

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARCELINO AGUILAR REYES,

Petitioner,

v.

Kevin RAYCRAFT, Field Office Acting  
Director of Enforcement and Removal  
Operations, Detroit Field Office, Immigration  
and Customs Enforcement; Kristi NOEM,  
Secretary, U.S. Department of Homeland  
Security; U.S. DEPARTMENT OF  
HOMELAND SECURITY; Pamela BONDI,  
U.S. Attorney General; EXECUTIVE OFFICE  
FOR IMMIGRATION REVIEW; THE GEO  
GROUP INC., facility operators; John DOE,  
Warden of North Lake Correctional Facility (or  
his/her successors),

Respondents.

Case No. 25-1416

**PETITION FOR WRIT OF  
HABEAS CORPUS**

**INTRODUCTION**

1  
2 1. Petitioner MARCELINO AGUILAR REYES is in the physical custody of  
3 Respondents at the North Lake Correctional Facility. He now faces unlawful detention because  
4 the Department of Homeland Security (DHS) and the Executive Office of Immigration Review  
5 (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. 8 U.S.C. § 1182(a)(6)(A)(i).

8 3. Based on this allegation in Petitioner's removal proceeding, DHS denied  
9 Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8,  
10 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone  
11 inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without  
12 inspection—to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore  
13 subject to mandatory detention.

14 4. Petitioner seeks a bond redetermination hearing before an Immigration Judge of  
15 the Executive Office for Immigration Review. However, following *Matter of Yajure Hurtado*, 29  
16 I&N Dec. 216 (BIA 2025), EOIR now declines jurisdiction to consider bond for individuals  
17 deemed “applicants for admission” under § 1225(b)(2)(A). As a result, despite Petitioner's  
18 twenty-five years of continuous residence in the United States, deep family ties, and lack of  
19 danger or flight risk, he remains mandatorily detained without any opportunity for individualized  
20 review. This categorical denial of bond authority results in indefinite detention without  
21 administrative recourse, raising serious constitutional concerns that warrant this Court's  
22 intervention under 28 U.S.C. § 2241.

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

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

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within five (5) days.

## JURISDICTION

8. Petitioner is a resident of Illinois, in the physical custody of Respondents. Upon information and belief, Petitioner is detained at the North Lake Correctional Facility, 1805 W. 32nd Street, Baldwin, MI, 49304.

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

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

**VENUE**

11. 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 Michigan, the Southern Division, the judicial district in which Petitioner currently is detained.

12. 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 Southern Division of the Western District of Michigan.

**REQUIREMENTS OF 28 U.S.C. § 2243**

13. 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.*

14. 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**

15. Petitioner MARCELINO AGUILAR REYES is a citizen of Mexico who has been in immigration detention since September 30, 2025. After arresting Petitioner in Michigan, ICE did not set bond; to date, an Immigration Judge has not set bond because he was deemed an

1 “applicant for admission.” Petitioner has resided in the United States since 2000 and is married  
2 with three young U.S. citizen children.

3 16. Respondent, Kevin Raycraft, is the Director of the Detroit Field Office of ICE’s  
4 Enforcement and Removal Operations division. As such, Kevin Raycraft is Petitioner’s  
5 immediate custodian and is responsible for Petitioner’s detention and removal. He is named in  
6 his official capacity.

7 17. Respondent Kristi Noem is the Secretary of the Department of Homeland  
8 Security. She is responsible for the implementation and enforcement of the Immigration and  
9 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms.  
10 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

11 18. Respondent Department of Homeland Security (DHS) is the federal agency  
12 responsible for implementing and enforcing the INA, including the detention and removal of  
13 noncitizens.

14 19. Respondent Pamela Bondi is the Attorney General of the United States. She is  
15 responsible for the Department of Justice, of which the Executive Office for Immigration Review  
16 and the immigration court system it operates is a component agency. She is sued in her official  
17 capacity.

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

21 21. Respondent The Geo Group, Inc. is the private entity under contract with ICE  
22 operating the North Lake Correctional Facility, where Petitioner is detained. They have  
23 immediate physical custody of Petitioner. They are sued in their official capacity.  
24

1       22.     Respondent John Doe (or his/her successors) is employed by The Geo Group, Inc.  
2 as Warden of the North Lake Correctional Facility, where Petitioner is detained. He has  
3 immediate physical custody of Petitioner. He is sued in his official capacity.

4                                   **LEGAL FRAMEWORK**

5                           **UNLAWFUL ARREST IN LIGHT OF CASTANON NAVA**

6       23.     On October 7, 2025, this Court held that ICE’s practice of issuing Form I-200  
7 administrative warrants in the field to make arrests (i.e., “collateral arrests”) is unlawful,  
8 rendering all of those arrests warrantless. Accordingly, all of those are subject to the  
9 requirements of 8 U.S.C. § 1357(a)(2) and the Nava Warrantless Arrest Policy. *See Castanon*  
10 *Nava v. Dep’t of Homeland Sec.*, No. 1:18-cv-03757, 2025 WL 6324179 (N.D. Ill. Oct. 7, 2025).

11       24.     Furthermore, this Court agreed that the regulations implementing DHS’s arrest  
12 authority under 8 U.S.C. § 1226 require DHS to issue a Notice to Appear either before or  
13 concurrently with the Form I-200 warrant when making a warrant-based arrest. 8 C.F.R. §§  
14 236.1(b) and 1236.1(b). Absent the NTA, the administrative warrant is an invalid basis for arrest,  
15 rendering the arrest warrantless.

16       25.     *Nava* emphasizes that community ties (e.g., home, family, employment) weigh  
17 against a finding of probable cause that the individual is likely to escape before a warrant could  
18 be obtained. And a determination of probable cause can be based only on information known or  
19 gathered at the time of arrest. The only consideration against release is the existence of a prior  
20 removal order which may be sufficient to establish probable cause that a person would be likely  
21 to escape before a warrant could be obtained under § 1357(a)(2).

1           26.     Petitioner gave no indication that there was probable cause for escape prior to  
2 obtaining a warrant at the time of their arrest. As such, their arrest without any warrant renders  
3 their current and continued detention unlawful.

4           27.     The *Nava* class is a Rule 23(b)(2) injunctive class, defined as: All current **and**  
5 **future persons** arrested without a warrant for a civil violation of U.S. Immigration Law within  
6 the ICE Chicago Field Office's Area of Responsibility. *Castañon Nava*, 2025 WL 2842146, at 9  
7 (emphasis added). Because that class is already certified, membership is automatic for anyone  
8 who meets the definition, and no separate judicial finding from this Court is required for class  
9 membership. It remains in effect and continues to govern ICE's conduct within Illinois.

10          28.     This Court need only review the extent that Petitioner's arrest mirrors those  
11 already adjudicated in *Nava* to determine if his detention falls within the scope of that ongoing  
12 injunctive relief. The remedy for this violation is prompt release or, if Petitioner is subsequently  
13 released on bond and no longer in ICE custody, prompt reimbursement of all bond payment, and  
14 all imposed conditions of release should be lifted. *Castañon Nava*, 2025 WL 2842146, at 42.

15                   **REQUIREMENTS FOR DETENTION**

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

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

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

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

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

7           34.     The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
8 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.  
9 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section  
10 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1,  
11 139 Stat. 3 (2025).

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

17           36.     Thus, in the decades that followed, most people who entered without inspection  
18 and were placed in standard removal proceedings received bond hearings, unless their criminal  
19 history rendered them ineligible. That practice was consistent with many more decades of prior  
20 practice, in which noncitizens who were not deemed “arriving” were entitled to a custody  
21 hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep.  
22 No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority  
23 previously found at § 1252(a)).  
24



1           37.     On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
2 rejected well-established understanding of the statutory framework and reversed decades of  
3 practice.

4           38.     The new policy, entitled “Interim Guidance Regarding Detention Authority for  
5 Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without  
6 inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore  
7 are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies  
8 regardless of when a person is apprehended, and affects those who have resided in the United  
9 States for months, years, and even decades.

10          39.     In a May 22, 2025, unpublished decision from the Board of Immigration Appeals  
11 (BIA), EOIR adopts this same position.<sup>2</sup> That decision holds that all noncitizens who entered the  
12 United States without admission or parole are considered applicants for admission and are  
13 ineligible for immigration judge bond hearings.

14          40.     ICE and EOIR have adopted this position even though federal courts have  
15 rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration  
16 court stopped providing bond hearings for persons who entered the United States without  
17 inspection and who have since resided here, the U.S. District Court in the Western District of  
18 Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not §  
19 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States.

20 *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24,

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22  
23 <sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

24 <sup>2</sup> Available at <https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf>.

2025); *see also* *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

41. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

42. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

43. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at \*12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

44. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

45. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine

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

3 46. 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 47. Petitioner has resided in the United States since February 2000 and lives in  
8 Indiana with his wife and three U.S. citizen daughters who are 17, 11, and 7 years old.

9 48. On or about September 30, 2025, Petitioner was detained in Michigan during an  
10 immigration-coordinated traffic stop. Petitioner was processed and sent to the North Lake  
11 Correctional Facility in Michigan. He is being held at the ICE Detention center in Wayne  
12 County, Baldwin, MI, operated by The Geo Group, Inc.

13 49. DHS has placed Petitioner in removal proceedings before the Detroit Immigration  
14 Court pursuant to 8 U.S.C. § 1229a, but has not provided Petitioner with a bond hearing. ICE has  
15 charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as  
16 someone who entered the United States without inspection and is holding him on a claim of  
17 mandatory detention.

18 50. Petitioner is the father of three U.S. citizen daughters who are 17, 11 and 7 years  
19 old. His daughters and wife depend on him for emotional and financial support. He entered the  
20 United States on a single occasion in February 2000 and has lived continuously in this country  
21 for over 25 years. During this time, he has built a stable family and meaningful ties within his  
22 community. Petitioner has maintained consistent employment, paid taxes, purchased a home in  
23 Indiana, and contributed positively through his church and his children’s school activities. He  
24

1 has no criminal history, has complied with all prior immigration requirements to the best of his  
2 ability, and poses neither a flight risk nor any danger to the community.

3 51. Following Petitioner's arrest and transfer to North Lake Correctional Facility, ICE  
4 issued a custody determination to continue Petitioner's detention without an opportunity to post  
5 bond or be released on other conditions.

6 52. Petitioner has requested a bond redetermination hearing before an IJ and one is set  
7 for November 14, 2025. To date, no IJ has issued a decision that the court lacks jurisdiction to  
8 conduct a bond redetermination hearing because Petitioner was an applicant for admission under  
9 § 1225(b)(2)(A).

10 53. As a result, Petitioner remains in detention. Without relief from this court, he  
11 faces the prospect of months, or even years, in immigration custody, separated from his children,  
12 his wife, his family and community.

13 54. Any appeal to the BIA is futile. DHS's new policy was issued "in coordination  
14 with DOJ," which oversees the immigration courts. Further, as noted, the most recent  
15 unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory  
16 detention as applicants for admission. Finally, in the *Rodriguez Vazquez* litigation, where EOIR  
17 and the Attorney General are defendants, DOJ has affirmed its position that individuals like  
18 Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See* Mot.  
19 to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6,  
20 2025), Dkt. 49 at 27–31.

21 **CLAIMS FOR RELIEF**

22 **COUNT I**

23 **Violation of the Nava Settlement**

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56. Pursuant to 8 U.S.C. § 1226 DHS must issue a Notice to Appear either before or concurrently with the Form I-200 warrant when making a warrant-based arrest. 8 C.F.R. 236.1(b) and 1236.1(b). Absent the NTA, the administrative warrant is an invalid basis for arrest, rendering the arrest warrantless. *Castanon Nava v. Dep't of Homeland Sec.*, No. 1:18-cv-03757, 2025 WL 6324179 (N.D. Ill. Oct. 7, 2025).

57. Petitioner's arrest puts him automatically in the certified class eligible for relief.

58. This Court needs only to affirm the extent that Petitioner's arrest mirrors those already adjudicated in *Nava*.

**COUNT II**

## Violation of the INA

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

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

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

**COUNT III**

### Violation of Due Process

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

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

64. Petitioner has a fundamental interest in liberty and being free from official restraint.

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

## PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring Respondents promptly release or, if Petitioner is already released on bond and no longer in ICE custody, prompt reimbursement of all bond payment, and lift all imposed conditions of release;
- c. Alternatively, issue a writ of habeas corpus requiring that Respondents release or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14 days;
- d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

1 e. Grant any other and further relief that this Court deems just and proper.  
2  
3

4 Dated: November 11, 2025

Respectfully Submitted by:

6  
7 /s/ William A. Quiceno

8 Kempster, Corcoran, Quiceno &

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