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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

EVA NADIA VARGAS PALACIOS,

Petitioner,

v.

Todd LYONS, in his capacity as Acting  
Director, Immigration and Customs  
Enforcement; Kristi NOEM, Secretary, U.S.  
Department of Homeland Security; Pamela  
BONDI, U.S. Attorney General; EXECUTIVE  
OFFICE FOR IMMIGRATION REVIEW;  
WARDEN, of ERO El Paso Camp East  
Montana Facility

Respondents.

Case No. 3:25-cv-552

**PETITION FOR WRIT OF  
HABEAS CORPUS**

**PETITION FOR WRIT OF HABEAS CORPUS**

**INTRODUCTION**

1  
2 1. Petitioner Eva Nadia Vargas Palacios is in the physical custody of Respondents at  
3 the ERO Camp East Montana ICE Facility in El Paso, Texas. She now faces unlawful detention  
4 because the Department of Homeland Security (DHS) and the Executive Office of Immigration  
5 Review (EOIR) have concluded Petitioner is subject to mandatory detention.

6 2. Petitioner is charged with, inter alia, having entered the United States without  
7 inspection, and no travel documents. 8 U.S.C. §§ 1182(a)(6)(A)(i); (a)(7).

8 3. Based on this allegation, Respondents have concluded that they do not have  
9 jurisdiction over Petitioner’s bond hearing. On July 8, 2025, DHS, in collaboration with the  
0 Executive Office for Immigration Review (Immigration Courts) issued a new policy instructing  
1 all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible  
2 under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an  
3 “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory  
4 detention.

5 4. On September 5, 2025, the Board of Immigration Appeals turned this new policy  
6 into precedent by issuing a decision that said it did “not have the authority” to hear any bond  
7 case for someone who had entered the United States without inspection.

8 5. Because of this new policy and the new BIA decision, Ms. Vargas Palacios cannot  
9 request a bond hearing before the Immigration Court. The Immigration Judge has no jurisdiction  
0 to hear the case.

1 6. The Respondents have concluded that notwithstanding the fact that Petitioner has  
2 lived in the United States for decades, she is nevertheless an “applicant for admission” who is  
3 “seeking admission” and subject to mandatory detention under § 1225(b)(2)(A).  
4

1 7. Petitioner's detention on this basis violates the plain language of the Immigration  
2 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who  
3 previously entered and are now residing in the United States. Instead, such individuals are  
4 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.  
5 That statute expressly applies to people who, like Petitioner, are charged as inadmissible for  
6 having entered the United States without inspection.

7 8. Respondents' new legal interpretation is plainly contrary to the statutory  
8 framework and contrary to decades of agency practice applying § 1226(a) to people like  
9 Petitioner.

10 9. Accordingly, Petitioner seeks a writ of habeas corpus requiring her immediate  
11 release from custody or, in the alternative that he be provided a bond hearing under § 1226(a)  
12 within seven days in which DHS bears the burden of establishing the necessity of petitioner's  
13 continued detention and considers alternatives to detention that could mitigate flight risk.

#### 14 JURISDICTION

15 10. Petitioner is in the physical custody of Respondents. Petitioner is detained at the  
16 ERO Camp East Montana ICE Facility in El Paso, Texas.

17 11. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28  
18 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States  
19 Constitution (the Suspension Clause).

20 12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory  
21 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

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**VENUE**

13. 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 Western District of Texas, the judicial district in which Petitioner currently is detained.

14. 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 Western District of Texas.

**REQUIREMENTS OF 28 U.S.C. § 2243**

15. 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.*

16. 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**

17. Petitioner, Eva Nadia Vargas Palacios, is a citizen of Guatemala who has been in immigration detention since approximately September 2025. Prior to being detained, Ms. Vargas Palacios was living in Florida with her 19-year-old U.S. citizen son. She was detained by ICE

1 following a traffic stop, and then ICE transferred her to El Paso, Texas. She sat in the detention  
2 center for approximately two months before ICE initiated removal proceedings by filing a Notice  
3 to Appear on November 10, 2025. She is now scheduled for immigration court proceedings in El  
4 Paso, Texas.

4 18. Ms. Vargas Palacios has applications pending with USCIS. She filed those  
5 applications with USCIS in December 2024. Despite having pending relief, ICE detained her and  
6 transferred Ms. Vargas Palacios far from her home and son. ICE did not set bond. However  
7 because of Respondents' new policies, Petitioner also cannot request a bond hearing before the  
8 Immigration Judge.

8 19. Petitioner has resided in the United States since approximately the year 1997. Her  
9 last entry was without inspection. The birth certificate for her U.S. citizen child is filed as proof  
0 of her long residency here in the United States.

1 20. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs  
2 Enforcement. As such, Acting Director Todd Lyons is Petitioner's immediate custodian and is  
3 responsible for Petitioner's detention and removal. He is named in his official capacity.

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

2 22. Respondent Pamela Bondi is the Attorney General of the United States. She is  
3 responsible for the Department of Justice, of which the Executive Office for Immigration Review  
4 and the immigration court system it operates is a component agency. She is sued in her official  
5 capacity.

1 23. Respondent Executive Office for Immigration Review (EOIR) is the federal  
2 agency responsible for implementing and enforcing the INA in removal proceedings, including  
3 for custody redeterminations in bond hearings.

4 24. Respondent Warden is employed as the Jail Administrator of the ERO Camp East  
5 Montana ICE Facility in El Paso, Texas, where Petitioner is detained. He has immediate physical  
6 custody of Petitioner. He is sued in his official capacity.

7 **LEGAL FRAMEWORK**

8 25. The INA prescribes three basic forms of detention for the vast majority of  
9 noncitizens in removal proceedings.

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

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

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

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

21 30. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
22 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.  
23 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section  
24

1 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1,  
2 139 Stat. 3 (2025).

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

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

15 33. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
16 rejected well-established understanding of the statutory framework and reversed decades of  
17 practice.

18 34. The new policy, entitled “Interim Guidance Regarding Detention Authority for  
19 Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without  
20 inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore  
21 are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies

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

1 regardless of when a person is apprehended, and affects those who have resided in the United  
2 States for months, years, and even decades.

3 35. On September 5, 2025, the BIA published a decision that adopts this same  
4 position and binds it on all Immigration Courts. *Matter of Yajure Hurtado*, 29 I&N Dec. 216  
5 (BIA 2025). In *Matter of Yajure-Hurado*, the BIA explicitly held that “Immigration Judges lack  
6 authority to hear bond requests or to grant bond to aliens who are present in the United States  
7 without admission.” *Id.* In complete contradiction of decades of judicial precedent, the Board  
8 stripped Immigration Judges of jurisdiction over bond for anyone who has entered the United  
9 States without inspection.

10 36. ICE and EOIR have adopted this position even though federal courts have  
11 rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration  
12 court stopped providing bond hearings for persons who entered the United States without  
13 inspection and who have since resided here, the U.S. District Court in the Western District of  
14 Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not §  
15 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States.  
16 *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025);  
17 *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*8 (D. Mass. July 7,  
18 2025) (granting habeas petition based on same conclusion).

19 37. Since then, federal courts throughout the United States have agreed with the  
20 Western District of Washington and granted preliminary injunctive relief for petitioners who  
21 entered the United States without inspections years ago. *Lopez Santos v. Noem et al*,  
22 3:25-cv-01193-TAD-KDM (W.D. La. Sept. 11, 2025); *Hernandez Marcelo v. Trump*,  
23 3:25-cv-00094, (S.D. Iowa September 10, 2025); *Jose J.O.E. v. Bondi, et al*, 25-cv-3051 (D.  
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1 Minn August 27, 2025); *Mayo Anicasio v Kramer et. al.*, 4:25-cv-3158, (D. Neb. August 14,  
2 2025).

3 38. 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 39. 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 40. 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  
11 (E)'s reference to such people makes clear that, by default, such people are afforded a bond  
12 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress  
13 creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions,  
14 the 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 41. 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 42. 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  
24

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

3 43. 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  
5 time they were apprehended.

#### 6 **FACTS**

7 44. Petitioner has resided in the United States since approximately 1997 and was  
8 living in Florida with her 19-year-old, U.S. citizen son prior to her detention.

9 45. Approximately two months ago, Petitioner was arrested by ICE in Florida.  
10 Petitioner was transferred far from her family, and she is now detained at ERO Camp East  
11 Montana ICE Facility in El Paso, Texas.

12 46. DHS placed Petitioner in removal proceedings before the El Paso Immigration  
13 Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being  
14 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States  
15 without inspection. Ex. 2.

16 47. Respondents have declined to release Petitioner, and instead, transferred her far  
17 away from her home in order to initiate removal proceedings at the El Paso Immigration Court.  
18 Respondents’ actions indicate their intention to detain her for the duration of her proceedings.  
19 Because of Respondents’ policy, Petitioner cannot request a bond hearing before the Immigration  
20 Judge, since the BIA has stripped Immigration Courts of their jurisdiction. *Yajure-Hurtado*, 29  
21 I&N Dec. 216.

1 48. As a result, Petitioner remains in detention. Without relief from this court, she  
2 faces the prospect of months, or even years, in immigration custody, separated from her family  
and community, including her U.S. citizen children.

3 49. Any request for bond from the Immigration Judge is futile because the Board has  
4 stripped it of jurisdiction. *Yajure-Hurtado*, 29 I&N Dec. 216. The Immigration Judge is not  
5 allowed to hear the case. *Id.* Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the  
6 Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner  
7 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),  
8 Dkt. 49 at 27–31.

9 **CLAIMS FOR RELIEF**

10 **COUNT I**

11 **Violation of the INA**

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

13 51. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
14 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As  
15 relevant here, it does not apply to those who previously entered the country and have been  
16 residing in the United States prior to being apprehended and placed in removal proceedings by  
17 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to  
18 § 1225(b)(1), § 1226(c), or § 1231.

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

**COUNT II**

**Violation of Due Process**

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

5 54. The government may not deprive a person of life, liberty, or property without due  
6 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,  
7 detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause  
8 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

9 55. Petitioner has a fundamental interest in liberty and being free from official  
10 restraint.

11 56. The government’s detention of Petitioner without a bond redetermination hearing  
12 to determine whether he is a flight risk or danger to others violates his right to due process.

**PRAYER FOR RELIEF**

13 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 14 a. Assume jurisdiction over this matter;
- 15 b. Declare that the actions of Respondents as set forth in Ms. Vargas Palacios’  
16 Petition and Motion violate the Fifth Amendment of the United States  
17 Constitution, 28 U.S.C. § 2241, the APA, and the INA;
- 18 c. Issue a writ of habeas corpus requiring that Respondents release Petitioner  
19 or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a)  
20 within 7 days;
- 21 d. Enjoin Respondents from denying Petitioner’s bond under U.S.C. § 1225(b)(2);

- 1 e. Should the Immigration Judge grant a bond, enjoin Respondents from invoking  
2 the auto-stay provision found at 8 C.F.R. § 1003.19(i)(2) during the pendency of  
3 any bond appeal; and  
4 f. Grant any other and further relief that this Court deems just and proper.

4 DATED this 14th of November 2025.

5 /s/ Jennifer Scarborough

6 Law Firm of Jennifer Scarborough  
7 P.O. Box 18460  
8 Minneapolis, MN 55418  
9 Texas State Bar No. 24106401  
10 *Attorney for Petitioner*

8 Verification Pursuant to 28 U.S.C. § 2242

9 The undersigned counsel submits this verification on behalf of the Petitioner. Undersigned  
10 Counsel has discussed with Petitioner the events described in this Petition and, on the basis of  
1 those discussions, verify that the statements in the Petition are true and correct to the best of her  
2 knowledge and belief.

0 Date: 14 Nov. 2025 /s/ Jennifer Scarborough

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1 I certify that I caused a copy of the foregoing

2 **PETITION FOR WRIT OF**  
3 **HABEAS CORPUS**

4 to be served on all counsel of record via ECF.

5 Dated this 14th day of November 2025.

6  
7 /s/ Jennifer Scarborough

8 Jennifer Scarborough

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