

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

JOSE ELEAZAR LEON-MARTINEZ )  
Alien #: [REDACTED] )  
Petitioner-Plaintiff, )

v. )

Case No.

Steve Kelley, KAY COUNTY JUSTICE FACILITY; )  
Joshua Johnson, IMMIGRATION CUSTOMS )  
ENFORCEMENT AND REMOVAL )  
OPERATIONS DALLAS FIELD OFFICE )  
DIRECTOR; )  
Marcos Charles, ACTING )  
EXECUTIVE ASSOCIATE DIRECTOR, )  
ENFORCEMENT AND REMOVAL )  
OPERATIONS; Todd M. Lyons, ACTING )  
DIRECTOR, IMMIGRATION CUSTOMS )  
ENFORCEMENT, Madison Sheahan, )  
DEPUTY DIRECTOR, IMMIGRATION )  
CUSTOMS ENFORCEMENT; Kristi Noem, )  
SECRETARY OF THE DEPARTMENT OF )  
HOMELAND SECURITY; Pam Bondi, )  
ATTORNEY GENERAL OF THE UNITED )  
STATES, in their official capacities )  
Respondents-Defendants. )

**PETITION FOR WRIT OF  
HABEAS CORPUS**

**EMERGENCY PETITION FOR WRIT of HABEAS CORPUS**

The Petitioner-Plaintiff, JOSE ELEAZAR LEON-MARTINEZ, by and through his own and proper person, and through his attorney, HASHIM SIDDIQUE, of SIDDIQUE LAW GROUP, LLC, petitions this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention and inability to request bond contrary to 8 U.S.C. § 1226, which usually allows for release on bond during the pendency of immigration proceedings. The Petitioner-Plaintiff is a citizen of Mexico who entered the United States without inspection on or about March, 2002, and has relief in the form of EOIR42-B Application for Cancellation of Removal for Certain Nonpermanent Residents. He was apprehended by Immigration and Customs

Enforcement (“ICE”) in or around October 7, 2025. Since that date, Respondents have unlawfully arrested and detained numerous individuals throughout the United States and within Illinois, jailing them without any possibility of release and without any due process protections based upon an erroneous misclassification of detention provisions as being subject to 8 U.S.C. § 1225, which does not allow for release on bond. Petitioner-Plaintiff falls into this category of individuals and is subject to continued detention during the pendency of his immigration court hearings, which as of the date of this filing, have commenced. He is currently scheduled for a second master calendar hearing on November 18, 2025 before the Otero, NM Immigration Court.

#### Introduction

1. Petitioner-Plaintiff is presently being detained by Immigration and Customs Enforcement (“ICE”) at the ICE Kay County Justice Facility 1101 West Dry Road Newkirk, OK 74647. He was detained, without warrant, on October 7, 2025, in Chicago, Illinois as he was traveling to work at a brunch cafe in Chicago, IL.
2. Since his apprehension, Petitioner-Plaintiff has been scheduled for a hearing before an Immigration Judge and placed before the Executive Office for Immigration Review (EOIR), which falls under the jurisdiction of the Department of Justice. Petitioner-Plaintiff had an initial master calendar hearing on October 21, 2025 with a next scheduled date of November 18, 2025 to submit his EOIR42-B Application for Cancellation of Removal for Certain Nonpermanent Residents. Undersigned counsel also represents Petitioner-Plaintiff in removal proceedings.
3. Petitioner-Plaintiff is entitled to a removal hearing before an Immigration Judge, who will determine his ultimate removability and any applications for relief. However, until approximately the last two months, Defendants have abruptly and unlawfully reversed

decades of settled immigration practice where individuals in Plaintiff's situation would otherwise be entitled to release upon posting an immigration bond while removal proceedings remain pending. Respondents-Defendants' continued detention of Plaintiff without a hearing on an immigration bond is in violation of law. *See* 8 U.S.C. § 1229a *cf. Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (under section 1225 proceedings individuals are subject to detention without a bond hearing when encountered at "borders and ports of entry").

4. Numerous individuals in Petitioner-Plaintiff's position have challenged the Defendants' new interpretation that individuals detained in the United States and not at the border are subject to mandatory detention without a bond hearing and its application to all civil immigration detainees and in all Immigration Courts, including people arrested and detained in immigration proceedings in Illinois. *See Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Choglo Chafra v. Scott*, 2025 WL 2688541 (D. Me. Sept. 2, 2025); *Ayala Casun v. Hyde*, 2025 WL 280679 (D.R.I. Oct. 2, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y Aug. 13, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *B.D.V.S. v. Forestal*, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); and *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025).

**Jurisdiction**

5. The action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended (“INA”), 8 U.S.C. section 1101 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. section 701 *et seq.*
6. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C § 2241, and Article I, section 9, clause 2 of the United States Constitution (the “Suspension Clause”), as Plaintiff is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.
7. This action is brought to compel the Defendants, officers of the United States, to accord Plaintiff the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution. Specifically, “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“Aliens 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”).
8. This Court may grant relief pursuant to 28 USC § 2241, the Declaratory Judgments Act, 28 USC § 2201 *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), and the All Writs Act, 28 USC §1651.

**Venue**

9. Venue lies in this Court pursuant to 28 U.S.C. § 1391(e). The Plaintiff is detained by ICE, Kay County Justice Facility 1101 West Dry Road Newkirk, OK 74647 located within the Western District of Oklahoma. Undersigned counsel requests he remain in the jurisdiction of this court.

**Parties**

10. Plaintiff-Petitioner is a citizen and national of Mexico and presently in the custody of ICE. He is a resident of the State of Illinois and maintains residence in Illinois. Petitioner-Plaintiff is filing his EOIR42-B Application for Cancellation of Removal for Certain Nonpermanent Residents before his next master calendar hearing on November 18, 2025. Petitioner-Plaintiff, prior to ICE apprehension, resided at "1798 North Laurel Drive Palatine, IL 60074".
11. Defendant STEVE KELLEY is being sued in his official capacity only, as the Sheriff of Kay County, OK and Kay County Justice Facility, where Petitioner-Plaintiff is presently detained.
12. Defendant JOSHUA JOHNSON is being sued in his official capacity only, as the Field Office Director of the Dallas Field Office of Immigration and Customs Enforcement. As such, he is charged with the detention and removal of aliens which fall under the jurisdiction of the Dallas Field Office. The Dallas Field Office has direct control over Petitioner-Plaintiff's detention and removal.
13. Defendant TODD M. LYONS is being sued in his official capacity only, as the Acting Director of Immigration and Customs Enforcement. As such, he is charged with the detention and removal of all aliens.

14. Defendant MADISON SHEAHAN is being sued in his official capacity only, as the Acting Deputy Director of Immigration and Customs Enforcement. As such, he is charged with the detention and removal of all aliens.
15. Defendant KRISTI NOEM is being sued in her official capacity only, as the Secretary of the Department of Homeland Security (“DHS”).
16. Defendant PAMELA BONDI is being sued in her official capacity only, as the Attorney General of the United States and administers the Department of Justice, including EOIR, the BIA, and the Immigration Courts.

**Factual and Procedural Background**

17. Petitioner-Plaintiff, JOSE ELEAZAR LEON-MARTINEZ is present in the United States along with his two U.S. Citizen children.
18. Petitioner-Plaintiff’s Notice to Appear (NTA) places him in removal proceedings pursuant to 8 U.S.C. § 1229a and charged him with being present in the United States without admission and therefore removable pursuant to *inter alia* 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I). The NTA instructs him to appear for a removal hearing in Chicago, IL on October 21, 2025. He has appeared with undersigned counsel and scheduled for a second master calendar hearing on November 18, 2025. Pet. Ex. 1 “Notice to Appear”.
19. Petitioner-Plaintiff is employed in a restaurant in Chicago, IL. He has been arrested once for operating motor vehicle while suspended in violation of 625 ILCS 5/3-708. On December 5, 2024, these charges were later stricken off with leave to reinstate. He has peacefully resided and working in the United States since his entry in or around March, 2002. Pet. Ex. 2 “Arrest Record”.

20. Petitioner-Plaintiff is the parent to two U.S. Citizen children, and is also a financial provider for his partner's two U.S. Citizen children. Pet. Ex. 3 "Birth Certificates".
21. On or about October 7, 2025, while at work, he and other individuals were forcibly detained. No warrant was shown or evidence provided OR that he fell under a class of aliens not entitled to continued release pending resolution of his removal proceedings.
22. Defendant is currently holding Petitioner-Plaintiff at the Kay County Justice Center without bond. As a person arrested inside the United States and held in civil immigration detention for his pending removal proceedings, he is subject to detention pursuant to 8 U.S.C. § 1226. *See, e.g. Romero*, 2025 WL 2403827, at \*1, 8 – 13 (collecting cases).
23. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a bond hearing and Petitioner-Plaintiff requests such a bond hearing consistent with established precedent.
24. Under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the responsible administrative agency has predetermined that Petitioner will be denied a bond hearing, and the government is holding Petitioner under the purported authority of 8 U.S.C. § 1225(b)(2), under which he will not receive a bond hearing.
25. Since *Matter of Yajure Hurtado* has been decided dozens of individual habeas corpus petitions challenging its misclassification of bond-eligible detainees have been filed in District Courts.
26. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a.
27. First, 8 U.S.C. § 1226 authorizes detention for individuals in removal proceedings under 8 U.S.C. § 1229a. These individuals are generally entitled to a bond hearing unless they

have been convicted or arrested of certain crimes which are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

28. Second, the INA provides for mandatory detention for those subject to expedited removal pursuant to 8 U.S.C. § 1225(b)(1) and other noncitizen applicants for admission at the border who are deemed not clearly entitled to be admitted. *See* 8 U.S.C. § 1225(b)(2).
29. Final, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings under 8 U.S.C. § 1231(a),(b).
30. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a) and 1225(b)(2), which were enacted as part of the Illegal Immigration and Reform and Immigrant Responsibility Act (IIRIRA) of 1996 and most recently section 1226(a) was amended in early 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
31. Following the enactment of IIRIRA in 1996, EOIR drafted regulations indicating that individuals present in the country without inspection, were not considered detained under § 1225 but rather detained under § 1226(a) and thus entitled to a bond hearing. *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).
32. Thus, as in Petitioner-Plaintiff's case, absent ineligibility due to a criminal history, individuals in § 1229a removal proceedings are entitled to a bond hearing consistent with almost 30 years of practice where individuals arrested inside the United States, even after initially entering without inspection, fall within § 1226 detention proceedings and entitled to request and receive bond. *See Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at \*4 n. 9 (D. Mass. July 25, 2025) (citing the United States Solicitor General's representation to the Supreme Court at oral argument that "DHS's long-standing

interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended”).

33. On July 8, 2025, ICE, “in coordination with” the Department of Justice, announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice.
34. A series of Board of immigration Appeals (BIA) decisions under authority of the EOIR, sought to apply § 1225 (b) bond ineligibility to individuals apprehended inside the United States.
35. Petitioner-Plaintiff acknowledges that the Supreme Court has held that noncitizens “seeking *initial* admission to the United States” have limited access to constitutional protections. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

#### Causes of Action

36. Petitioner-Plaintiff incorporates by reference the allegations of fact set forth in the preceding paragraphs.
37. FIRST, the mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Petitioner-Plaintiff as he has already been placed in removal proceedings under section 1229(a) and thus entitled to a bond hearing. Section 1225(b) does not apply to those who previously entered the country and have been present and residing in the United States.
38. The application of 8 U.S.C. § 1225(b)(2) to Petitioner-Plaintiff’s continued detention without a bond hearing violates 8 U.S.C. § 1226(a), which governs his case.
39. SECOND, under the Administrative Procedure Act, a court must “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not

in accordance with the law” ... or that is “in excess of statutory jurisdiction authority, or limitations or short of statutory right.” 5 U.S.C. § 706(2)(A) – (C).

40. Petitioner-Plaintiff’s continued detention is arbitrary, capricious, an abuse of discretion, and without statutory authority in violation of 5 U.S.C. § 706(2).<sup>1</sup>

41. THIRD, Petitioner-Plaintiff has a fundamental interest in liberty and being free from official restraint. Defendants’ denial of a bond hearing is a violation of his due process rights which “lies at the heart of the liberty that the Clause protects.” *Zadvydas*, at 690 (2001). An immediate bond hearing and release take place under 8 U.S.C. §1226(a).

42. FOURTH, by way of separate petition, Petitioner-Plaintiff requests a temporary restraining order enjoining the Respondents from relocating him outside the jurisdiction of this court pending final resolution of his case; and

43. FIFTH, If Petitioner-Plaintiff prevails, he requests attorney’s fees and costs pursuant to the Equal Access to Justice Act, as amended 28 U.S.C. § 2412.

**Relief Requested:**

WHEREFORE, Petitioner-Plaintiff JOSE ELEAZAR LEON-MARTINEZ, respectfully requests this Honorable Court:

- A. Accept jurisdiction over this action;
- B. Grant the writ of habeas corpus;
- C. Order the Department of Homeland Security to conduct a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

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<sup>1</sup> Petitioner-Plaintiff also asserts that his arrest is in violation of this Court’s order in *Castanon Nava, et. al. v. DHS, et. al.*, 1:18-cv-03757 (NDIL)(Judge Cummings) as he was arrested and stopped pursuant to what is believed to be a warrantless arrest and traffic stop.

- D. Make a finding that Defendants have acted contrary to law and have abused Petitioner-Plaintiff's due process rights, and
- E. Grant any other relief that is equitable and just.

Respectfully Submitted,  
Jose Eleazar Leon-Martinez

By: s/ Hashim Siddique  
One of his attorneys

*Pro Hac Vice Pending*

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**VERIFICATION**

I, Hashim Siddique, declare as follows:

I am an attorney admitted to practice law in the State of Illinois.

Because many of the allegations of this Petition require a legal knowledge not possessed by Petitioner-Plaintiff, I am making this verification on his behalf.

I have read the foregoing Petition for Writ of Habeas Corpus and know the contents thereof to be true to my knowledge, information, or belief.

I certify under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 24, 2025.

s/Hashim Siddique  
HASHIM SIDDIQUE  
Siddique Law Group LLC  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 24, 2025, I served a copy of this Emergency Petition for Writ of Habeas Corpus by mail to the following individuals:

Robert J. Troester, AUSA  
US Attorney's Office (NDIL Oklahoma)  
210 Park Avenue  
Suite 400  
Oklahoma City, OK 73102

And, I also HEREBY CERTIFY that the foregoing documents are served on counsel for all parties through the Court's CM/ECF system.

s/Hashim Siddique  
HASHIM SIDDIQUE  
Siddique Law Group LLC  
Attorney for Petitioner  
Date: October 24, 2025