

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

DILMER EDER BOQUIN OLIVA,	)	
	)	
<i>Petitioner,</i>	)	
	)	
v.	)	Civ. Action No. _____
	)	
KRISTI NOEM, Secretary, U.S.	)	
Department of Homeland Security,	)	
	)	
TODD M. LYONS, Acting Director,	)	
U.S. Immigration and Customs Enforcement,	)	
	)	
PAMELA BONDI, Attorney General,	)	
	)	
RUSSELL HOTT, Field Office Director,	)	
Immigration and Customs Enforcement,	)	
Washington Field Office,	)	
	)	
JEFFREY DILLMAN, Warden,	)	
Riverside Regional Jail,	)	
	)	
<i>Respondents.</i>	)	
	)	

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

1. Petitioner Dilmer Eder Boquin Oliva entered the United States in February 2002. He is now married to a U.S. citizen and has three U.S.-citizen children. Petitioner was recently re-detained by U.S. Immigration and Customs Enforcement (“ICE”), under facts and circumstances that place him squarely within ICE’s general detention authority 8 U.S.C. § 1226(a). Under that statute, Petitioner is eligible to seek release on bond from an Immigration Judge (“IJ”). However, due to a new and unprecedented legal opinion that overturns decades of settled law, Respondents now consider Petitioner to be detained under a different detention statute, 8 U.S.C. § 1225(b),

which only applies to noncitizens apprehended at the border. That latter statute does not allow release on bond. Petitioner therefore brings this action seeking a declaration from this Court that he is properly detained (if at all) only pursuant to 8 U.S.C. § 1226(a); and seeking an order that Respondents schedule him for a bond hearing before an Immigration Judge within 15 days.

### **JURISDICTION AND VENUE**

2. This action arises under the Immigration and Nationality Act of 1952 (“INA”), as amended, 8 U.S.C. § 1101 *et seq.*, and the Due Process Clause of the Fifth Amendment to the United States Constitution. This Court has jurisdiction pursuant to Art. I, § 9, cl. 2 of the United States Constitution; 28 U.S.C. § 2241 (general grant of habeas authority to the district courts); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. §§2201, 2202 (Declaratory Judgment Act); and 28 U.S.C. § 1651 (All Writs Act).

3. Venue is proper under 28 U.S.C. § 1391(e)(1)(A), (B) because Respondent Hott, who has a principal place of business in Fairfax, Va., is the ICE official with immediate legal custody of Petitioner, and Petitioner is currently held in ICE custody within the territorial jurisdiction of this District.

### **PARTIES**

4. Petitioner Dilmer Eder Boquin Oliva is a native and citizen of Honduras, currently detained by Respondents at the Riverside Regional Jail in Prince George County, Va.

5. Respondent Kristi Noem is the Secretary of Homeland Security, the cabinet department of which U.S. Immigration and Customs Enforcement is an agency. She is sued in her official capacity.

6. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, the agency currently detaining Petitioner. He is the individual who issued an order

to detain individuals like Petitioner, and also has legal custody over Petitioner. He is sued in his official capacity.

7. Respondent Pamela Bondi is the Attorney General of the United States. The Immigration Judge who conducted Petitioner's bond hearing and the Board of Immigration Appeals members who will decide ICE's appeal of Petitioner's bond order do so as her designees. In addition, the automatic stay regulation challenged in this lawsuit was promulgated by her agency. She is sued in her official capacity.

8. Respondent Russell Hott is the Field Office Director of the Washington Field Office of U.S. Immigration and Customs Enforcement, located in Fairfax, Va. He is the immediate custodian who is currently holding Petitioner in legal custody. He is sued in his official capacity.

9. Respondent Jeffrey Dillman is the warden of the Riverside Regional Jail, where Petitioner is currently detained. He is the immediate custodian who is currently holding Petitioner in physical custody. He is sued in his official capacity.

### **LEGAL BACKGROUND** *Custody hearings generally*

10. When a noncitizen is alleged to have violated immigration laws, they are generally placed into removal proceedings, during which an immigration judge will determine whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.

11. The statute provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a), or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), nor has ICE alleged that he is.

12. In addition, "arriving aliens" who are placed in removal proceedings for consideration of their applications for asylum are also subject to mandatory immigration detention

under a different statute, 8 U.S.C. § 1225(b)(1), even if they have had no criminal arrests or convictions. Regulations define an “arriving alien” as “an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.” 8 C.F.R. § 1.2.

13. Finally, 8 U.S.C. § 1225(b)(2)(A) applies to “an alien who is an applicant for admission . . . seeking admission.”

14. Noncitizens detained under any subsection of 8 U.S.C. § 1225(b) are not eligible to seek release on bond from an Immigration Judge.

15. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE’s initial custody determination before the IJ, who has the authority to modify ICE’s custody determination and set bond in a case in which ICE has designated no bond, lower bond when ICE has set a cash bond amount, or deny bond completely. 8 C.F.R. § 1003.19.

16. Custody hearings are separate from hearings in the underlying removal proceedings. 8 C.F.R. § 1003.19(d). If a noncitizen is granted bond by the IJ, he must still appear in court for the IJ to hear his claim for relief from removal. Once IJ jurisdiction to consider bond is established, custody hearings are limited to an inquiry into whether the detainee is a danger to the community or a flight risk, and bond may only be granted when an IJ has determined that the detainee meets his burden of proof that he is neither. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

## FACTS

17. Petitioner entered the United States as an unaccompanied alien child, without inspection between ports of entry, across the U.S.-Mexico border, on February 5, 2022. *See* Ex. A (Notice to Appear) at 1. He was apprehended and detained by Department of Homeland Security (“DHS”) officers not long thereafter. *Id.* That same day, Petitioner was served with a Notice to Appear, placing him in removal proceedings pursuant to 8 U.S.C. § 1229a. *Id.* The Notice to Appear charged him with being removable as “an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.” *Id.* at 1.

18. That same day, ICE issued a Warrant for Arrest of Alien, taking him into custody “as authorized by section 236 of the Immigration and Nationality Act,” or 8 U.S.C. § 1226. *See* Ex. B (Warrant for Arrest of Alien).

19. Finally, that same day, ICE issued Petitioner a \$10,000 bond “[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act,” or 8 U.S.C. § 1226. *See* Ex. C (Notice of Custody Determination).

20. Three days later, ICE apparently *sua sponte* reconsidered its decision to require a cash bond, and released Petitioner on his own recognizance “in accordance with section 236 of the Immigration and Nationality Act,” or 8 U.S.C. § 1226. *See* Ex. D (Order of Release on Recognizance).

21. Petitioner then made his way to Virginia, where he established a life.

22. On December 11, 2022, Petitioner was ordered removed *in absentia* for failing to attend a hearing in immigration court in Arlington, Va.

23. Petitioner later married a U.S. citizen, with whom he bore two U.S.-citizen children; he also has a third U.S.-citizen child from a prior relationship. On April 25, 2018, Petitioner's U.S.-citizen wife filed an I-130 Petition for Alien Relative on Petitioner's behalf, which was approved on November 5, 2020. *See* Ex. E (I-130 approval notice).

24. Petitioner subsequently filed a Motion to Reopen his removal proceedings, which was granted on August 3, 2023. *See* Ex. F (Order of the Immigration Judge).

25. Petitioner then filed a Motion to Dismiss his removal proceedings, which was granted without prejudice on September 18, 2023. *See* Ex. G (Order on Motion to Dismiss).

26. On October 20, 2023, Petitioner filed an I-601A Application for Provisional Unlawful Presence Waiver, pursuant to 8 C.F.R. § 212.7(e). *See* Ex. H (I-601 receipt notice). That application has not yet been adjudicated.

27. Petitioner continued to live his life in Virginia as a father and husband, seeking to remain in the United States while awaiting the adjudication of his Form I-601A so that he could then depart the United States and return via consular processing at the U.S. consulate in Honduras as a Lawful Permanent Resident.

28. On or about September 21, 2025, Petitioner was arrested and taken into ICE custody by surprise, and issued a new Notice to Appear.<sup>1</sup>

29. At the time of filing this action, Petitioner is currently detained by Respondents at the Riverside Regional Jail, under contract to ICE.

30. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Accordingly, it would be futile

---

<sup>1</sup> Counsel does not currently have a copy of that Notice to Appear, but will supplement the record as soon as it is available.

for Petitioner to request a bond from an Immigration Judge. Exhaustion of administrative remedies would therefore be futile.

**CAUSES OF ACTION  
FIRST CLAIM FOR RELIEF:  
Declaratory Judgment**

31. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-30.

32. The District Court in *Lopez Benitez v. Francis* explains why an individual like Petitioner is properly considered detained under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2): “[W]hile ‘U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2),’ ‘[i]t also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).’” 2025 WL 2371588, at \*3 (S.D.N.Y. Aug. 13, 2025). “To be sure, the line between when a person is ‘seeking admission’ as opposed to being ‘already in the country’ is not necessarily obvious. . . . But there is no dispute that the provisions at issue here are mutually exclusive—a noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226[.] It therefore follows that if [a noncitizen] was detained pursuant to one provision, he cannot be subject to the other.” *Id.* Respondents’ construction of 8 U.S.C. § 1225(b)(2)(A) “render[s] the phrase ‘seeking admission’ in § 1225(b)(2)(A) mere surplusage.” *Id.* at \*6, citing *Martinez v. Hyde*, 2025 WL 2084238, at \*4 (D. Mass. July 24, 2025).

33. Petitioner requests a declaration from this Court that he is properly detained by Respondents, if at all, pursuant to 8 U.S.C. § 1226(a).

**SECOND CLAIM FOR RELIEF:  
No-Bond Detention in Violation of 8 U.S.C. § 1226(a)**

34. Petitioner re-alleges and incorporate by reference the preceding paragraphs 1-30.

35. Since Petitioner is neither an “arriving alien” nor an “applicant for admission . . .

seeking admission” and has no disqualifying criminal arrests or convictions, he is entitled to a bond redetermination by an immigration judge pursuant to 8 U.S.C. § 1226(a).

36. Respondents’ actions, as set forth herein, violate Petitioner’s statutory right to a bond redetermination hearing in front of an immigration judge.

**THIRD CLAIM FOR RELIEF:  
Detention in Violation of Due Process**

37. Petitioners re-allege and incorporate by reference the preceding paragraphs 1-30.

38. Immigration detention is civil, not criminal, in nature. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community.

39. Petitioner has been lawfully permitted to develop ties to the community, as the husband of a U.S. citizen with an approved I-130 Petition for Alien Relative, and a clear path to becoming a Lawful Permanent Resident. He is therefore a “person” within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

40. Petitioner has a liberty interest in his freedom from physical restraint.

41. Respondents’ actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate deprive Petitioner of his liberty rights without due process of law.

**PRAYER FOR RELIEF**

42. WHEREFORE, Petitioners respectfully request that this Court assume jurisdiction over this matter and enter an order:

- a) Enjoin Petitioner’s transfer outside of this judicial district pending this litigation;
- b) Declare that Petitioner is neither an “arriving alien” nor an “applicant for admission . . . seeking admission”;
- c) Declare that Respondents’ actions, as set forth herein, violate Petitioner’s due

process rights;

- d) Declare that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a);
- e) Grant the writ of habeas corpus and order Respondents to schedule a bond hearing before an Immigration Judge within 15 days; and
- f) Grant any other relief that this Court deems just and proper.

Respectfully submitted,

Date: September 23, 2025

//s// Simon Sandoval-Moshenberg

Simon Y. Sandoval-Moshenberg, Esq. (VSB No.: 77110)

*Counsel for Petitioner*

MURRAY OSORIO PLLC

4103 Chain Bridge Road, Suite 300

Fairfax, VA 22030

Telephone: (703) 352-2399

Facsimile: (703) 763-2304

ssandoval@murrayosorio.com

Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

Civil Process Clerk  
U.S. Attorney's Office for the Eastern District of Virginia  
2100 Jamieson Ave  
Alexandria, VA 22314

Office of the General Counsel  
U.S. Department of Homeland Security  
245 Murray Lane, SW, Mail Stop 0485  
Washington, DC 20528-0485

Pamela Bondi, Attorney General of the United States  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Office of the Principal Legal Advisor  
U.S. Immigration and Customs Enforcement  
500 12th Street SW, Mail Stop 5902  
Washington, DC 20536-5902

Jeffrey Dillman, Warden  
Riverside Regional Jail  
500 FOLAR Train  
North Prince George, VA 23860

Respectfully submitted,

Date: September 23, 2025

//s// Simon Sandoval-Moshenberg  
Simon Y. Sandoval-Moshenberg, Esq.  
VSB No.: 77110  
Counsel for Plaintiff  
Murray Osorio PLLC  
4103 Chain Bridge Road, Suite 300  
Fairfax, VA 22030  
Telephone: (703) 352-2399  
Facsimile: (703) 763-2304  
ssandoval@murrayosorio.com