

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IVAN GARCIA RIOS,

Petitioner,

v.

Kristi NOEM, Secretary, U.S. Department of  
Homeland Security; U.S. DEPARTMENT OF  
HOMELAND SECURITY; SAMUEL OLSON,  
Field Office Director, IMMIGRATION AND  
Customs Enforcement; Pamela BONDI, U.S.  
Attorney General,;

Respondents.

Case No. 25-13180

**PETITION FOR WRIT OF  
HABEAS CORPUS**





1 **VENUE**

2 11. Venue lies in the United States District Court for the Northern District of Illinois,  
3 the judicial district in which the Petitioner is currently detained as of the moment of filing the  
4 instant petition. 28 U.S.C. §1391(e).

5 12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
6 Respondents are employees, officers, and agencies of the United States, and because a substantial  
7 part of the events or omissions giving rise to the claims occurred in the Northern District of Illinois  
8

9 **REQUIREMENTS OF 28 U.S.C. § 2243**

10 13. The Court must grant the petition for writ of habeas corpus or order Respondents  
11 to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an  
12 order to show cause is issued, the Respondents must file a return “within three days unless for  
13 good cause additional time, not exceeding twenty days, is allowed.” *Id.*

14 14. Habeas corpus is “perhaps the most important writ known to the constitutional  
15 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or  
16 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the  
17 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and  
18 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208  
19 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

20  
21 **PARTIES**

22 15. Petitioner Ivan GARCIA RIOS is a citizen of Mexico who has been in immigration  
23 detention since October 28, 2025. After arresting Petitioner in Illinois, ICE did not set bond; to  
24

1 date, an Immigration Judge has not set bond because he was deemed an “applicant for admission.”

2 Petitioner has resided in the United States since he arrived in or around May 2024.

3 16. Respondent Kristi NOEM is the Secretary of the Department of Homeland  
4 Security. She is responsible for the implementation and enforcement of the Immigration and  
5 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms.  
6 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

7 17. Respondent, Samuel OLSON, is the Chicago Field Office Director for Department  
8 of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the  
9 INA, including the detention and removal of noncitizens.

10 18. Respondent Pamela BONDI is the Attorney General of the United States. She is  
11 responsible for the Department of Justice, of which the Executive Office for Immigration Review  
12 and the immigration court system it operates is a component agency. She is sued in her official  
13 capacity.

14  
15 **LEGAL FRAMEWORK**

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

18 20. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal  
19 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally  
20 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),  
21 while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject  
22 to mandatory detention, *see* 8 U.S.C. § 1226(c).

1           21.     Second, the INA provides for mandatory detention of noncitizens subject to  
2 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission  
3 referred to under § 1225(b)(2).

4           22.     Lastly, the INA also provides for detention of noncitizens who have been ordered  
5 removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

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

7           24.     The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
8 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-  
9 –208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a)  
10 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat.  
11 3 (2025).

12           25.     Following the enactment of the IIRIRA, EOIR drafted new regulations explaining  
13 that, in general, people who entered the country without inspection were not considered detained  
14 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited  
15 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum  
16 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

17           26.     Thus, in the decades that followed, most people who entered without inspection  
18 and were placed in standard removal proceedings received bond hearings, unless their criminal  
19 history rendered them ineligible. That practice was consistent with many more decades of prior  
20 practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing  
21 before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-  
22 469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously  
23 found at § 1252(a)).

1           27.     On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
2 rejected well-established understanding of the statutory framework and reversed decades of  
3 practice.

4           28.     The new policy, entitled “Interim Guidance Regarding Detention Authority for  
5 Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without  
6 inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore  
7 are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless  
8 of when a person is apprehended, and affects those who have resided in the United States for  
9 months, years, and even decades.

10          29.     In a May 22, 2025, unpublished decision from the Board of Immigration Appeals  
11 (BIA), EOIR adopts this same position.<sup>2</sup> That decision holds that all noncitizens who entered the  
12 United States without admission or parole are considered applicants for admission and are  
13 ineligible for immigration judge bond hearings.

14          30.     ICE and EOIR have adopted this position even though federal courts have rejected  
15 this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court  
16 stopped providing bond hearings for persons who entered the United States without inspection and  
17 who have since resided here, the U.S. District Court in the Western District of Washington found  
18 that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to  
19 noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v.*  
20 *Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v.*

21  
22  
23 <sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

24 <sup>2</sup> Available at <https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf>.

1 *Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025) (granting habeas  
2 petition based on same conclusion).

3 31. DHS’s and DOJ’s interpretation defies the INA. As the *Rodriguez Vazquez* court  
4 explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b),  
5 applies to people like Petitioner.

6 32. Section 1226(a) applies by default to all persons “pending a decision on whether  
7 the [noncitizen] is to be removed from the United States.” These removal hearings are held under  
8 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

9 33. The text of § 1226 also explicitly applies to people charged as being inadmissible,  
10 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s  
11 reference to such people makes clear that, by default, such people are afforded a bond hearing  
12 under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates  
13 “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the  
14 statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at \*12 (citing *Shady Grove*  
15 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

16 34. Section 1226 therefore leaves no doubt that it applies to people who face charges  
17 of being inadmissible to the United States, including those who are present without admission or  
18 parole.

19 35. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
20 recently entered the United States. The statute’s entire framework is premised on inspections at  
21 the border of people who are “seeking admission” to the United States. 8 U.S.C.  
22 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme  
23 applies “at the Nation’s borders and ports of entry, where the Government must determine whether  
24

1 a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281,  
2 287 (2018).

3 36. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to  
4 people like Petitioner, who have already entered and were residing in the United States at the time  
5 they were apprehended.

6 37. **UNLAWFUL ARRESTS IN LIGHT OF CASTANON NAVA**

7 38. On October 7, 2025, this Court held that ICE’s practice of issuing Form I-200  
8 administrative warrants in the field to make arrests (i.e., “collateral arrests”) is unlawful,  
9 rendering all of those arrests warrantless. Accordingly, all of those are subject to the  
10 requirements of 8 U.S.C. § 1357(a)(2) and the Nava Warrantless Arrest Policy. *See*  
11 *Castanon Nava v. Dep’t of Homeland Sec.*, No. 1:18-cv-03757, 2025 WL 6324179 (N.D.  
12 Ill. Oct. 7, 2025).

13 39. *Nava* emphasizes that community ties (e.g., home, family, employment) weigh against a  
14 finding of probable cause that the individual is likely to escape before a warrant could be  
15 obtained. And a determination of probable cause can be based only on information  
16 known or gathered at the time of arrest. The only consideration against release is the  
17 existence of a prior removal order which may be sufficient to establish probable cause  
18 that a person would be likely to escape before a warrant could be obtained under §  
19 1357(a)(2).

20 40. Petitioner gave no indication that there was probable cause for escape prior to obtaining a  
21 warrant at the time of their arrest. As such, their arrest without any warrant renders their  
22 current and continued detention unlawful.

23 **FACTS**

1 41. Petitioner has resided in the United States for over a year and lives in Illinois.

2 42. On or about October 28, 2025, the Petitioner was detained in Illinois while he was  
3 at work. He is currently being processed at the ICE correctional facility in Broadview, Illinois.

4 43. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. §  
5 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

6 44. Petitioner currently has an asylum application pending before the Chicago  
7 Immigration Court. He last entered the United States in 2024 at the age of twenty. He has built  
8 meaningful ties within his community. Petitioner has maintained consistent employment, paid  
9 taxes, and contributed positively to his community. He has no criminal history, has complied with  
10 all prior immigration requirements to the best of his ability, and poses neither a flight risk nor any  
11 danger to the community.

12 45. ICE issued a custody determination to continue Petitioner's detention without an  
13 opportunity to post bond or be released on other conditions.

14 46. Petitioner has not had any bond redetermination hearing before an IJ and there is  
15 no court proceedings attached to his A-number in the EOIR system.

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

19 48. Any appeal to the BIA is futile. DHS's new policy was issued "in coordination with  
20 DOJ," which oversees the immigration courts. Further, as noted, the most recent unpublished BIA  
21 decision on this issue held that persons like Petitioner are subject to mandatory detention as  
22 applicants for admission. Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the  
23 Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are  
24

1 applicants for admission and subject to detention under § 1225(b)(2)(A). *See* Mot.to Dismiss,  
2 *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at  
3 27–31.

4  
5 **CLAIMS FOR RELIEF**

6 **COUNT I**

7 **Violation of the INA**

8 49. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
9 paragraphs.

10 50. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
11 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As  
12 relevant here, it does not apply to those who previously entered the country and have been residing  
13 in the United States prior to being apprehended and placed in removal proceedings by Respondents.  
14 Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c),  
15 or § 1231.

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

18  
19 **COUNT II**

20 **Violation of Due Process**

21  
22 52. Petitioner repeats, re-alleges, and incorporates by reference each and every  
23 allegation in the preceding paragraphs as if fully set forth herein.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

Lenz- Calvo, Ltd.  
332 S. Michigan Avenue, Suite 1428  
Chicago, IL 60604  
(312) 341-9730  
Atty. Code: 6343214