

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MIGUEL ANGEL VELASQUEZ
ALGUEIRA,

Petitioner,

v.

WARDEN, ERO EL PASO CAMP EAST
MONTANA, EL PASO, TX;
FIELD OFFICE DIRECTOR, U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT EL PASO; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; **KRISTI NOEM**,
SECRETARY, U.S. DEPARTMENT OF
HOMELAND SECURITY; **PAMELA
BONDI**, U.S. ATTORNEY GENERAL;
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW,

Respondents.

Case No. 3:25-cv-691

**PETITION FOR WRIT OF
HABEAS CORPUS**

PETITION FOR WRIT OF HABEAS CORPUS (28 U.S.C. § 2241)

INTRODUCTION

1. Petitioner Miguel Angel Velasquez Algueira (“Mr. Velasquez”) seeks a writ of habeas corpus under 28 U.S.C. § 2241 challenging his current detention by Immigration and Customs Enforcement (“ICE”).

2. Respondents are detaining Mr. Velasquez as if he were subject to mandatory detention under INA § 235, 8 U.S.C. § 1225(b), and take the position that he is ineligible for a bond (custody redetermination) hearing before an Immigration Judge.

3. Mr. Velasquez is properly detained, if at all, under INA § 236(a), 8 U.S.C. § 1226(a), and therefore is entitled to a prompt custody redetermination (bond) hearing.

4. Absent an order from this Court, Mr. Velasquez will continue to be detained without the bond-hearing procedures Congress provided in § 1226(a).

5. Mr. Velasquez asks this Court to issue an Order to Show Cause, declare that § 1226(a) governs his detention, order Respondents to release Petitioner (or, in the alternative, order Respondents to provide him a prompt bond hearing before an Immigration Judge).

JURISDICTION AND VENUE

6. This action arises under the Constitution and laws of the United States, including 28 U.S.C. § 2241 and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq.

7. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 2241, and has authority to grant habeas relief under 28 U.S.C. § 2243.

8. Venue is proper in this District because Mr. Velasquez is confined at or under the direction and supervision of ICE Enforcement and Removal Operations (“ERO”) El Paso, TX and because Respondents with day-to-day control and authority to produce him and to provide the requested custody hearing are located within this District.

9. To the extent Respondents contend that the immediate custodian is located outside this District, Petitioner respectfully requests that the Court transfer this matter to the appropriate district pursuant to 28 U.S.C. § 1406(a) and/or 28 U.S.C. § 1631 rather than dismissing the Petition.

PARTIES

10. Petitioner Miguel Angel Velasquez Algueira is a Venezuelan citizen and national. His A-Number is 

11. Mr. Velasquez is currently in civil immigration detention. According to ICE documentation, he was transferred to ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, TX 79936.

12. Respondent Warden, ERO El Paso Camp East Montana, El Paso, TX is Mr. Velasquez's immediate custodian at the facility where he is confined and has day-to-day control over him.

13. Respondent Field Office Director, ICE ERO El Paso, is responsible for ICE detention operations and custody decisions in the El Paso Area of Responsibility.

14. Respondent U.S. Immigration and Customs Enforcement ("ICE") is a component of the Department of Homeland Security responsible for civil immigration detention.

15. Respondent Secretary of the U.S. Department of Homeland Security ("DHS") and Respondent Attorney General of the United States are sued in their official capacities and have authority to effectuate the relief requested.

16. Respondent Executive Office for Immigration Review ("EOIR") is a federal government agency responsible for adjudication immigration proceedings. EOIR has the authority to release and/or schedule a bond hearing for the unlawfully detained Petitioner Mr. Velasquez.

EXHAUSTION / FUTILITY

17. Although Respondents may argue that Mr. Velasquez should first request a bond hearing, exhaustion is not jurisdictional in § 2241 proceedings, and courts routinely excuse exhaustion where it would be futile.

18. Here, Respondents' position is that Mr. Velasquez is detained under § 1225(b) and is not eligible for bond.

19. Because Respondents will admit that they believe Mr. Velasquez is not eligible for bond, an administrative bond request is futile and unnecessary to preserve this Court's ability to grant relief.

FACTUAL BACKGROUND

20. Mr. Velasquez was encountered by Border Patrol on or about March 22, 2022 near San Luis, Arizona and processed for removal proceedings under INA § 240.

21. DHS served him with a Notice to Appear charging him under INA § 212(a)(6)(A)(i).

22. On March 26, 2022, DHS issued a Notice of Custody Determination (Form I-286) stating that, pursuant to INA § 236 and 8 C.F.R. part 236, Mr. Velasquez would be released on his own recognizance pending removal proceedings.

23. For approximately three years after his entry, Mr. Velasquez resided in the United States and complied with immigration reporting requirements.

24. On November 14, 2025, Mr. Velasquez reported to an ICE check-in appointment at the ICE Mt. Laurel Field Office and was taken into ICE custody.

25. ICE subsequently transferred Mr. Velasquez to an ICE detention facility in the El Paso Area.

26. Mr. Velasquez's removal proceedings are currently set for a Master Calendar Hearing on December 31, 2025 at 8:30 a.m. (Mountain Time) before the Otero Immigration Court, with proceedings conducted through the facility where he is detained.

27. Respondents have taken the position that Mr. Velasquez is subject to mandatory detention under INA § 235, 8 U.S.C. § 1225(b), and therefore is not eligible for a bond hearing before the Immigration Court.

CLAIMS FOR RELIEF

COUNT I – Unlawful Detention Under 8 U.S.C. § 1225(b); Proper Detention Authority is 8 U.S.C. § 1226(a)

28. The averments contained in the preceding paragraphs one (1) – twenty-eight (28) are incorporated by reference as if fully contained herein.

29. Mr. Velasquez is in § 240 removal proceedings (as opposed to expedited removal proceedings) and has long been physically present in the United States for over three (3) years.

30. Removal proceedings under INA § 240, (8 U.S.C. § 1229a), are the formal adjudicatory proceedings conducted by an Immigration Judge to decide whether a noncitizen is inadmissible or deportable and therefore removable, and which (unless otherwise specified) are the sole and exclusive procedure for determining whether a noncitizen may be admitted or, if admitted, removed.

31. By contrast, expedited removal is a summary removal process under INA § 235(b)(1), (8 U.S.C. § 1225(b)(1)), in which an immigration officer (not an Immigration Judge) may issue a removal order without further hearing or review against certain arriving noncitizens found inadmissible under specified grounds, subject to the statute's asylum/credible-fear screening and review provisions.

32. Additionally, the INA establishes distinct detention frameworks for (a) arriving applicants for admission subject to inspection and expedited procedures, and (b) noncitizens in removal proceedings who are physically present in the United States.

33. Section 1225(b) (INA § 235) governs certain arriving applicants for admission; Section 1226 (INA § 236) governs arrest, detention, and release “pending a decision on whether the alien is to be removed from the United States.” *INA* § 236(a) / 8 *U.S.C.* § 1226(a)

34. DHS previously exercised discretionary custody authority under INA § 236 (8 USC 1226) and released him on his own recognizance.

35. Now Respondents are attempting to reclassify Mr. Velasquez as subject to mandatory detention under under § 1225(b) (INA § 235). However, this is inconsistent with the INA’s text, structure, and purpose.

36. Federal courts have held that individuals arrested within the United States and placed in § 240 proceedings are detained, if at all, under § 1226—not § 1225(b)—and are entitled to the bond-hearing procedures provided by § 1226(a). See, e.g., *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025) (order granting petitioners’ motion for partial summary judgment).

37. Because § 1226(a) governs, Mr. Velasquez is entitled to a prompt bond (custody redetermination) hearing before an Immigration Judge pursuant to 8 C.F.R. § 236.1(d) and related regulations.

38. This Court should declare that § 1226(a) governs Mr. Velasquez's detention and order Respondents to provide a prompt bond hearing (or release him unless and until such a hearing is provided).

COUNT II – Fifth Amendment Due Process

39. The averments contained in the preceding paragraphs one (1) – thirty-eight (38) are incorporated by reference as if fully contained herein

40. Civil immigration detention must comport with due process. By holding Mr. Velasquez without the bond-hearing procedures Congress and the regulations provide under § 1226(a), Respondents are depriving him of liberty without due process of law.

41. Due to the deliberate and illegal detention of the Mr. Velasquez this Honorable Court should Order Respondents to immediately release Mr. Velasquez from custody.

42. At minimum, due process requires that Mr. Velasquez receive a prompt hearing at which an Immigration Judge may consider whether detention is necessary based on flight risk or danger, and may impose conditions of release if appropriate.

43. This Court should order grant any additional relief necessary to remedy the due process violation.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- A. Issue an Order to Show Cause under 28 U.S.C. § 2243 directing Respondents to respond promptly to this Petition;

B. Declare that Respondents are unlawfully detaining Mr. Velasquez under 8 U.S.C. § 1225(b) and that 8 U.S.C. § 1226(a) governs his detention;

C. Order Respondents to provide Mr. Velasquez a prompt bond (custody redetermination) hearing before an Immigration Judge under § 1226(a) and applicable regulations, or, in the alternative, order his release unless and until such a hearing is provided;

D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Kathrine Russell

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Pro Hac Vice Motion forthcoming