

JUDGE LEON SCHYDLOWER

December 01, 2025

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: D. Trujillo
DEPUTY

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
El Paso Division**

Hector Manuel Vasquez Carreto,

Petitioner,

v.

Civil Action No. _____

Kristi Noem, *Secretary of Homeland Security, U.S.
Department of Homeland Security*

Todd Lyons, *Acting Director, U.S. Immigration
and Customs Enforcement,*

Mary De Anda-Ybarra, *Director, El Paso ICE
Field Office, U.S. Immigration and
Customs Enforcement,*

Pamela Bondi, *Attorney General, U.S. Department
of Justice,*

Warden, *ERO El Paso Camp East Montana,*

Respondents.

EP 25 CV 0597

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner is a citizen of Guatemala who entered the United States in approximately 2004 without inspection between ports of entry on the U.S.-Mexico border, and upon information and belief was not encountered by immigration officials at that time. Approximately 21 years later, Petitioner was arrested by U.S. Immigration and Customs Enforcement ("ICE"), while traveling to work along the George Washington Memorial Parkway in Virginia. Petitioner is now detained by 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 discretionary release

on bond from an Immigration Judge (“IJ”). However, due to a new policy announced by ICE in July 2025, and now a recent Board of Immigration Appeals (BIA) decision that overturns decades of settled law, Respondents contend that Petitioner is actually detained under 8 U.S.C. § 1225(b). However, while § 1225 requires mandatory detention and does not allow release on bond, it only applies to noncitizens apprehended at the border “seeking admission.” Petitioner therefore brings this action for a declaratory judgment 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 discretionary bond hearing pursuant to § 1226(a) before an Immigration Judge within 15 days.

JURISDICTION AND VENUE

2. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241; 28 U.S.C. § 2201, the Declaratory Judgment Act; and 28 U.S.C. § 1331, Federal Question Jurisdiction. In addition, the individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

3. The Court has authority to enter a declaratory judgment and to provide temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, 28 U.S.C. §§ 2201-2202, the All Writs Act, and the Court’s inherent equitable powers, as well as issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

4. This Court also has federal question jurisdiction, through the APA, to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA review of a final agency action may proceed, absent a special statutory review proceeding, by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction.” 5 U.S.C. § 703.

5. Venue lies in this District because Petitioner is currently detained within the

territorial jurisdiction of this division of this District; and each Respondent is an agency or officer of the United States sued in his or her official capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1).

THE PARTIES

6. Petitioner Hector Manuel Vasquez Carreto is a citizen and native of Guatemala and is currently detained by Respondents at ERO El Paso Camp East Montana in El Paso, TX within the territorial jurisdiction of this Court.

7. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (“DHS”). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

8. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”). He is the head of the federal agency responsible for all immigration enforcement in the United States.

9. Respondent Mary De Anda-Ybarra is the Director of the El Paso ICE ERO Field Office of U.S. Immigration and Customs Enforcement (ICE) which has jurisdiction over ERO El Paso Camp East Montana where Petitioner Escobar Monterroso is unlawfully detained. As the local ICE official overseeing enforcement operations in the region, she is responsible for Petitioner’s continued detention and any actions related to his removal. She is therefore the Petitioner’s immediate legal custodian for the purpose of habeas jurisdiction.

10. Respondent Pamela Bondi is the Attorney General of the United States. She is the head of the U.S. Department of Justice, which oversees the Executive Office for Immigration Review, including the Board of Immigration Appeals and the Immigration Court judges, who decide removal cases and applications for bond as her designees.

11. Respondent Warden of the ERO El Paso Camp East Montana is the immediate custodian who is currently holding Petitioners Escobar Monterroso in physical custody in El Paso, TX. They are sued in their official capacity.

12. All government Respondents are sued in their official capacities.

LEGAL BACKGROUND

A. Immigration Detention Legal Framework

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

14. Detention is authorized for “certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and 1126(c).” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The statute provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a) generally, or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Discretionary detention under § 1226(a) has been described as the “default” provision for immigration detention for those subject to traditional removal proceedings. *Id.* at 288. Under § 1226(a), “[e]xcept as provided in subsection (c) of this section,’ the Attorney General ‘may release’ an alien detained under § 1226(a) ‘on ...bond’ or ‘conditional parole.’” *Id.*

15. Alternatively, mandatory detention is authorized for “certain aliens *seeking admission* into the country under §§ 1225(b)(1) and 1225(b)(2),” [emphasis added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and determined to be “applicants for

admission” may be subject to mandatory detention under two separate subsections. Applicants for admission include someone:

“present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for the purposes of this chapter to be an applicant for admission.”

§ 1225(a)(1).

16. The first subset, under 8 U.S.C. § 1225(b)(1), may be subject to expedited removal and mandatory detention if they are determined to be an “arriving alien,” and if they have not been physically present in the United States continuously for a two-year period immediately prior. 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.

17. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of “applicant for admission” specifically when “the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title,” i.e. for traditional removal proceedings [emphasis added].

18. An “arriving alien” or an applicant for admission “seeking admission” may only be released from detention on parole (which is a form of release on recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no bond available to an arriving alien or applicant

for admission seeking admission. *Id.* There is no such thing as a “parole bond” – a release must be either parole under § 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*

19. 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 (a “custody review hearing”), 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.

20. Custody review 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, she must still appear in immigration court for the IJ to determine her removability and hear any claim for relief from removal. At a custody review hearing, once jurisdiction over bond is established, the IJ’s inquiry is limited to 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).

21. For decades, it has been Respondents’ practice to afford § 1226(a) discretionary bond hearings and custody review hearings to those individuals who have been encountered neither at a point of entry nor seeking admission to the United States. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (“Respondents’ proposed application of § 1226 is also belied by the Department of Homeland Security’s ‘longstanding practice’ of treating noncitizens taken into custody while living in the United States, including those detained and found

inadmissible upon inspection and then released into the United States with the government's acquiescence, who have committed no crime after release, as detained under § 1226(a).” citing *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)).

B. New ICE memo reinterpreting 8 U.S.C. § 1225(b)(2)

22. On July 8, 2025, Respondent ICE issued new interim guidance that announced a breathtakingly broad interpretation of 8 U.S.C. § 1225(b)(2). See ICE memorandum “Interim Guidance Regarding Detention Authority for Applications for Admission.”¹ This memo concerns the detention of “applicants for admission” as defined by § 1225(a)(1). “Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)].” *Id.* DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id.* (“For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated.”)

23. In addition to the announcement re-interpreting § 1225(b)(2), the memo further clarifies that “[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1227], with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].” *Id.*

24. Moreover, ICE maintains that “DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA §

¹ Available at: <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last visited October 6, 2025).

212(d)(5) based on this change in legal position.” *Id.* ICE fails to clarify under what legal authority, then, those prior releases were effectuated. Rather, ICE signals the resulting lack of “correct” paperwork is nonetheless permissible. *Id.* (“Accordingly, ERO and HIS are not required to ‘correct’ the release paperwork by issuing INA § 212(d)(5) parole paperwork.”)

25. Nationwide implementation of the ICE § 1225(b)(2) mass detention policy ensued.

C. Recent BIA decision *Matter of Yajure Hurtado*

26. On September 5, 2025, the Board of Immigration Appeals (BIA), which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE’s re-interpretation of § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

27. The BIA held that the noncitizen was an “applicant for admission” within the scope of § 1225(b), and therefore subject to mandatory detention.

28. The BIA characterized the issue before it as “one of statutory construction: Does the INA require that *all* applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?” [emphasis added]. *Id.* at 220.

29. The BIA reasoned that individuals “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer.” *Id.* at 228.

30. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id.* at 225, FN6 (“We acknowledge that for years Immigration Judges have

conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled ‘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), reflects that the Immigration and Naturalization Service took the position at that time that ‘[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.’”)

31. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229.

32. The BIA decision is binding on all immigration judges nationwide.

33. Respondents’ new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at *11 (“It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.”)

FACTS

34. Petitioner Vasquez Carreto is a citizen of Guatemala. He entered the United States without inspection between ports of entry, across U.S.-Mexico border, on or around 2004. Upon information and belief, he was not encountered by immigration officials nor issued an ICE Notice to Appear upon entry.

35. Petitioner Vasquez Carreto later relocated to the state of Virginia, where he established his life and community ties. He currently resides in Arlington, Virginia, with his partner, and three of their children.

36. On May 28, 2021, Petitioner submitted an application for Deferred Action for Childhood Arrivals (DACA). However, due a subsequent nationwide suspension of initial DACA adjudications, his application has never been processed or adjudicated.

37. Petitioner Vasquez Carreto was detained on September 23, 2025, while traveling to work along the George Washington Memorial Parkway in Virginia. He was forced to pull over, and shortly thereafter officers approached his vehicle and placed him under arrest.

38. Petitioner is currently detained at ERO El Paso Camp East Montana in El Paso, TX, within the territorial jurisdiction of this Court. See ICE Detainee Locator information (available at <https://locator.ice.gov/> (last visited on November 24, 2025)):

The screenshot shows a web browser window with the URL locator.ice.gov/odis/#/details. The page header includes the U.S. Department of Homeland Security logo and the text "U.S. Immigration and Customs Enforcement". A navigation bar contains links: Home, Who We Are, What We Do (selected), Newsroom, Information Library, and Contact ICE. Below the navigation bar is a button labeled "< BACK TO RESULTS". The main content area is titled "Facility Page" and contains the following information:

Detention Information For:
HECTOR MANUEL VASQUEZ-CARRETO
Country of Birth: Guatemala
A-Number: [REDACTED]

Current Detention Facility:
ERO EL PASO CAMP EAST MONTANA
6920 Digital Road
NA
El Paso, TX 79936
Visitor Information: (915) 208-0980

39. Petitioner Vasquez-Carreto has pending removal proceedings (his Master Calendar Hearing is scheduled for December 9, 2025) and is not subject to a final order of removal. *See* EOIR Automated Case Information (available at <https://acis.eoir.justice.gov/> (last visited on November 24, 2025)):

The screenshot shows the EOIR Automated Case Information website. The browser address bar displays "acis.eoir.justice.gov/en/caseinformation". The page title is "Automated Case Information". Below the title, the case name is "Name: VASQUEZ-CARRETO, HECTOR MANUEL" and the docket date is "Docket Date: 9/30/2025". The page is divided into four sections:

- Next Hearing Information:** "Your upcoming MASTER hearing is on December 9, 2025 at 8:30 AM." The judge is "JUDGE Miller, Jessica K." and the court address is "8915 MONTANA AVENUE EL PASO, TX 79925".
- Court Decision and Motion Information:** "This case is pending."
- BIA Case Information:** "No appeal was received for this case."
- Court Contact Information:** "If you require further information regarding your case, or wish to file additional documents, please contact the immigration court." The court address is "8915 MONTANA AVENUE EL PASO, TX 79925" and the phone number is "(315) 540-7854".

40. Petitioner's detention has caused significant emotional and financial hardship for his family. He is the main breadwinner, and his absence has left his partner (who has DACA) struggling to cover even the family's basic expenses. Their three U.S. citizen children—ages 4, 7, and 10—have been severely affected by their father's sudden detention. They ask constantly where their father is, have been crying frequently, and their eating habits have deteriorated due to stress. The family now relies on the children's school for meals, as they cannot consistently afford adequate food at home. The emotional instability and financial strain caused by Petitioner's detention have placed the family in an extremely vulnerable situation.

41. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. Accordingly, it would be futile for

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

**FIRST CLAIM FOR RELIEF:
Declaratory Judgment**

42. Petitioner re-alleges and incorporates by reference paragraphs 1-41.

43. Petitioner requests a declaration from this Court that he is not an applicant for admission “seeking admission” or “an arriving alien” subject to mandatory detention under 8 U.S.C. §§ 1225(b)(1) or (b)(2), and that his current detention by Respondents is proper, if at all, only under 8 U.S.C. § 1226(a).

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

44. Petitioner re-alleges and incorporates by reference paragraphs 1-41.

45. Since Petitioner is not an applicant for admission “seeking admission” or an “arriving alien” subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2), and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), he is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

46. 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**

47. Petitioner re-alleges and incorporates by reference paragraphs 1-41.

48. 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.

49. After entering the United States unlawfully, Petitioner went on to develop ties to the community over the course of several years. Petitioner is therefore a “person” within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution, and has a liberty interest in freedom from physical restraint.

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

REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully requests that the Court enters an order:

- a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioner’s detention in fact and in law, forthwith;
- b) Enjoin Petitioner’s transfer outside of this judicial district pending this litigation;
- c) Declare that Petitioner is not an applicant for admission “seeking admission” or “an arriving alien” subject to 8 U.S.C. § 1225(b);
- d) Declare that Respondents’ actions, as set forth herein, violate Petitioner’s due process rights;
- e) Declare that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a);
- f) Order that Respondents conduct bond hearings for Petitioner pursuant to 8 U.S.C. § 1226(a) within 15 days;
- g) Grant the writ of habeas corpus and order Respondents to release Petitioner forthwith, upon payment of the bond as ordered by the Immigration Judge;
- h) Award Petitioner his costs of suit; and

i) Grant any other relief that this Court deems just and proper.

Respectfully submitted,

Date: November 24, 2025

/s/ Alaina Taylor

Alaina M. Taylor, Esq.*

Virginia State Bar No. 97250

Murray Osorio PLLC

4103 Chain Bridge Road, Suite 300

Fairfax, Virginia 22030

Telephone: 703-352-2399

Facsimile: 703-763-2304

ataylor@murrayosorio.com

**Pro Hac Vice Counsel for Petitioner*

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I will send a copy by certified U.S. mail, return receipt requested, to:

Civil Process Clerk
U.S. Attorney's Office for the Western
District of Texas
700 E. San Antonio, Suite 200
El Paso, Texas 79901

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

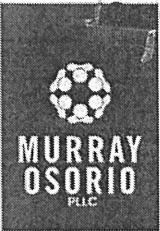
Warden,
ERO El Paso Camp East Montana
6920 Digital Road
El Paso, TX 79936

Respectfully submitted,

Date: November 24, 2025

/s/ Alaina Taylor
Alaina M. Taylor, Esq.*
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**Pro Hac Vice Counsel for Petitioner*



November 24, 2025

Via USPS overnight
U.S. District Clerk's Office
525 Magoffin Avenue, Suite 105
El Paso, Texas 79901

RE: New Civil Case
Vasquez Carreto v. Noem, et al.
Pro Hac Vice Counsel

Dear Clerk,

My office represents Mr. Hector Manuel Vasquez Carreto, who is the Petitioner in this habeas corpus petition. Enclosed within, please find the following case-initiating documents and corresponding fees:

- Petition for Writ of Habeas Corpus
- Civil Cover Sheet
- Motion for Admission Pro Hac Vice with Proposed Order
- Check in the amount of \$5 (Habeas Corpus case filing fee)
- Check in the amount of \$100 (*Pro Hac Vice* filing fee)

Should any other documents or information be needed, please do not hesitate to contact me at ataylor@murrayosorio.com. Thank you.

Respectfully submitted,

/s/ Alaina Taylor
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**Pro Hac Vice Counsel for Petitioner*