

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

BENJAMIN CRUZ CRUZ)
 Alien #: )
)
 Petitioner,)
)
 v.)
)
 Warden, ERO EL PASO CAMP EAST MONTANA;)
 Mary De Anda Ybarra, IMMIGRATION and CUSTOMS)
 ENFORCEMENT AND REMOVAL)
 OPERATIONS EL PASO FIELD OFFICE)
 DIRECTOR; Todd M. Lyons, ACTING)
 DIRECTOR, IMMIGRATION and CUSTOMS)
 ENFORCEMENT; Kristi Noem,)
 SECRETARY OF THE DEPARTMENT OF)
 HOMELAND SECURITY; Pam Bondi,)
 ATTORNEY GENERAL OF THE UNITED)
 STATES)
)
 Respondents.)

Case No. 3:25-cv-732

VERIFIED PETITION

EMERGENCY PETITION FOR WRIT of HABEAS CORPUS

Petitioner, BENJAMIN CRUZ CRUZ, by and through his own and proper person, and through his attorney, SAADIA SIDDIQUE, of SIDDIQUE LAW GROUP, LLC, petitions this Honorable Court to issue a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner is challenging his unlawful arrest and detention and denial of release on his bond request contrary to 8 U.S.C. § 1226, which under certain conditions, allows for release on bond during the pendency of immigration court proceedings.

Cruz Cruz is a citizen of Mexico who initially entered the United States without inspection on or about February 2004. It is believed he was not deported or removed at the border and has remained in the United States since this date. He has resided in Illinois for approximately 22 years and has three children who are U.S. Citizens, ages 21, 15, and 11. He

also has an elderly father who is a lawful permanent resident who lives part-time with Cruz Cruz and his other children located in California and Arizona. Cruz Cruz's US Citizen daughter filed a visa petition to sponsor him for lawful permanent residency. He is the primary support for his family members working as a landscaper for the past seven years. His wife is not employed outside the home.

At approximately 10:30 A.M. on November 4, 2025, while putting in fertilizer at a worksite in Algonquin, Illinois, he was forcibly detained and apprehended by Immigration and Customs Enforcement (ICE) officers and taken to an ICE facility in Broadview, Illinois. It is believed that shortly that same day or the next day he was then transferred to El Paso, Texas. He is now at the ERO El Paso Camp East Montana ICE facility in El Paso, Texas. Although after his initial arrival at the facility he could not be located in the ICE detainee locator, it is believed that Respondents have not transferred him outside the jurisdiction of this court.

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. Cruz Cruz falls into this category of individuals and is subject to continued detention during the pendency of his immigration court hearings, which are pending.

Introduction

It is believed that Cruz Cruz remains detained by Immigration and Customs Enforcement ("ICE") at the ERO El Paso Camp East Montana ICE facility in El Paso, Texas. Prior to his apprehension, Petitioner had not been previously apprehended by ICE and was pursuing his

application for lawful permanent resident status through his U.S. Citizen daughter. The application requires him to depart the United States and process through the U.S. Consulate in Ciudad Juarez and file a waiver of unlawful presence which, if not approved in the U.S, would require him to remain in Mexico for a minimum of 10 years. Since his apprehension, he has been issued a Notice to Appear (NTA) and placed in removal proceedings and has a detained master-calendar hearing scheduled before the immigration court in El Paso, Texas for February 18, 2026. His immigration attorney also requested a bond hearing before an immigration judge in El Paso, but it was denied on December 11, 2025.

Petitioner is entitled to contest his removal hearing before an Immigration Judge, who will determine his ultimate removability and his applications for relief. However, until approximately the last six months, Respondents have abruptly and unlawfully reversed decades of settled immigration practice and procedure where individuals in Petitioner's situation would otherwise be entitled to release upon posting an immigration bond while removal proceedings remain pending. Respondents' continued detention of Petitioner 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").

Numerous individuals in Petitioner's position have challenged the Respondents' 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 and then sent to ICE contracted facilities around the country. *See Espinoza Andres v. Noem*, 2025 WL 3458893 (S.D. Tex. Dec. 2, 2025); *Lopez-Arevalo v. Ripa*,

2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Choglo Chafla 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

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.* 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 Petitioner 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.

This action is brought to compel the Respondents’ officers of the United States, to accord Petitioner 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”).

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

Venue lies in this Court pursuant to 28 U.S.C. § 1391(e). The Petitioner is detained by ICE, under the jurisdiction of the Chicago and El Paso Field Offices, at ERO El Paso Camp East Montana ICE facility in El Paso, Texas, a facility located in the Western District of Texas. He is subject to being moved to another undisclosed ICE facility. Undersigned counsel is not aware if he will be moved and thus requests, he remain in the jurisdiction of this court.

Parties¹

Petitioner is 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.

Respondent WARDEN is being sued in his or her official capacity only, as the Warden of ERO El Paso Camp East Montana ICE facility as the custodian of the jail and all individuals detained therein, where Petitioner is presently being detained. He is, therefore, Petitioner’s immediate custodian.

Respondent MARY DE ANDA YBARRA is being sued in her official capacity only, as the Field Office Director of the El Paso Field Office of Immigration and Customs Enforcement. As

¹ Although initially detained in the jurisdiction of the Northern District of Illinois, the Seventh Circuit has found that the proper respondent to this petition is the warden or sheriff of the detention center where Petitioner is detained. *Kholjavskiy v. Achim*, 443 F.3d 946, 949-53 (7th Cir. 2006).

such, she is charged with the detention and removal of aliens which fall under the jurisdiction of the El Paso Field Office. Although the Chicago Field Office did have direct control over Petitioner's detention and removal as it was the office which initially detained him and issued his Notice to Appear, it is believed his present custody falls under the El Paso, Texas field office.

Respondent 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.

Respondent KRISTI NOEM is being sued in her official capacity only, as the Secretary of the Department of Homeland Security ("DHS").

Respondent 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

Petitioner, BENJAMIN CRUZ CRUZ, is present in the United States without inspection and based on information and belief, has not been previously deported when he crossed the U.S border at or near El Paso, Texas on or about February 2004. His U.S. Citizen daughter filed an affirmative application for an immigrant visa (Form I-130) on October 24, 2025, with USCIS. (Pet. Ex. A: I-130 Receipt). Following ICE apprehension, on November 5, 2025, ICE issued him a Notice to Appear (NTA) which places him in removal proceedings pursuant to 8 U.S.C. § 1229a and charges him with being present in the United States without admission and without

valid documentation and therefore removable pursuant to *inter alia* 8 U.S.C. §§ 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I).² (Pet. Ex. B: NTA).

Petitioner has no criminal record, and his removal proceedings remain pending before an Immigration Court in El Paso, Texas. He filed a bond request with the immigration court in El Paso, Texas. On December 11, 2025, the immigration judge denied him bond on that basis that he was not eligible because of his entry without inspection or admission. (Pet. Ex. C: IJ Order). In addition, a class action case from the Central District of California granting habeas relief to similarly-situated individuals such as Cruz Cruz, “is an order for partial summary judgment, it is not a final judgment and therefore not binding on all parties until a final judgment is entered.”³ The IJ’s bond order does not indicate he would have been denied bond because he is a danger to the community or a flight risk or on any discretionary grounds.

After his bond was denied, he has been scheduled for a master-calendar hearing for February 18, 2026. Having been present in the U.S. for over 10 years and with two U.S. Citizen children under 21 years of age and a lawful permanent resident father, Petitioner is eligible to file for cancellation of removal; adjustment of status to lawful permanent resident pursuant to 8 U.S.C. § 1229b(b) which allows the Attorney General to “cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien-

(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;

² The box on his NTA is checked “you have been admitted to the United States but are removable for the reasons stated below”.

³ The immigration judge is referencing the court decision in *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr et al.*, 5:25-cv-01873 (C.D. Cal., Nov. 20, 2025), which as of December 18, 2025, has been issued as a “Final Judgment”.

- (B) has been a person of good moral character during such period;
- (C) has not been convicted of an offense under section 212(a)(2), 237(a)(2), or 237(a)(3), subject to paragraph (5); and
- (D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

Cruz Cruz is statutorily eligible for cancellation of removal for certain nonpermanent residents given his long-time residence in the United States, gainful employment, lack of criminal arrests or convictions, and as the sole financial support to his U.S. Citizen children and also helping to support his elderly lawful permanent resident father. His wife is a full-time stay at home mom caring for their children's needs while Petitioner is the sole financial support. His 21-year old daughter is a recent college graduate and is also primarily being financially supported by the Petitioner.

On or about November 4, 2025, while on his way to his employment as a landscaper for his own company which he has owned for the past seven years, he was surrounded by ICE agents and forcibly detained. A warrant was not shown when he was detained, but after he was taken to the ICE processing facility at Broadview, Illinois. (Pet. Ex. D: Warrant). He was not given an option for release or advised if he fell under a class of aliens not entitled to apprehension or release pending resolution of his removal proceedings. Petitioner holds a valid TVDL (driver's license) from the state of Illinois and is the sole financial support to his two U.S. Citizen children and wife who is not employed. He rents a home in Palatine, Illinois and has been paying US income taxes since 2004.

Respondents have commenced removal proceedings against Petitioner with an immigration court date, and he is being held, without bond, at an ICE facility. 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 cases cited on page 3-4.* As a person detained under 8 U.S.C. § 1226(a), Petitioner should have received bond at his hearing on December 11, 2025, and Petitioner requests release pursuant to that bond hearing consistent with established precedent. Under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which the IJ cited in her decision denying bond, the responsible administrative agency has predetermined 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 be permitted release on bond. Requiring any exhaustion of administrative remedies before an Immigration Judge would be futile. An Immigration Judge is bound by the *Yajure Hurtado* decision and requesting bond and or appealing the same should not be counted as an impermissible failure to exhaust administrative remedies.

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, including in this one.

The INA prescribes three basic forms of detention for most noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a. 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). 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). 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) (emphasis added).

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). 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).

Thus, as in Petitioner's case, absent ineligibility due to a criminal history or flight risk, which the IJ did not find, 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. Noem*, No. 3:25-cv-430-KC, 2025 WL 2965859, at *1-5 (W.D. Tex. Oct. 21, 2025) (finding procedural due process violation in denying bond); *Singh v. Lewis*, 2025 WL 2699219, at *5 (W.D. KY Sept. 22, 2025) (Petitioner who was "present in the United States for more than 12 years is not seeking admission into the United States.") (internal quotations omitted); and *Martinez v. Hyde*, 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”); *cf Montoya Cabanas v. Bondi*, 2025 WL 3171131 at * 8 (S.D. Tex. Nov. 13, 2025) (finding the statutory text of § 1225(b)(2)(A) governs and an amendment by the Laken Riley Act to section 1226 isn’t superfluous).

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. 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. Petitioner acknowledges 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). This provision does not apply to Petitioner’s situation given the length of time inside the United States and no prior record of removability.

Causes of Action

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

1. FIRST, the mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Petitioner as he has been placed in removal proceedings under 8 U.S.C. § 1229a and thus entitled to release pursuant to his 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. Petitioner has been present and residing in the United States now for over 21 years since his initial entry in February 2004.

2. The application of 8 U.S.C. § 1225(b)(2) to Petitioner's continued detention without releases on a bond violates 8 U.S.C. § 1226(a), which governs his case.
3. 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). This authority is given to the Courts and "courts, not agencies, will decide all relevant question of laws arising on review of agency action . . . and set aside any such action inconsistent with the law as they interpret it." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024) (quoting 5 U.S.C. § 706) (emphasis in original) (internal quotations omitted).
4. Petitioner's continued detention is arbitrary, capricious, an abuse of discretion, and without statutory authority in violation of 5 U.S.C. § 706(2).⁴
5. THIRD, Petitioner has a fundamental interest in liberty and being free from official restraint. Respondent's 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). Respondents' interpretation of the Immigration and Nationality Act (INA) is in error and is a violation of his due process rights. The BIA has no authority to adjudicate

⁴ Petitioner also asserts his arrest is in violation of a separate Court 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 a warrantless arrest. In addition, a recent class action decision places Petitioner as a member of bond eligible class of individuals in *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr et al.*, 5:25-cv-01873 (C.D. Cal., Nov. 20, 2025) classified as: "All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination."

Pursuant to 28 U.S.C. § 2243 Issuance of a Final Judgment, Petitioner is a class member with the District Court of California issuing a declaratory judgment finding that his current detention is unlawful. (Pet. Ex. E: Final Judgment).

constitutional claims and thus this action is proper before this Court. *See generally Falek v. Gonzales*, 475 F.3d 285, 291 n 4 (5th Cir. 2007).

6. FOURTH, if necessary, by way of separate petition, Petitioner requests a temporary restraining order enjoining Respondents from relocating him outside the jurisdiction of this court pending final resolution of his case. He is likely to succeed on the merits, there is a threat of irreparable harm absent an injunction, the balance between threatened harm to him versus the Government weighs in his favor and Respondents will not suffer by granting him release pursuant to his bond hearing, and public interest dictates that those detained pursuant to 8 U.S.C. § 1226 be given review of their custody status as Congress intended.
7. FIFTH, If Petitioner 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 BENJAMIN CRUZ CRUZ, respectfully request this

Honorable Court:

- A. Accept jurisdiction over this action;
- B. Order Respondents not to remove Petitioner outside the jurisdiction of this Court;
- C. Grant the writ of habeas corpus;
- D. Order the Department of Homeland Security to release Petitioner based on an individualized bond hearing conducted pursuant to 8 U.S.C. § 1226(a) within seven days;
- E. Make a finding that Respondents have acted contrary to law and have abused Petitioner's due process rights, and
- F. Grant any other relief that is equitable and just.

Respectfully Submitted,
ANGEL CASTANEDA BORJAS

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VERIFICATION

I, Saadia 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, 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 December 23, 2025

s/Saadia Siddique

SAADIA SIDDIQUE
Siddique Law Group LLC
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 23, 2025, I served a copy of this Petition for Writ of Habeas Corpus by MAIL & EMAIL to the following individuals:

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I ALSO HEREBY CERTIFY that the foregoing documents will be served on counsel for all parties through the Court's CM/ECF system.

s/Saadia Siddique
SAADIA SIDDIQUE
Siddique Law Group LLC
Attorney for Petitioner
Date: December 23, 2025