

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NERY ADOLFO VICENTE ROMERO

Petitioner,

v.

PAMELA BONDI, in her official capacity as
U.S. Attorney General;

KRISTI NOEM, in her official capacity as
U.S Secretary of Homeland
Security;

TODD M. LYONS, in his official capacity as
Acting Director, U.S Immigration and
Customs Enforcement; and

NIKITA BAKER, in her official capacity as
Field Office Director of the U.S. Immigration
and Customs Enforcement, Enforcement and
Removal Operations Baltimore Field Office.

Respondents.

AMENDED PETITION FOR A WRIT OF
HABEAS CORPUS

Case No. 26-219

Immigration No. 

INTRODUCTION

1. Petitioner Nery Adolfo Vicente Romero (“Mr. Vicente”), a native and citizen of Guatemala, challenges his unlawful detention by the Department of Homeland Security (“DHS”) because despite having lived in the United States for over 11 years, since January 2015, he like so many others has been subjected to the government’s new policy of designating all noncitizens who entered the country without inspection, to mandatory detention under 8 U.S.C. §1225(b)(2)(A).

2. Mr. Vicente was apprehended by immigration officials for the first time on January 18, 2026 and, upon information and belief, charged with being present without being admitted or paroled under 8 U.S.C. § 1182 (a)(6)(A)(i) and is being detained without access to a

bond hearing, in violation of the Immigration and Nationality Act, its implementing regulations and the Due Process Clause of the Fifth Amendment.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art I § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”); and 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. §§2201, 2202 (Declaratory Judgment Act).

4. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

5. Administrative exhaustion is unnecessary and would be futile. *See Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542 (E.D. Va. 1999). As explained below, the Board of Immigration Appeals’ decision in *Matter of Yajure Hurtado* precludes Petitioner’s pursuit of a remedy in immigration court. 29 I&N Dec. 216 (BIA 2025).

6. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district at the Baltimore ICE ERO Field Office at this time. Additionally, a substantial part of the events or omissions that give rise to this action occurred or continue to occur within this division.

PARTIES

7. Petitioner Nery Adolfo Vicente Romero is a native and citizen of Guatemala who entered the U.S. in January 2015. He is currently detained in the custody of ICE at the Baltimore ERO Field Office.

8. Respondent Pamela Bondi is the Attorney General of the U.S. She oversees the immigration court system, housed within the Executive Office for Immigration Review (“EOIR”), and includes all immigration judges and the Board of Immigration Appeals (“BIA”). She is sued in her official capacity.

9. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. DHS oversees ICE, which is responsible for administering and enforcing immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity.

10. Respondent Todd Lyons is the Acting Director of ICE, the agency currently detaining Petitioner. He is the individual who issued an order to detain individuals like Petitioner, and also has legal custody over Petitioner. He is sued in his official capacity.

11. Respondent Nikita Baker is the Field Office Director of the ICE Enforcement and Removal Operations (ERO) Baltimore Field Office and is the federal agent charged with overseeing all ICE detention in Maryland, including at the Baltimore field office. Ms. Baker is the legal custodian of Petitioner. She is sued in his official capacity.

FACTUAL ALLEGATIONS

12. Mr. Vicente is a native and citizen of Guatemala. In 2015, he fled his home country and came to the United States.

13. On or about January 2015, Mr. Vicente entered the U.S. without inspection, crossing the U.S. – Mexico border.

14. After arriving in the U.S., Mr. Vicente settled in Maryland, and built a stable life working tirelessly. Mr. Vicente has a three U.S. citizen children ranging in ages from 1 year old to 6 years old. Upon information and belief, Mr. Vicente has no criminal history.

15. On January 18, 2026, Mr. Vicente was apprehended and taken into custody by immigration officials for the first time in his life, at or near Hyattsville, Maryland. Upon information and belief, upon his apprehension, ICE charged him with being “present in the United States without being admitted or paroled,” pursuant to 8 U.S.C. § 1182(a)(6)(A)(i).

16. Upon information and belief, Mr. Vicente is in the custody of ICE within the state of Maryland, most likely at the Baltimore ICE ERO Field Office.

Legal Background

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

18. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Generally, noncitizens are entitled to a bond hearing at the outset of their detention. 8 U.S.C. § 1226(a); *see also* 8 C.F.R. §§ 1003.19(a), 1236.1(d). However, there are several categories of noncitizens who are subject to mandatory detention under the INA.

19. First, noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention until their removal proceedings are concluded, 8 U.S.C. § 1226(c).

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

21. Last, the INA also provides for detention of noncitizens who have received a final order of removal from the U.S., including individuals in withholding-only proceedings, 8 U.S.C. § 1231(a)–(b).

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

23. Following IIRIRA’s enactment, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and were instead detained under § 1226(a), making them eligible to be released on bond. 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) (“Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination”).

24. In the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an immigration judge, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the U.S., even if without inspection, were entitled to a custody hearing before an immigration judge or other hearing officer. See e.g., *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (discussing Section 1226(a) as the “default rule” for detaining noncitizens “already present in the United States”); *Miranda v. Garland*, 34 F.4th 338, 346 (4th Cir. 2022) (same); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *9 (D. Md. Aug. 24, 2025) (“Since at least 1996, the INA has mandated the

detention of arriving aliens and certain criminal non-citizens detained in the United States.”). The Board of Immigration Appeals has long held to this interpretation. For everyone else, 8 U.S.C. § 1226(a) provides DHS the discretion to detain noncitizens, subject to review during a custody hearing before an immigration judge.”); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255, at *9 (E.D. Va. Sept. 19, 2025) (“Before July 8, 2025, ‘DHS’s long-standing interpretation has been that § 1226(a) applie[d] to those who have crossed the border between ports of entry and are shortly thereafter apprehended.”) (quoting Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022)). *See also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

25. In the past several months, Respondents have adopted an entirely new interpretation of the statute. On May 22, 2025, the BIA issued an unpublished decision holding that all noncitizens who entered the U.S. without admission or parole are considered applicants for admission and are therefore ineligible for immigration judge bond hearings under 8 U.S.C. § 1225(b)(2)(A). *Matter of Q. LI*, 29 I&N Dec. 66 (BIA 2025).

26. On July 8, 2025, ICE, in coordination with the Department of Justice (“DOJ”), announced a corresponding policy that rejected the well-established understanding of the statutory and regulatory framework and reversed decades of practice. This policy applies nationwide.

27. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” claims that all persons who entered the U.S. without inspection shall now be deemed subject to mandatory detention under § 1225(b)(2)(A). The policy applies

regardless of when a person is apprehended, and affects those who have resided in the U.S. for months, years, and even decades.

28. According to news reports, immigration officials within the Trump administration requested this new policy in response to Congress's recent appropriation of billions of dollars to expand the immigration system, given that ICE will soon have the capacity to detain more than twice as many people on any given day.¹

29. The new policy is reportedly in furtherance of the administration's mass deportation strategy by seeking to coerce noncitizens to relinquish any relief from deportation they may be entitled to by consenting to their deportation.²

30. On September 5, 2025, the BIA issued a second decision seemingly reiterating its holding in *Matter of Q-LI*, that any noncitizen who is present in the U.S. without having been inspected or admitted is subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A). See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

31. As instructed by these decisions, the immigration judges sitting in the Annandale Immigration Court, where Petitioner's immigration case is likely to be filed, are now holding that they lack jurisdiction to determine bond for any person who has entered the U.S. without

¹ See Michelle Hackman, *New ICE Policy Blocks Detained Migrants From Seeking Bond*, Wall Street Journal (July 15, 2025), <https://www.wsj.com/politics/policy/new-ice-policy-blocks-detained-migrantsfrom-seeking-bond-f557402a> [<https://perma.cc/K8NY-DAAZ>].

² See Kyle Cheney, *Trump's new detention policy targets millions of immigrants. Judges keep saying it's illegal*, Politico (Sept. 20, 2025), <https://www.politico.com/news/2025/09/20/ice-detention-immigration-policy-00573850>; see also DHS, *New Milestone: Over 2 Million Illegal Aliens Out of the United States in Less Than 250 Days* (Sept 23, 2025), <https://www.dhs.gov/news/2025/09/23/new-milestone-over-2-million-illegal-aliens-out-united-states-less-250-days> (“All of these successes will make arresting, detaining, and deporting illegal aliens more efficient and streamlined than ever before – paving the way to continue the surge in deportations.”).

inspection, even if that person has been in the U.S. for years or decades. Instead, consistent with the BIA decisions and the new DHS policy, the immigration judges are concluding that such people are subject to mandatory detention under § 1225(b)(2)(A).

32. Courts in this district have soundly rejected Respondents' attempts to misclassify noncitizens arrested in the interior of the U.S. as subject to mandatory detention under §1225. *See e.g., See Afghan v. Noem*, No. 25-cv-4105-SAG, 2025 WL 3713732, at *1 (D. Md. Dec. 23, 2025

CLAIMS FOR RELIEF
Count I:
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Bond Redetermination Hearing

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

34. Petitioner is a noncitizen who has been “already present in the United States” for years prior to his immigration detention. *Jennings*, 583 U.S. at 303. He is not, nor has he ever been classified as an “arriving alien,” has no disqualifying criminal arrests or convictions, and is therefore entitled to a bond redetermination by an immigration judge pursuant to 8 U.S.C. § 1226(a).

35. Upon information and belief, Respondents have misclassified Petitioner as subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A), and Respondent Bondi and her designees will not give Petitioner a bond redetermination pursuant to *Q. Li*, 29 I&N Dec. at 66, and *Yajure Hurtado*, 29 I&N Dec. at 216.

36. Respondent's misclassification of Petitioner under §1225(b)(2)(A) unlawfully mandates his continued detention and violates the Immigration and Nationality Act.

Count II:

Violation of the Fifth Amendment to the U.S. Constitution
Unlawful Detention

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

38. The Fifth Amendment provides that “[n]o person” shall be “be deprived of life, liberty, or property, without due process of law.”

39. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*. 533 U.S. at 690.

40. Moreover, “[t]he Due Process Clause applies to all ‘persons’ within the U.S., including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.

41. The government’s mandatory detention of Petitioner without consideration for release on bond or access to a bond hearing violates his due process rights.

Count III:
Violation of the Administrative Procedures Act
Unlawful Denial of Release on Bond

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

43. Courts must “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).

44. In subjecting Petitioner to mandatory detention under §1225(b)(2)(A), Respondents have violated the INA, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, and adopted a new

policy that contradicts its regulations without providing meaningful notice or opportunity to comment, despite the substantive rights of noncitizens, such as Petitioner.

45. Moreover, Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

46. The application of 8 U.S.C. §1225(b)(2)(A) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such violates the APA. *See* 5 U.S.C. §706(2).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully asks that this Court:

- a. Assume jurisdiction over the matter;
- b. Order that Petitioner shall not be transferred outside of the state of Maryland while this case is pending;
- c. Issue a writ of habeas corpus within three days of the filing of this petition, requiring that Respondents show cause why the relief Petitioner seeks should not be granted, and set a hearing on this matter within five days of Respondents' return on the order to show cause, pursuant to 28 U.S.C. § 2244;
- d. Order Petitioner's immediate release, subject to any appropriate conditions, or require that he be provided a bond hearing pursuant to 8 U.S.C. §1226(a);
- e. Declare that the continued immigration detention of Petitioner violates 8 U.S.C. § 1226(a);

- f. Declare that the continued immigration detention of Petitioner violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- g. Set aside Respondents' unlawful no-bond policy under the APA, 5 U.S.C. § 706(2), as contrary to law, arbitrary and capricious, and contrary to constitutional right;
- h. Grant any other and further relief this Court deems just and proper.

Dated: January 19, 2025

/s/ Allia Borowski

Allia Borowski
Bar No. 1601838
Attorney for Petitioner
2273 Research Blvd., Suite 200
Rockville, Maryland 20850
E-mail: allia@karplawfirm.net
Tel: 301-948-3800

CERTIFICATE OF SERVICE

I, Allia Borowski, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I will furthermore send a copy by certified U.S. mail, return receipt requested, to:

Pamela Bondi, Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Kristi Noem, Secretary
Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW, Mail Stop 0485
Washington, DC 20528-0485

Todd M. Lyons, Acting Director ICE
500 12th St SW
Washington, DC 20536

Nikita Baker, Field Office Director
U.S. Immigration and Customs Enforcement, Baltimore Field Office
31 Hopkins Plaza, Room 1600
Baltimore, MD 21201

Dated: January 19, 2025

/s/ Allia Borowski

Allia Borowski
Bar No. 1601838
Attorney for Petitioner
2273 Research Blvd., Suite 200
Rockville, Maryland 20850
E-mail: allia@karplawfirm.net
Tel: 301-948-3800

**VERIFICATION BY SOMEONE ACTING ON PETITIONERS' BEHALF PURSUANT
TO 28 U.S.C. § 2242**

I represent Petitioner and submit this verification on Petitioner's behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 19, 2025

/s/ Allia Borowski

Allia Borowski
Bar No. 1601838
Attorney for Petitioner
2273 Research Blvd., Suite 200
Rockville, Maryland 20850
E-mail: allia@karplawfirm.net
Tel: 301-948-3800