

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

HERBERTH ROMERO-TORRES,

Petitioner,

v.

PAUL PERRY, Warden,
Caroline Detention Facility;
RUSSEL HOTT, Field Office Director,
Enforcement and Removal Operations,
U.S. Immigration and Customs
Enforcement;
KRISTI NOEM, Secretary of the U.S.
Department of Homeland Security; and
PAMELA BONDI, Attorney General of
the United States, in their official
capacities,

Respondents.

Case No: 1:25-cv-1726

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

This is a petition for a writ of habeas corpus filed on behalf of Mr. Herberth Romero-Torres ("Petitioner"), seeking relief from unlawful immigration detention. Respondents are detaining Petitioner in violation of Petitioner's constitutional due process rights and beyond the Department of Homeland Security's lawful statutory authority. By subjecting Petitioner to unlawful and indefinite detention, Respondents further violate the Eighth Amendment's prohibition on cruel and unusual punishment.

Mr. Romero has fully cooperated with Respondents. He is not a flight risk or a danger to the community.

Herberth Romero Torres entered the United States in 2016 without inspection. This was his first contact with immigration authorities. He is single, has no children, and lives near his younger siblings and his girlfriend. He works full-time as a mechanic's assistant Monday through Saturday and spends Sundays with family. He has no criminal record. Those who know him consider him reliable, helpful, and sober.

On Friday, August 1, 2025, during the lunch hour in Richmond, Virginia, Mr. Romero Torres sat in the back seat of his own car, parked outside the shop where he worked. His sister was driving and his brother-in-law, Neri Godínez, was in the front passenger seat. They are all Hispanics and had picked up lunch and planned to return to work.

Several vehicles then pulled up around the car. Officers approached and directed the occupants to open the doors, yelling that if the doors were not opened, they would break the windows. The officers said they had a detainer for Mr. Godínez (who was sitting in the passenger side of the car). Mrs. Godinez exited the vehicle and was handcuffed and taken away. An officer then pressed the unlock button from the passenger side, unlocking all doors. Another officer then opened the rear door, ordered Mr. Romero Torres to get out (which he did) and handcuffed him. No explanation was given. He had no opportunity to gather personal items or notify his employer that he would not be returning after lunch. All occupants in the vehicle were detained.

After his arrest on August 1, 2025, Mr. Romero Torres was not permitted to contact family until Sunday, August 3, 2025. During that period, his family did not know his location or status. When he was able to make contact on Sunday, he provided basic information to reassure them but had limited details about next steps. Since August 4, 2025, he has been detained at the Caroline Detention Facility in Bowling Green, Virginia.

Before August 1, Mr. Romero's routine centered on steady employment and family time on Sundays. The events surrounding his arrest—multiple vehicles arriving, shouted directives to open the doors, an officer opening the rear door and handcuffing him without explanation, and a two-day delay before he could contact family—interrupted that routine and left his employer and family uncertain about his whereabouts.

Mr. Romero Torres later appeared for an immigration court hearing on August 19, 2025, at which bond was granted. Two days later, the government appealed the bond decision, which had the effect of stopping his release.

Mr. Romero submits that his prolonged detention is in violation of his constitutional rights. His detention is not justified under the Constitution or the Immigration and Nationality Act ("INA"). He seeks an order from this Court declaring his continued detention unlawful and ordering Respondents to hold a custody redetermination hearing or release Mr. Romero on parole or his own recognizance.

CUSTODY

1. Mr. Romero is in physical custody of Respondents Russel Hott is the Field Office Director, ICE ERO, DHS generally, and Paul Perry is the Warden of the Caroline Detention Facility located in Bowling Green, Virginia. At the time of the filing of this petition, Mr. Romero is detained at Caroline Detention Facility in Bowling Green, Virginia. The Facility contracts with DHS to detain noncitizens like Mr. Romero. Mr. Romero is under the direct control of Respondents and their agents.

JURISDICTION

2. This Court has jurisdiction over this habeas action under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), as the Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States.
3. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

4. Venue is proper in this District because Petitioner is detained at Caroline Detention Facility within this District and because a Respondent with immediate custody is located here.

PARTIES

5. Petitioner Herberth Romero Torres, A Number [REDACTED] is a native and citizen of El Salvador, currently detained at Caroline Detention Facility, in Bowling Green, Virginia.
6. Respondent Paul Perry is the Warden of the Caroline Detention Facility and has immediate custody over Petitioner. He is the Petitioner's legal custodian.
7. Respondent Russel Hott is the Field Office Director, ICE ERO with responsibility for field operations relevant to Petitioner's detention. Respondent is a legal custodian with the authority to release him.
8. Respondent Kristi Noem is the Secretary of DHS and is responsible for policies and practices concerning detention and removal.
9. Respondent Pamela Bondi is the Attorney General of the United States.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. Petitioner has exhausted available administrative remedies to the extent required by law. Through counsel, Petitioner requested and was granted bond before the Annandale Immigration Court on August 19, 2025. Shortly thereafter, U.S.DHS appealed the Immigration Judge's decision. And on September 5, 2025, the Board of

Immigration Appeals (BIA) decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (2025), sealing the Petitioner's fate regarding his continued detention.

11. Even if Respondents contend that Mr. Romero has not exhausted his administrative remedies because the appeal to the IJ's grant of bond that DHS filed is pending, the Court should waive the exhaustion requirement. Allowing the DHS appeal to run its course would be futile given that the BIA would consider his appeal; the BIA is the same entity that issued *Matter of Yajure Hurtado* and established that IJs lack jurisdiction to redetermine custody. Thus, waiting for BIA decide DHS appeal would create an intolerable delay and would certainly result in the BIA siding with DHS. *See Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000).
12. Mr. Romero's only remedy is by way of this judicial action.

STATUTORY FRAMEWORK

13. On August 19, 2025, an Immigration Judge granted bond, which DHS quickly appealed. On September 5, 2025, BIA issued *Matter of Yajure Hurtado*, establishing that any noncitizen present in the United States without having been inspected and admitted is subject to detention under 8 U.S.C. § 1225(b)(2), rather than 8 U.S.C. § 1226(a), regardless of how long they have resided in the United States and where they were encountered by immigration authorities. 29 I&N Dec. 216 (BIA 2025).

Relevant Sections of the Immigration and Nationality Act

14. **U.S.C. § 1225 / INA § 235:** Chapter titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing."

15. **8 U.S.C. § 1225(a)(1) / INA § 235(a)(1)**: Defines applicant for admission, “*for purposes of this chapter*” as “an alien present in the United States who has not been admitted or who arrives in the United States[.]”
16. **U.S.C. § 1225(b)(1) / INA § 235(b)(1)**: Lays out the class of noncitizens subject to expedited removal. Section 1225(b)(1)(A)(i) subjects to expedited removal any applicants for admission “who [are] *arriving in* the United States [(“Arriving Aliens”)] **or** who [are] described in clause (iii)” **and** who lack valid entry documents. 8 U.S.C. § 1225(b)(1)(A)(i) (emphases added). Clause (iii) provides for expedited removal of applicants for admission who are not “arriving in” the United States but who have not been admitted or paroled into the United States **and** cannot establish two years of physical presence in the United States “immediately prior to the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(iii).
17. **8 U.S.C. § 1225(b)(2)(A) / INA § 235(b)(2)(A)**: A noncitizen who is an “applicant for admission” and is not clearly and beyond a doubt entitled to be admitted *must* be kept in DHS custody during the pendency of removal proceedings under 8 U.S.C. § 1229A (INA § 240). These are non- expedited proceedings and are commenced by the issuance of a charging document known as a Notice to Appear, Form I-862. Section 1225(b)(2) applies to arriving aliens and certain individuals stopped shortly after entry.
18. **8 U.S.C. § 1226 / INA § 236**: Chapter titled “Apprehension and detention of aliens.”
19. **8 U.S.C. § 1226(a) / INA § 236(a)**: Allows the Attorney General, *on warrant*, to arrest and detain a noncitizen pending the outcome of their removal proceedings.

Noncitizens arrested under a warrant may be released on bond or recognizance in DHS's discretion. Predecessor statutes to § 1226(a) authorized arrest, detention, and release of noncitizens inside the United States and permitted discretionary bond; when Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), it stated that § 1226 "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully present in the United States[,]" indicating continuity. H.R. Rep. No. 104-469, pt. 1, at 229.

20. **8 U.S.C. § 1226(c) / INA § 236(c)**: Creates grounds of mandatory detention for criminal and terrorist noncitizens. The Laken Riley Act (LRA) added 8 U.S.C. § 1226(c)(1)(E), which requires DHS to keep detained noncitizens who are arrested for, charged with, or convicted of certain crimes, who are also inadmissible for being present in the country without inspection or admission, for lacking valid documentation, or for committing fraud or misrepresentation.

21. **8 U.S.C. § 1357(a) / INA § 287(a)**: Permits immigration officials to arrest noncitizens without a warrant where (1) the officer sees the noncitizen entering the country in violation of law; (2) the officer has reason to believe that the noncitizen is in the United States unlawfully and is likely to escape before a warrant can be obtained; or (3) the officer has reason to believe the noncitizen has committed a felony. The BIA construed the "reason to believe" standard with probable cause and recognized that a person in a vehicle may be deemed likely to escape before a warrant can be secured. *Matter of Mariscal-Romero*, 28 I&N Dec. 666 (BIA 2022).

Longstanding Interpretation of 8 U.S.C. §§ 1225 and 1226

22. Since 1996, the immigration courts, Board of Immigration Appeals, and federal courts recognized the plain text of these two sections, accepting that § 1225(b) only covers a narrow subset of detainees, with the rest subject to discretionary detention under the “catch-all” provision of § 1226(a). A longstanding practice of the government applying the law in a certain way can inform the court's determination of what the law is. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 386 (2024).
23. The U.S. Supreme Court added temporal and geographical confines to treating a noncitizen as an applicant for admission. In *Department of Homeland Security v. Thuraissigiam*, the Court noted that DHS historically treated noncitizens as applicants for admission only when encountered within 14 days of entry, and within 100 miles of the border. 591 U.S. 121, 134 n.2 (2020) (citing 69 Fed. Reg. 48879 (2004)). When the Court analyzed the constitutionality of expedited removal proceedings, it noted that the broad definition of an applicant for admission contained in § 1225 applies *for the purposes of those subject to expedited removal*. *Id.* at 124.
24. Indeed, in *Jennings v. Rodriguez*, the seminal case analyzing §§ 1225 and 1226, the United States Supreme Court maintained that § 1225(b) concerns “primarily [those] seeking entry,” and is generally applicable “at the Nation’s borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible.” 583 U.S. 281, 297, 287 (2018). On the other hand, § 1226 “authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings.” *Id.* at 289 (emphasis added).

25. The discretionary detention provision in § 1226 has been referred to as a catch-all provision, with the Supreme Court dubbing it a “default rule” that “applies to [noncitizens] already present in the United States.” *Id.* at 288, 301.
26. In *Matter of Akhmedov*, the BIA acknowledged that noncitizens arrested within the interior of the United States and placed into removal proceedings with the issuance of a Notice to Appear (NTA) are detained under § 1226(a) and therefore the Immigration Judge had jurisdiction to consider their bond request. 29 I&N Dec. 166 (BIA 2025). *Matter of Q. Li* held that the detention of a noncitizen who is detained and arrested at or near the border and placed into *expedited* removal proceedings is not governed by § 1226(a) but rather by § 1225(b). 29 I&N Dec. 66, 69 (BIA 2025).

Matter of Yajure-Hurtado and DHS Policy on Detention

27. In July 2025, DHS issued a policy alert laying out a novel interpretation of these two sections unsupported by the above case law: 8 U.S.C. § 1225(b)(2) requires mandatory detention of all noncitizens present without admission, and that Immigration Judges therefore lack jurisdiction to grant them bond.
28. In *Matter of Yajure-Hurtado*, the BIA upheld DHS’s policy and departed from three decades of statutory interpretation, holding that the detention of any noncitizen who is in the United States without being admitted is governed by § 1225(b)(2), irrespective of whether the noncitizen’s encounter with immigration officials was when they were “arriving” or whether they have been physically present in the United States for more than two years. 29 I&N Dec. 216 (BIA 2025).
29. Accordingly, the decision held that Immigration Judges effectively only have jurisdiction over deciding bond for noncitizens who have been inspected and

admitted, and that all noncitizens present in the United States without admission or parole must be detained during the pendency of their removal proceedings. *Id.* at 218, 223. It was before this decision that the Immigration Judge granted Mr. Romero's request for bond, finding that the Immigration Court had jurisdiction over the request. Then came *Matter of Yajure-Hurtado*.

30. Respondents continue to subject Petitioner to what is effectively mandatory detention based on this flawed logic.

Chevron Overruled – Independent Statutory Interpretation Required

31. For decades, courts deferred to reasonable agency interpretations of ambiguous statutes under *Chevron* deference. On June 8, 2024, the U.S. Supreme Court overturned *Chevron U.S.A., Inc. v. NRDC* in *Loper Bright Enterprises v. Raimondo*, holding that the Administrative Procedure Act requires courts to exercise their own independent judgment in deciding whether an agency has acted within its statutory authority. 603 U.S. 369 (2024). In its decision, the Court emphasized that judges may not defer to an agency interpretation merely because a statute is ambiguous; instead, the courts must decide the best interpretation, giving respectful consideration - but not deference - to the Executive Branch. *Id.*

STATEMENT OF FACTS

32. Herberth Romero Torres entered the United States in 2016 without inspection. This was his first contact with immigration authorities. He is single, has no children, and lives near his younger siblings and his girlfriend. He works full-time as a mechanic's

assistant Monday through Saturday and spends Sundays with family. He has no criminal record. Those who know him consider him reliable, helpful, and sober.

33. On Friday, August 1, 2025, during the lunch hour in Richmond, Virginia, Mr.

Romero Torres sat in the back seat of his own car, parked outside the shop where he worked. His sister was driving and his brother-in-law, Neri Godínez, was in the front passenger seat. They were all Hispanic and had picked up lunch and planned to return to work.

34. Several vehicles then pulled up around the car. Officers approached and directed the occupants to open the doors, yelling that if the doors were not opened, they would break the windows. The officers said they had a detainer for Mr. Godínez (who was sitting in the passenger side of the car). Mr. Godínez exited the vehicle and was handcuffed and taken away. An officer then pressed the unlock button from the passenger side, unlocking all doors. Another officer then opened the rear door, ordered Mr. Romero Torres to get out (which he did) and handcuffed him. No explanation was given. Mr. Romero had no opportunity to gather personal items or notify his employer that he would not be returning after lunch. All occupants in the vehicle were detained.

35. After his arrest on August 1, 2025, Mr. Romero Torres was not permitted to contact family until Sunday, August 3, 2025. During that period, his family did not know his location or status. When he was able to make contact on Sunday, he provided basic information to reassure them but had limited details about next steps. Since August 4, 2025, he has been detained at the Caroline Detention Facility in Bowling Green, Virginia.

36. Mr. Romero Torres later appeared for an immigration court bond hearing on August 19, 2025, at which bond was granted in the amount of \$1,500.00. But two days later, the government appealed the bond decision, which stopped his release.

37. On September 9, 2025, Mr. Romero filed for asylum, withholding, and Convention Against Torture protection, forms of relief that were was denied on October 3, 2025. Although granted voluntary departure, Mr. Romero reserved appeal on the decision and filed an appeal it on October 8, 2025.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF FIFTH AMENDMENT RIGHT TO SUBSTANTIVE AND PROCEDURAL DUE PROCESS

38. Mr. Romero incorporates by reference all preceding paragraphs.

39. Mr. Romero's detention under 8 U.S.C. § 1225 violates his substantive due process rights under the Fifth Amendment to the United States Constitution as it subjects him to arbitrary detention.

40. "Government detention violates the Fifth Amendment "unless the detention is ordered in a *criminal proceeding* with adequate procedural protections or, in certain special and narrow nonpunitive circumstances where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas v. Davis*, 553 U.S. 678, 690 (2001) (internal citations and quotations omitted).

41. Here, there is no “special justification” which allows the Respondents to deny Mr. Romero’s the liberty to which he is entitled. Respondents have not alleged any “special justification” to support Mr. Romero’s continued detention.
42. Further, the BIA’s decision in *Matter of Yahure Hurtado* claims that the immigration judge lacks the jurisdiction to grant bond to any noncitizen who has entered the United States without being inspected and admitted or paroled based on 8 U.S.C. § 1225. According to the BIA, anyone who entered without inspection or parole, no matter how long present in the United States before encountering immigration authorities, are essentially subject to mandatory detention. 29 I&N Dec. at 228.¹
43. Substantive due process also affords Mr. Romero “a right to adequate food, shelter, clothing, and medical care . . . [and to] safety and freedom from bodily restraint.” See *Youngberg v. Romeo*, 457 U.S. 307, 315-18 (1982).
44. Without federal court action, Mr. Romero will likely remain detained for months. Given that as of the third quarter for fiscal year 2025 the BIA has 186,473 cases pending and only 16 appellate immigration judges (11 permanent members and five

¹ Importantly, several federal district courts have rejected this argument as well as the arguments from *Matter of Yahure Hurtado*’s predecessor, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). See *Quispe-Ardiles v. Noem*, 1:25-cv-01382-MSN-WEF (E.D.V.A. Sept. 30, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court’s disagreement with BIA’s analysis in *Yajure Hurtado*); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Orellana Juarez v. Moniz*, 2025 WL 1698600 (D. Mass. June 11, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Romero v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025); *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Romero Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

temporary members), immediate action from this court is required to prevent Mr. Romero long-term detention. *See Executive Office for Immigration Review Adjudication Statistics*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/eoir/media/1344986/dl?inline> (last updated July 31, 2025); *Board of Immigration Appeals*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/eoir/board-of-immigration-appeals> (last updated Sept. 16, 2025).

COUNT TWO

VIOLATION OF EIGHT AMENDMENT RIGHT TO PROTECTION FROM CRUEL AND UNUSUAL PUNISHMENT

45. Mr. Romero incorporates all preceding paragraphs by reference.
46. Mr. Romero's confinement inflicts profound and ongoing suffering. Mr. Romero Torres is a noncriminal civil detainee with steady work, close family ties, and no record. Before August 1, 2025, his life followed a stable pattern: full-time work Monday through Saturday and Sundays set aside for family. Since August 4, 2025, he has been confined at the Caroline Detention Facility, where his freedom to visit, support, and care for his siblings and girlfriend is sharply limited. For the first two days after arrest, he could not reach his family at all, leaving them uncertain of his whereabouts. Although an immigration judge later granted bond on August 19, 2025, DHS's appeal two days afterward prevented his release and prolonged the separation, cutting him off from his job and routine family life. As a civil detainee, he may not be subjected to conditions that operate as punishment; at a minimum, the Eighth Amendment's prohibition on cruel and unusual treatment serves as a constitutional floor. Measured against that standard, the continuing, forced

rupture of his family life, the sustained loss of freedom to maintain those relationships, and the open-ended interruption of his work and Sunday family routine impose harms that are not reasonably necessary for a civil immigration purpose and thus amount to cruel and unusual treatment. This relentless mental and emotional pain, coupled with the indefinite nature of his confinement, heightens the cruelty of Petitioner's detention and underscores the punishment's unusual severity.

47. The Eighth Amendment to the U.S. Constitution prohibits the government from inflicting cruel and unusual punishment on individuals.
48. To state a cognizable claim under the Eighth Amendment, Mr. Romero must allege acts or omissions sufficiently harmful to show deliberate indifference to his needs. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976).
49. Even if no harm has occurred, the lack of safety in Mr. Romero's detention conditions is sufficient for judicial intervention. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993) (explaining that the Supreme Court and Courts of Appeals have recognized a remedy for unsafe conditions where a tragic event has not yet occurred, i.e. one need not wait for a traffic event to occur to file a claim for future harm under the Eighth Amendment).
50. Mr. Romero's continued unlawful detention also constitutes cruel and unusual punishment under the Eighth Amendment because Mr. Romero is subject to mandatory, indefinite detention based solely on Respondents' erroneous interpretation of 8 U.S.C. § 1225(b)(2).
51. Detainees may challenge their confinement's unconstitutional conditions through writs of habeas corpus, an avenue which the U.S. Supreme Court has never

explicitly foreclosed. *See Preiser v. Rodriguez*, 411 U.S. 475, 499-500 (1973) (stating that when “a prisoner is put under additional and unconstitutional restraints during his lawful custody, it is arguable that habeas corpus will lie to remove the restraints making the custody illegal.”).

52. Respondents’ continued custody of Mr. Romero has transformed civil immigration detention into cruel and unusual punishment. Mr. Romero has no criminal record in this country. He is also appealing his immigration matter and is eligible for multiple forms of relief from removal yet is indefinitely held in detention solely due to his manner of entry into the United States.

COUNT THREE

53. If he prevails, Mr. Romero requests attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), as amended, 28 U.S.C. Section 2412.

PRAYER FOR RELIEF

WHEREFORE, Mr. Romero respectfully requests that this Court grant the following relief:

- A. Assume jurisdiction over this matter.
- B. Issue an order directing Respondents to Show Cause why the writ should not be granted.
- C. Enjoin Respondents from transferring Petitioner outside this District during this action or in a way that would strip this Court’s jurisdiction.
- D. Order immediate release on reasonable conditions if a timely hearing is not held.
- E. Award reasonable costs and attorney fees.
- F. Grant any other relief which this Court deems just and proper.

DATED: October 8, 2025

Respectfully submitted,
Wilmer Antonio Romero Portillo

By: _____/s/
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Wilmer Antonio Romero Portillo, 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.

Dated: October 8, 2025

_____/s/
Jorge E. Artieda, Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2025, I served a true and correct copy of the foregoing Petition on Respondents by USPS Certified Mail, Return Receipt to:

1. Caroline Detention Facility
Attn: **Warden, Paul Perry**
11093 S.W. Lewis Memorial Drive
P.O. Box 1460
Bowling Green, VA 22427
2. U.S. Immigration and Customs Enforcement
Enforcement and Removal Operations, Washington Field Office
Attn: **Field Office Director, Russell Hott**
14797 Murdock Street, Mail Stop 5216
Chantilly, VA 20598-5216
3. **The Honorable Kristi Noem**
Secretary of Homeland Security
U.S. Department of Homeland Security
Office of the Executive Secretary
Mail Stop 0525
Washington, DC 20528
4. **The Honorable Pamela Bondi**
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

_____/s/_____

Jorge E. Artieda