Immigration and Nationality Act, the Administrative Procedure Act, and the Due Process Clause of the United States Constitution;

c. Issue a writ of habeas corpus directing Respondents to release Petitioner or, in the alternative, to provide Petitioner with the bond hearing to which Petitioner is legally entitled within seven (7) days;

d. For such other relief as this Court deems just and appropriate.

Date: 07/30/2026

By: _____
Michael Quiroga
Attorney for Petitioner