IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

ABELARDO PENATE PEREZ Petitioner, v. CHRISTOPHER BULLOCK, Field Office Director of Enforcement and Removal Operations, New Orleans Field Office, Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; TOM SPANGLER, Knox County Sheriff, Respondents.	**Case No. 3:26-cv-363**

PETITION FOR WRIT OF HABEAS CORPUS

Pursuant to 28 U.S.C. § 2241, petitioner Abelardo Penate Perez (Penate) asks the Court to issue a Writ of Habeas Corpus requiring Respondents to immediately release him or to provide him a bond hearing within seven days of the granting of the writ. The Sixth Circuit Court of Appeals has rejected the Respondents' interpretation of the underlying bond statutes, and that precedent resolves the merits in Petitioner's favor. *Lopez-Campos v. Raycraft*, 174 F.4th 713 (6th Cir. 2026).

Introduction

1. In about 2006, at about age 13, petitioner Penate left his home country of Mexico and migrated to the United Sates. He has lived and worked here since. He and his longtime partner, who is a U.S. citizen, have three U.S. citizen children, ages 2, 5, and 12.

2. On July 29, 2026, Penate was a passenger in a car on his way to work when the car was stopped by local police in Sevierville, Tennessee. He was held that night in Sevier County jail on a U.S. Immigration and Customs Enforcement (ICE) hold, and then transferred to Knoxville, Tennessee on July 30, 2026, with possible plans to transfer him to Louisiana. On information and belief, he has been served with a Notice to Appear (NTA) charging him with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. Consequently, Penate is being subjected to the Department of Homeland Security's (DHS) new policy, issued in July 2025, under which people like him, who are charged with being inadmissible under § 1182(a)(6)(A)(i) for having entered without admission or inspection, are deemed to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and are therefore ineligible for a bond hearing under 8 U.S.C. § 1226. That new policy, which rests on the DHS's new interpretation of § 1225(b)(2)(A), reversed nearly three decades of practice, but it has been adopted by the Board of Immigration Appeals (BIA) in its precedential decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The federal circuit courts have disagreed about the soundness of this new policy, as some have rejected it and others have accepted it. *Compare Lopez-Campos v. Raycraft*, 174 F.4th 713 (6th Cir. 2026) (rejecting the DHS's new interpretation of § 1225(b)(2)(A)); *Da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026) (same); *Alvarez v. Warden, Fed. Det. Ctr. Miami*, 175 F.4th 1258 (11th Cir. 2026) (same); *with Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. 2026) (agreeing with the new interpretation); *Avila v. Bondi*, 170 F.4th 1128, 1138 (8th Cir. 2026) (same). Thus, under Sixth Circuit precedent, Petitioner is entitled to a § 1226 bond hearing, but for example, under Fifth Circuit precedent, he is ineligible for one.

4. Petitioner would be deemed ineligible for release on bond even though he has lived productively and peaceably in the United States from age 14 to 32, and even though he has three minor U.S. citizen children with his longtime partner, who is also a U.S. citizen.

5. Petitioner raises two claims: (1) the Respondents are violating the Immigration and Nationality Act by denying him a § 1226 bond hearing; and, (2) they are violating his procedural Due Process rights both by holding him without a bond hearing. He seeks a writ of habeas corpus ordering the Respondents either (a) to immediately release him or (b) to release him unless they provide him with a § 1226 bond hearing within seven days.

Requirements of 28 U.S.C. § 2243

6. 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).

7. Pursuant to 28 U.S.C. § 2243, 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. *Id.* After issuance of an order to show cause, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* Upon filing of the return, the Court sets a hearing "not more than five days after the return unless for good cause additional time is allowed." *Id.* Finally, "[t]he court shall summarily hear and determine the facts, and dispose of the matter as law and justice require." *Id.*

Jurisdiction

8. Petitioner is in the physical custody of Respondents, as he remains in immigration custody. At the time of the filing of this petition, Petitioner is in the physical custody of the Respondents at the Roger D. Wilson Detention Facility, operated by Respondent Sheriff Tom

Spangler and under the legal control of Respondent Christopher Bullock. *Rumsfield v. Padilla*, 542 U.S. 426, 435 (2004); *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003).

9. This Court retains jurisdiction regardless of the Petitioner's movements following the filing of the Petition. *Ex parte Endo*, 323 U.S. 283, 305–06 (1944).

10. 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).

11. 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.

Venue

12. 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 Tennessee, the judicial district in which Petitioner is detained. Regardless of where Petitioner is detained as his case progresses, venue remains proper here. *See So v. Reno*, 251 F. Supp. 2d 1112, 1127 (E.D.N.Y. 2003) (collecting cases).

13. 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, because Petitioner resides in this District, and because a substantial part of the events or omissions giving rise to the claims, namely Petitioner's ongoing detention, occurred in this District.

Parties

14. Petitioner Abelardo Penate Perez is alleged to be a citizen of Mexico who has been in immigration detention since about July 29, 2026. Petitioner has continuously resided in the United States since 2006. After detaining Petitioner in Sevierville, ICE did not set bond for him,

and Petitioner, who is evidently charged with, inter alia, having entered the United States without admission or inspection (8 U.S.C. § 1182(a)(6)(A)(i)), is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

15. Respondent Christopher Bullock is the Director of the New Orleans Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Bullock is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity. *Roman v. Ashcroft*, 340 F.3d 314, 320–22 (6th Cir. 2003) (District Director is proper respondent).

16. 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. He has ultimate custodial authority over Petitioner and is sued in his official capacity.

17. Respondent Tom Spangler is the Knox County Sheriff who has jurisdiction over the Roger D. Wilson Detention Facility, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

Legal Framework

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

19. 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).

20. Second, the INA provides for mandatory detention of two groups of noncitizens regardless of any criminal record. The first group consists of those who are subject to expedited removal (a) for being apprehended upon arrival at or near the border lacking any valid entry document or (b) for being apprehended at any location and unable to show that they have been physically present in the United States for more than two years. 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). The second group consists of anyone alleged to be an "applicant for admission" who is "seeking admission" and whom an "examining officer determines . . . is not clearly and beyond a doubt entitled to be admitted," *e.g.,* someone who presents valid entry documents at a port of entry but is inadmissible for some reason. 8 U.S.C. § 1225(b)(2).

21. 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).

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

23. 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 last year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

24. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who had entered the country without inspection were considered detained under Section 1226(a), not under Section 1225. *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).

25. In the decades following the enactment of these statutory and regulatory provisions, most people who were detained after having entered without inspection were placed in standard removal proceedings and received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many 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)).

26. 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.

27. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who are detained after having entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225(a)(1), and therefore subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and it affects those who have resided in the United States for months, years, and even decades.

28. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). The BIA held that "aliens who are present in the United States without admission are applicants for admission as defined under

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

section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained during the duration of their removal proceedings." *Id.*

29. The Sixth Circuit Court of Appeals, joining the Second and Eleventh Circuits, has rejected *Yajure Hurtado*'s interpretation of these statutes. *Lopez-Campos v. Raycraft*, 174 F.4th 713 (6th Cir. 2026); *Da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026) (same); *Alvarez v. Warden, Fed. Det. Ctr. Miami*, 175 F.4th 1258 (11th Cir. 2026) (same); *but see Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (accepting government's interpretation); *Avila v. Bondi*, 170 F.4th 1128, 1138 (8th Cir. 2026) (same). Under *Lopez-Campos*, it is definitively established that the mandatory detention provision of Section 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

Facts

37. Petitioner, who was born in Mexico in 1993, has resided in the United States since 2006, and lives in Sevierville, Tennessee area.

38. Petitioner entered the United States through the southern border in 2006, at age 13. When he entered, he was detained and then sent back to Mexico by immigration authorities. On information and belief, he was returned to Mexico without being issued a removal order.[2] A few days later, Petitioner reentered the United States and has resided here since.

39. Petitioner has lived and worked here productively for about 20 years. His longtime partner is a U.S. citizen, and they have three U.S. citizen children, ages 2, 5, and 12. It is believed he has one conviction for driving on a suspended license.

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[2] A person detained near the border can be returned to Mexico either through "voluntary return" or through "expedited removal." Immigrant Legal Resource Center, *How to Interview Clients about their Entries and Attempted Entries to the United States (And Understand Their Answers)*, at 2-3 (Dec. 18, 2018), available at https://www.ilrc.org/resources/how-interview-clients-about-their-entries-and-attempted-entries-united-states-and. In each process, that person signs documents. *Id.* A layperson typically does not understand, much less recall years later, which process was used. *Id.*

40. On July 29, 2026, Penate was a passenger in a car on his way to work when the car was stopped by local police in Sevierville, Tennessee. He was held that night in Sevier County jail on an ICE hold, and then transferred to Knoxville, Tennessee on July 30, 2026, with possible plans to transfer him to Louisiana. On information and belief, he has been served with a Notice to Appear (NTA) charging him with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

41. Thus, it appears that, according to DHS-DOJ, petitioner is ineligible for a bond hearing despite living productively in the United States for two decades and despite his strong family ties with U.S. citizens.

42. Petitioner is now held in immigration custody at the Roger D. Wilson Detention Facility. Without relief from this court, he faces the prospect of months of wrongful detention.

Claims for Relief

Count I: Violations of the INA

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

44. For the reasons set forth above, 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 specified ground of inadmissibility, entry without inspection, 8 U.S.C. § 1182(a)(6)(A)(i) grounds of inadmissibility. As relevant here, the mandatory detention statute cannot be read to apply to those who are accused of residing in the United States for many years prior to apprehension and removal proceedings. A person with long-term residence in the United States who is alleged to be removeable should be deemed detained under Section 1226(a), unless they

are subject to Section 1225(b)(1), 1226(c) or 1231. Indeed, for the reasons set forth above, the mandatory detention statute cannot be read to apply to someone in petitioner's circumstances.

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

Count II: Violation of Due Process

46. Petitioner incorporates by reference the factual allegations and legal arguments set forth in the preceding paragraphs.

47. The government cannot 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 (2001). That Due Process protection applies to people like Petitioner, who entered the country without inspection and have resided here for years. *Id.* at 693–94; *Lopez-Campos*, 174 F.4th at 732–33. *See also Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." (citing *The Japanese Immigrant Case*, 189 U.S. 86, 100–101 (1903); *Wong Yang Sung v. McGrath*, 339 U.S. 33, 49–50 (1950); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 598 (1953))); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("There are literally millions of aliens within the jurisdiction of the United States. The Fifth Amendment . . . protects every one of these persons from deprivation of life, liberty, or property without due process of law. Even one whose presence in this country is unlawful, involuntary or transitory is entitled to that constitutional protection." (citations omitted) (citing *Wong Yang Sung*, 339 U.S. at 48–51; *Wong Wing v. United States*, 163 U.S. 228, 238 (1896))); *Plyler v. Doe*, 457 U.S. 202, 210 (1982) ("'[A]ll

persons within the territory of the United States,' including aliens unlawfully present, may invoke the Fifth . . . Amendment[] to challenge actions of the Federal Government . . . ." (quoting *Wong Wing*, 163 U.S. at 238)).

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

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

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Eastern District of Tennessee while this habeas petition is pending;

c. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner immediately, returning all property and documents taken from Petitioner when he was seized and returning him to the *status quo ante*. In the alternative, issue a Writ ordering Petitioner's release unless the Respondents provide him, within seven days, a bond hearing in which the burden of proving Petitioner is a flight risk or danger rests on the DHS, in which that burden of proof be by clear and convincing evidence, and in which the immigration judge must take into consideration the Petitioner's ability to pay a bond.

d. Declare that Petitioner's detention is unlawful;

e. 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

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

Respectfully submitted,

/s/ Lorne G. Hiller
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I, Lorne G. Hiller, am submitting this verification on behalf of the Petitioner because I am his attorney and Petitioner is in custody with limited ability to communicate and sign documents. Based on discussions that I and my assistant have had with Petitioner's partner, and based on our review of certain documents, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/ Lorne G. Hiller
Lorne G. Hiller