Nate Crowley
CA SBN 330755
PO Box 22661
San Diego, CA 92192
619-363-1547
nate@crowleycrowleylaw.com
Pro Bono Attorney for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JULIO JACINTO RUEDA,

Petitioner,

v.

Gregory J. ARCHAMBEAULT, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, 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; Christopher LAROSE Warden of Otay Mesa Detention Facility

Respondents.

Case No. '26CV4573 RFL BJW

VERIFIED EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS, ORDER TO SHOW CUASE WITHIN THREE DAYS AND COMPLAINT FOR DECLARATORY RELIEF

INTRODUCTION

1. Petitioner Julio Jacinto Rueda is in the physical custody of Respondents at the Otay Mesa Detention Facility. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner is charged with, inter alia, having entered the United States without inspection in 2012. 8 U.S.C. § 1182(a)(6)(A)(i), (a)(7)(A)(i)(I). *Exhibit B.* He was arrested December 14, 2025 by Border Patrol at a checkpoint on Highway 94 near Jamul. *Exhibit C.* On July 1, 2026, he was ordered removed after a hearing where he presented an asylum claim, and has initiated an appeal before the BIA. *Exhibit A, D.*

3. Based on the allegation in Petitioner's removal proceeding that he entered without inspection, DHS will deny Petitioner release from immigration custody, consistent with a DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. *See Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). Detainee cases challenging this policy are overwhelming the federal courts.[1] Despite an

[1] Cheney, Kyle *'We've never seen anything like this': ICE's detention crackdown swamps the courts."* Politico, 8/10/26 https://www.politico.com/news/2026/08/10/ice-detentions-trump-administration-01027440.

avalanche of judicial rulings requiring otherwise, DHS continues to classify such entrants, like Petitioner, as applicants for admission and denies bond hearings.

4. Petitioner's detention as an arriving alien violates the plain language of the Immigration and Nationality Act. Section 1225 does not apply to individuals like Petitioner who previously entered years ago and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a) (INA § 236), that allows for release on conditional parole or bond. INA § 236 applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

5. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner, as well as hundreds of recent federal judicial decisions.

6. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released or in the alternative, that Respondents provide a bond hearing under § 1226(a) within fourteen days.

JURISDICTION

7. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Facility in San Diego, California.

8. 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).

9. 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

10. 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 Southern District of California, the judicial district in which Petitioner currently is detained.

11. 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 Southern District of California.

REQUIREMENTS OF 28 U.S.C. § 2243

12. 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.*

13. 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

14. Petitioner Julio Enrique Jacinto Rueda is a citizen of El Salvador who has been in immigration detention since approximately December 15, 2025. Counsel and Petitioner are aware that seeking bond in the immigration court will be futile as he will be deemed an "applicant for admission." Petitioner has resided in the United States since 2012.

15. Respondent Gregory J. Archambeault is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, Gregory J. Archambeault is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

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

18. 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 her official capacity.

19. 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.

20. Respondent Christopher LaRose is employed by CoreCivic as Warden of the Otay Mesa Detention Facility, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

21. The INA sets forth three basic forms of detention for the vast majority of noncitizens in removal proceedings.

22. 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).

23. 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).

24. 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).

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

26. 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).

27. 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).

28. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings were provided with 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)).

29. 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.

30. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[2] 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.

31. In a May 22, 2025, an unpublished decision from the Board of Immigration Appeals (BIA), EOIR adopted this same position.[3] 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. *See also Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025).

32. ICE and EOIR have persisted in this position even though the majority of federal courts subsequently rejected the agency's exact conclusion. *See Barco Mercado v. Francis*, No. 25-cv-6582, --- F. Supp. 3d ----, 2025 WL 3295903, at *13 (S.D.N.Y. Nov.

[2] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.
[3] *Available at* https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf.

26, 2025) (listing 350 decisions rejecting government's position); *Jacobo Ramirez v. Noem*, No. 2:25-CV-02136-RFB-MDC, 2026 WL 310090, at *1 (D. Nev. Feb. 5, 2026) (noting "more than 300 federal judges in over 1,600 cases across the country have rejected the government's new detention policy, with over 100 new lawsuits filed daily, while 14 federal judges have found in favor of the government's position" (citation omitted)). 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 within the United States, the District Court for 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), *Maldonado Bautista v. Noem*, 5:25-cv-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025)(*order vacated and stayed by Ninth Circuit*).

33. 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 who have been in the country for years, like Petitioner.

34. 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]."

35. 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) of section 1226. As the *Rodriguez Vazquez* court explained, "[w]hen Congress 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)).

36. 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.

37. 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).

Section 1226 generally governs the detention of those "already in the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Subsection (a) applies the default rule for such people, providing for discretionary detention "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]."

Subsection (c) confirms that subsection (a) governs Petitioner's detention. As the Supreme Court has explained, "subsection (c) is simply a limit on the authority conferred by subsection (a)." *Nielsen v. Preap*, 586 U.S. 392, 409 (2019). It "carves out a statutory category of [noncitizens] who may *not* be released under § 1226(a)" in *Jennings*. 583 U.S. at 289.

Critically, subsection (c)'s carve outs reference people charged as being inadmissible, including those who entered without admission or parole. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, people like Petitioner people are afforded a bond hearing under subsection (a). This is because "the statutory exceptions would be unnecessary" unless the statute "appl[ies] generally" to inadmissible persons. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010); *see also id.* ("The fact that Congress has created specific exceptions to [the Rule] hardly proves that the Rule does not apply generally. In fact, it proves the opposite.").

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 "inspection[s]" at the border by "examining immigration officer[s]" 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*, 583 U.S. at 287.

38. 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.

FACTS

39. Petitioner has resided in the United States since 2012 and has sponsors available. *Exhibits B, E.*

40. On approximately December 15, 2025, Petitioner was arrested by border patrol. *Exhibit C.* Petitioner is now detained at the Otay Mesa Detention Facility.

41. DHS placed Petitioner in removal proceedings at the Otay Mesa Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I) as someone who entered the United States without inspection and is present without documentation. *Exhibit B.* He was ordered removed after presentation of an asylum claim and has initiated an appeal with BIA. *Exhibits A, D.*

42. Following Petitioner's arrest and transfer to Otay Mesa Detention Facility, ICE has held Petitioner without the opportunity to post bond.

43. Petitioner has no criminal history and there is no evidence Petitioner is a flight risk or community danger. Petitioner's immigration attorney opines that seeking bond before the immigration court is futile because of the immigration court's repeated

and frequent reliance on *Matter of Yajure Hurtado, supra,* 29 I&N Dec. 216 (BIA 2025). *Exhibit A.*

44. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community of over 13 years.

45. Any immigration court bond motion or appeal to the BIA is futile. DHS's new policy was issued "in coordination with DOJ," which oversees the immigration courts. Further, as noted, the most recent unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission. Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

47. 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.

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

COUNT II

Violation of Due Process

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

50. 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).

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

52. The government's detention of Petitioner without a meaningful bond redetermination hearing to determine whether he is a flight risk or danger to others 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. Order that Petitioner shall not be transferred outside the Southern District of California.

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

d. 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

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

DATED this 10th of August, 2026.

/s/ Nate Crowley

Nate Crowley,

Pro Bono Attorneys for Petitioner

Index of Exhibits

A. Affidavit of Petitioner's Immigration Attorney.

B. Notice to Appear in Immigration Court, alleging entry in 2012.

C. Excerpt form I213 showing "criminal history: None" and 2025 arrest date.

D. Proof of filing of appeal

E. Support/surety letters and documents in support of bond

VERIFICATION BY ATTORNEY ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. §2242

I am submitting this verification on behalf of Petitioner. I have reviewed the documents from his immigration court file, as provided to me by his pro bono immigration counsel, and have visited him in person at Otay Mesa Detention Facility.

As Petitioner's attorney, 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.

Dated: August 10, 2026 By: /s/ Nate Crowley