

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

GANSHYAMKUMAR
SHAMBHUBHAI PATEL (),

Petitioner,

v.

DAVID HARDIN, in his official
capacity as warden of GLADES
COUNTY DETENTION CENTER;
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; UNITED
STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT; and
PAMELA BONDI, in her official
capacity as ATTORNEY GENERAL OF
THE UNITED STATES,

Respondents.

Case No. 2:25-cv-00870-JES-NPM

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Ganshyamkumar Shambhubhai Patel petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to compel his release from custody, as his current civil immigration detention violates the Due Process Clause of the United States Constitution and the Administrative Procedure Act.

JURISDICTION AND VENUE

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

2. This court has subject matter jurisdiction under 28 U.S.C. §§ 2241 and 1331, and Article I, section 9, clause 2 of the United States Constitution.

3. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, and the INA, 8 U.S.C. § 1252(e)(2). This Court also has remedial authority under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

4. Venue is proper because Petitioner is in Respondents’ custody in Moore Haven, Florida at the Glades County Detention Center pursuant to an intergovernmental service agreement between Respondent United States Immigration and Customs Enforcement (“ICE”) with the Glades County Board of County Commissioners. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner’s claims occurred in this District, where Petitioner is now in Respondent’s custody. *See* 28 U.S.C. § 1391(e).

PARTIES AND BACKGROUND

5. **Petitioner Ganshyamkumar Shambhubhai Patel** is a native of India, who entered the United States on or about July 20, 2011 without inspection. He was then apprehended and detained under INA § 236(a) (8 U.S.C § 1226(a)). *See* Warrant for Arrest of Alien, attached as **Exhibit 1**. During those proceedings, he was issued a defective notice to appear (“NTA”), which did not include the date and time for the hearing. *See* Notice of Hearing, attached as **Exhibit 2**. Petitioner was released from government custody, and despite providing his correct address to the Immigration Court and his former immigration attorney, the NTA was returned as undeliverable, and he did not appear at his section 236(a) hearing. The Immigration Court in Houston, Texas issued an order removing Petitioner in absentia on or about October 17, 2012. Petitioner remained in the United States.

6. Petitioner, who suffers from a physical disability, later became the victim of a violent crime in the United States. As a result, on or about July 1, 2019 he filed a petition for a U Visa, which is pending with U.S. Citizenship and Immigration Services (“USCIS”). On or about November 9, 2023, USCIS issued correspondence to Petitioner in which it informed him that it could not grant him

U-1 nonimmigrant status, as the statutory cap had been met for that year, but that “the evidence demonstrate[d that his] petition for U nonimmigrant status is bona fide” and Petitioner was warranted “a favorable exercise of discretion to receive employment authorization and deferred action.” See Correspondence from USCIS, attached as **Exhibit 3**. After receiving employment authorization, Petitioner began to operate a retail business in Florida. He has no criminal history.

7. On or about July 31, 2025 Petitioner was arrested by ICE at his retail business. He was detained at the Krome Processing Center in Miami-Dade County but has since been relocated to the Glades County Detention Center.

8. Following his immigration arrest, Petitioner, through counsel, moved to reopen his immigration proceedings at the Houston Immigration Court. Those proceedings were reopened and his order of removal in absentia was vacated.

9. On September 7, 2025, Petitioner’s counsel sought a motion for a bond under 8 C.F.R. § 1236 with the Krome Immigration Court. During that hearing, government counsel argued that Petitioner was ineligible for a bond based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), wherein the

Board of Immigration Appeals (“BIA”) held on September 5, 2025 that noncitizens present in the United States without admission are “seeking admission” under 8 U.S.C. § 1225(b)(2)(A) and must be detained. The immigration judge (“IJ”) denied Petitioner’s request for a bond, concluding it lacked jurisdiction to render a determination based on *Matter of Yajure Hurtado* because Petitioner entered the United States without inspection in 2011.¹ See IJ Detention Order, attached as **Exhibit 4**.

10. Thus, Petitioner is “in custody” for the purpose of 28 U.S.C. § 2241 because Petitioner is arrested and detained by Respondents.

11. **Respondent David Hardin** is the Sheriff of Glades County, Florida and the warden of the Glades County Detention Center, where Petitioner is located pursuant to an intergovernmental services agreement with ICE. Respondent Hardin is a legal custodian of Petitioner and he is sued in his official capacity.

12. **Respondent U.S. Immigration Customs Enforcement** is the federal agency responsible for custody decisions relating to noncitizens charged

¹ While the IJ determined the court lacked jurisdiction to make a bond determination for Petitioner, the IJ also included in the order that Petitioner failed to appear at his 2012 hearing and was living under an order of removal for 13 years in the United States and failed to provide an original identification document. See Ex. 4.

with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

13. **Respondent U.S. Department of Homeland Security** is the federal agency that has authority over the actions of ICE.

14. **Respondent Pamela Bondi** is the Attorney General of the United States and the senior official of the U.S. Department of Justice. She is sued in her official capacity. In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review, which administers the immigration courts and the BIA. Respondent Bondi is responsible for decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. Therefore, she is also Petitioner's legal custodian.

LEGAL FRAMEWORK

15. District courts have the power to grant writs of habeas corpus. 28 U.S.C. § 2241(a). The Constitution guarantees that the writ of habeas corpus is available to every individual detained within the United States. *Hamdi v. Rumsfeld*, 542 U.S. 507, 525

(2004) (citing U.S. Const. Art. I, § 9, cl. 2); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody.”).

16. A district court’s power includes jurisdiction to hear habeas challenges to immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Indeed, noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

A. Petitioner is Not Being Detained Under 8 U.S.C. § 1225(b)(2)

17. The immigration court concluded, based on the government’s arguments at the bond hearing, that Petitioner must be mandatorily detained under the INA as set forth in *Matter of Yajure Hurtado*, in which the BIA concluded ICE could treat undocumented immigrants already present in the United States as arriving aliens subject to mandatory detention under 8 U.S.C. § 1225. The IJ relied on *Hurtado* to determine that Petitioner was ineligible for bond based on his arrival without inspection in 2011. There the BIA concluded that noncitizens “who have been residing in the United States for years without

lawful status” are considered “applicants for admission” and are thus subject to the mandatory detention provision in INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) “for the duration of the immigration proceedings[.]” *Hurtado*, 29 I&N Dec. at 220.

18. But section 1225(b)(2) does not apply to Petitioner as he is not a recent arrival nor is he seeking admission. His continued detention under section 1225(b)(2) is therefore unlawful. Instead, as a noncitizen who previously entered the United States and lived here for more than a decade before his arrest by ICE, section 1226(a) governs his detention. Indeed, he was arrested in 2011 under INA section 236(a) (8 U.S.C. § 1226(a)). That order of removal was vacated and removal proceedings there have resumed. How can the government both continue removal proceedings from 2011 under INA section 236(a)/1226(a) but also argue that section 1225(b)(2) applies to Petitioner. It cannot.

19. Under section 1225(b)(2), “in the case of an alien who is an *applicant for admission*, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained.” 8 U.S.C. § 1225(b)(2) (emphasis added). By contrast, a noncitizen arrested on a warrant issued by the Attorney General “*may*” be detained but is also eligible for release on bond. 8 U.S.C. § 1226(a) (emphasis

supplied). “Courts have repeatedly held that § 1225 applies to arriving aliens, while § 1226 governs detention of ‘aliens already in the country.’” *Palma v. Trump*, 2025 WL 2624385, at *2 (D. Neb. Sept. 11, 2025) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018)). As the Court in *Palma* noted, “[t]he BIA’s decision in *Hurtado* represents a stark departure from that approach.” *Palma*, 2025 WL 2624385, at *2.

20. The IJ’s decision based on *Hurtado* is not dispositive. *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 179 (S.D.N.Y. 2009) (“While the Immigration and Nationality Act ... precludes review of the ‘Attorney General’s discretionary judgment’ with regard to ‘detention or release of any alien or the grant, revocation, or denial of bond or parole,’ 8 U.S.C. § 1226(e), the United States Supreme Court rejected the contention that § 1226(e) deprives courts of jurisdiction to consider challenges to the interpretation of the mandatory detention statute.”) (citing *Demore v. Kim*, 538 U.S. 510, 517, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003)). Courts have independent judgment in determining whether an agency has acted within its statutory authority. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024).

21. Indeed, as other courts have concluded since *Hurtado*, “[t]he text of Sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions [...] confirm that [the petitioner] is subject to Section 1226(a)’s discretionary detention scheme.” *Sampiao v. Hyde*, 2025 WL 2607924, at *8 (D. Mass. Sept. 9, 2025) (granting habeas relief to a noncitizen who was arbitrarily detained following three years of release on an order of recognizance). Here, Petitioner has resided in the United States since 2011, has obtained work authorization and USCIS determined that his U Visa application was “bona fide.” To determine that he is *seeking admission* after living in the United States and operating a business with authorization from USCIS is nonsensical, contrary to the plain meaning of the statutes, contrary to the basis for ongoing removal proceedings after vacatur of the order of removal, and the Court should disregard the *Hurtado* decision as contrary to the INA and federal law.

22. As such, under section 1226(a), this Court has the authority to review Petitioner’s request for habeas relief and release from immigration detention, or in the alternative to mandate a bond redetermination under section 236(a)/1226(a) as opposed to section 235/1225.

B. Petitioner Should Not Await Further Determination by the BIA

23. Because Petitioner is detained subject to section 1226(a), not section 1225(b)(2), the Court should, in the event it is raised by Respondents, find that exhaustion is not required here. Because BIA has adopted a policy that deprives Petitioner of jurisdiction to seek a bond from immigration detention, further review of the IJ's decision invoking *Hurtado* will be futile. *Vazquez v. Feeley*, 2025 WL 2676082, at *10 (D. Nev. Sept. 17, 2025) ("Because, as discussed below, this Court finds the BIA has adopted a policy [in *Hurtado*] that likely violates federal law, awaiting the BIA's decision regarding Petitioner is futile.").

24. Further, while the IJ raised additional grounds in the detention determination after concluding that the immigration court lacked jurisdiction, an appeal to the BIA on those issues will not help Petitioner, as the BIA's recent decision in *Hurtado* forecloses any challenge to any discretionary bases to deny bond or detain. Indeed, the immigration court expressly found that it lacked jurisdiction in Petitioner's case to consider discretionary bases for bond or release, given the BIA's decision in *Hurtado*.

COUNT I

**Violation of Fifth Amendment Right to Due Process
(against all Respondents)**

25. Petitioner re-incorporates and re-alleges paragraphs 1-24 above as if fully set forth herein.

26. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. While certain constitutional protections do not extend outside the “geographic borders” of the United States, “legal circumstances change” as soon as a noncitizen “enters the country.” *Id.*; see also *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (“[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”) (quoting *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam)).

27. To determine whether civil detention violates a detainee's due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts consider (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's

interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

See id. at 335.

28. Here, all three factors favor Petitioner. He has a significant private interest at stake. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (freedom from physical detention is “the most elemental of liberty interests”); *see also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”). The petitioner is experiencing all the deprivations that come with physical detention, including separation from his family and the inability to work to support his family. Next, there is a large risk of the erroneous deprivation of Petitioner’s liberty interest through the procedures used in the immigration court proceedings, particularly with the order of removal vacated, and Petitioner’s credible U Visa application. There are also alternative procedures, such as a cash bond, turn over of his passport, and other measures that might mitigate against the risk of flight. Finally, to the extent there is any government interest in detention, it is minimal compared with Petitioner’s liberty interest.

29. Here, Respondents have chosen to detain Petitioner under the wrong statute and in an arbitrary manner not based on a rational and individualized determination of whether he is a safety or flight risk, in violation of due process. Because section 1225 does not apply, Respondents' detention of him violates the Fifth Amendment.

COUNT II
Violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A)
(against all Respondents)

30. Petitioner re-incorporates and re-alleges paragraphs 1-24 above as if fully set forth herein.

31. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

32. Congress has made it clear that mandatory detention under § 8 U.S.C. § 1225(b) applies to "applicant[s] for admission" who are determined to be "seeking admission." By contrast, Congress permits other noncitizens who are arrested on a warrant issued by the Attorney General to be detained (using the language "may") but those noncitizens are also eligible for release on bond. § 8 U.S.C. § 1226(a).

33. Courts have interpreted section 1225 to apply to arriving noncitizens, while section 1226 applies to noncitizens already in the United States.

34. Petitioner entered the United States in 2011 and was arrested under INA section 236(a) (8 U.S.C § 1226(a)). He applied for a U Visa that was determined to be “bona fide” almost a decade later, all while residing in the United States. He was detained by ICE this summer. The government contends Petitioner is an applicant for admission to which section 1225 applies. The IJ at the immigration hearing determined the court lacked jurisdiction to determine whether Petitioner was eligible for bond because of the section 1225 bar.

35. Respondents’ determination that Petitioner is “seeking admission” under section 1225(b)(2) was arbitrary, capricious, an abuse of discretion, and not otherwise in accordance with law. 5 U.S.C. § 706(2)(A). Indeed, “ICE, like any agency, ‘has the duty to follow its own federal regulations.’” *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (quoting *Haoud v. Ashcroft*, 350 F.3d 201, 205 (1st Cir. 2003)).

36. Because Petitioner is not subject to mandatory detention, Respondents’ determination was unlawful.

PRAYER FOR RELIEF

Petitioner Ganshyamkumar Shambhubhai Patel respectfully requests that the Court:

- A. Retain jurisdiction over this action;
- B. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days pursuant to 28 U.S.C. § 2243;
- C. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
- D. Declare that Petitioner's detention violates the Administrative Procedure Act;
- E. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody or in the alternative provide a bond hearing under section 236(a);
- F. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the Court's approval;
- G. Award Petitioner attorneys' fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- H. Grant all other relief that the Court deems just and proper.

Dated: October 1, 2025

Respectfully submitted,

/s/ James M. Slater

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U.S. Department of Homeland Security

Warrant for Arrest of Alien

File No. [Redacted]
Event No: [Redacted]
Date: November 16, 2011

FINS #: [Redacted]

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:
Ghanshyam PATEL

(Full name of alien)

an alien who entered the United States at or near Unknown Place on Unknown Date (Port) (Date) is within the country in violation of the immigration laws and is

therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

[Handwritten Signature]

(Signature of Designated Immigration Officer)

Supervisory Detention & Deportation Officer

(Print name of Designated Immigration Officer)

SDDO

(Title)

Certificate of Service

Served by me at HOUSTON, TEXAS on November 16, 2011 at 12:00 AM

I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

[Handwritten Signature]

NELSON CIBTRON

(Signature of officer serving warrant)

Immigration Enforcement Agent

(Title of officer serving warrant)