

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
VIRGINIA, NORFOLK DIVISION**

**Michael A. Martinez Aviles v. Immigration & Customs Enforcement,
et al.**

Aviles · No. 2:26-cv-169 · Decided March 10, 2026

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division MICHAEL A. MARTINEZ AVILES, Petitioner, v. Civil Action No. 2:26-cv-169
IMMIGRATION & CUSTOMS ENFORCEMENT, et al., Respondents. MEMORANDUM
ORDER Petitioner Michael Alejandro Martinez Aviles (“Petitioner”), a noncitizen and detainee of
the United States Immigration and Customs Enforcement (“ICE”), filed a Petition for Writ of
Habeas Corpus (“Petition”) pursuant to 28 U.S.C. § 2241, alleging that he has been unlawfully
detained and denied a bond hearing under 8 U.S.C. § 1226.

Dkt. No. 1. Petitioner was taken into ICE custody on August 18, 2025, and has been detained
since that time at the Washington Field Office. Dkt. No. 1. Petitioner asks this Court to order his
release from ICE custody or, in the alternate, to order a bond hearing under 8 U.S.C. § 1226.

The Petition turns on the resolution of an issue pending throughout the courts: whether Petitioner,
as a noncitizen who entered the United States without inspection is entitled to a bond hearing
under 8 U.S.C. § 1226(a), or whether he is subject to mandatory detention as provided for in 8
U.S.C. § 1225(b)(2)(A). Given the apparent similarities between this case and others pending
before the Court, the Court ordered Respondents to file a notice indicating whether the factual and
legal issues presented in the present Petition differ in any material fashion from those presented in
Duarte Escobar v. Perry, et al., 807 F. Supp. 3d 564 (E.D.

Va. 2025). In response, Respondents notified the Court that “the factual and legal issues presented
in the instant habeas petition do not differ in any material fashion from those presented in *Duarte
Escobar*” and the Respondents incorporate their arguments from that case into the record here.
Dkt. No. 5; see *Duarte Escobar*, No. 3:25-cv-758, Dkt. No. 18. Based on this Court’s review of the
filings in this case and the arguments made in *Duarte Escobar*, Petitioner is not “seeking
admission” for purposes of § 1225(b)(2) and instead falls into the category of “aliens already in
the country” subject to the discretionary detention provisions in § 1226(a).

Therefore, the Court concludes that 8 U.S.C. § 1226(a) entitles Petitioner to a bond hearing before
an Immigration Judge. Other jurists in this Court have previously addressed the same arguments
concerning the application of 8 U.S.C. § 1226(a) in this context in cases such as *Hasan v.*

Crawford, 800 F. Supp. 3d 641, 651-57 (E.D. Va. 2025), and the Court incorporates Hasan's reasoning into this Order.

The Supreme Court has "long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). "But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Accordingly, the discretionary detention provisions of 8 U.S.C. § 1226(a) apply in this case, and therefore Petitioner's continued detention without a bond hearing is unlawful and violates Petitioner's due process rights.

For these reasons, the Court will GRANT the Petition, and ORDER that Petitioner be provided a bond hearing pursuant to 8 U.S.C. § 1226(a) within fourteen (14) days of this Order. Respondents are ORDERED to file a status report with this Court within three (3) days of the bond hearing, stating whether Petitioner has been granted bond, and, if his request for bond was denied, the case-specific reasons given by the Immigration Judge for that denial.

Let the Clerk of the Court send a copy of this Final Order to all counsel of record and to Petitioner at his address of record. It is SO ORDERED. Elizabeth W. Hanes United States District Judge Norfolk, Virginia Date: March 10, 2026