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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

Octavio CRUZ MORENO,

Petitioner,

v.

Jason STREEVAL, Warden of Stewart Detention Center, in his official capacity; George STERLING, Deputy Field Office Director of the Atlanta Field Office, U.S. Immigration and Customs Enforcement; Todd LYONS, in his official capacity as acting Director of U.S. Immigration and Customs Enforcement, Kristi NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security, and Pamela BONDI, in her official capacity as U.S. Attorney General; Daren K. MARGOLIN, Director for Executive Office for Immigration Review,

Respondents.

HEARING REQUESTED

Case No.:

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner **Octavio Cruz Moreno (** [redacted] is a native and citizen of Mexico who has resided in the United States for more than twenty-five years after entering without

inspection. He is the spouse of U.S. citizen, Yady Liliana Rivera Tovar. His only criminal history consists of minor traffic infractions; he has no other criminal record. In **or about October 2025,** U.S. Immigration and Customs Enforcement ("ICE") detained Mr. Cruz Moreno and transferred him to the Stewart Detention Center in Georgia in October 2025.

2. DHS has determined that Mr. Cruz Moreno is detained under **INA § 235(b)(2)(A),** 8 U.S.C. § 1225(b)(2)(A), pursuant to a July 2025 policy and the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under this interpretation, Immigration Judges are stripped of jurisdiction to conduct custody redeterminations, and individuals like Mr. Cruz Moreno are categorically denied bond hearings despite decades of contrary agency and judicial practice.

3. Mr. Cruz Moreno's detention under § 235(b)(2)(A) **violates the text and structure of the INA and its implementing regulations.** That provision applies only to individuals apprehended while "seeking admission" at the border or immediately upon arrival. For decades, noncitizens long present in the interior, like Mr. Cruz Moreno, have been detained—if at all—under **INA § 236(a), 8 U.S.C. § 1226(a),** which expressly provides for conditional release on bond.

4. Federal courts across the country have rejected DHS's new interpretation of § 235(b)(2) and have held that detention of long-time residents apprehended in the interior is governed by § 236(a). These courts recognize that applying § 235(b)(2) to people who have lived in the United States for years misreads the statute and produces absurd results.

5. Respondents' new interpretation is **arbitrary and capricious** under the Administrative Procedure Act, because it abandons decades of consistent practice without explanation and was not adopted through required rulemaking procedures. Further, Mr. Cruz

Moreno's **prolonged civil detention without access to a bond hearing** violates the **Due Process Clause of the Fifth Amendment.**

6. Mr. Cruz Moreno respectfully requests that this Court: **(a)** declare that his detention is governed by § 236(a) and that he is therefore eligible for bond; **(b)** order Respondents to provide him with an immediate bond hearing before an Immigration Judge applying § 236(a); and **(c)** if Respondents fail to provide such a hearing within a reasonable time, order him released from custody under appropriate conditions of supervision.

JURISDICTION AND VENUE

7. Mr. Cruz Moreno is currently in the physical custody of Respondents at the Stewart Detention Center in Lumpkin, Georgia.

8. This Court has jurisdiction under 28 U.S.C. § 2241 (*habeas corpus*), 28 U.S.C. § 1331 (*federal question*), 28 U.S.C. § 1651 (*All Writs Act*), 28 U.S.C. §§ 2201–2202 (*Declaratory Judgment Act*), 5 U.S.C. § 702 (*APA*), and Article I, Section 9, Clause 2 of the United States Constitution (*Suspension Clause*). Mr. Cruz Moreno is presently in custody under color of the authority of the United States and challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

9. Federal district courts have jurisdiction under § 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). The Supreme Court has repeatedly upheld such jurisdiction, most recently in *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

10. Venue is proper in the Middle District of Georgia, Columbus Division, pursuant to 28 U.S.C. §§ 1391 and 2241(d), because Petitioner is detained within this District at the Stewart Detention Center.

PARTIES

11. Petitioner Octavio Cruz Moreno is a native and citizen of Mexico unlawfully detained at the Stewart Detention Center in Lumpkin, Georgia. ICE has held him in custody since October 2025. He is not subject to a final order of removal. Under DHS's July 2025 policy and the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, Immigration Judges no longer have jurisdiction to redetermine custody for individuals like Mr. Cruz Moreno. As a result, he has been categorically denied access to a bond hearing.

12. Respondent Jason Streeval is the warden of the Stewart Detention Center and controls the detention center where Petitioner is confined under the authority of ICE. Mr. Streeval has direct physical custody of Petitioner and is his immediate custodian. Mr. Streeval is sued in his official capacity.

13. Respondent George Sterling is the Acting Director of ICE's Atlanta Field Office, which has jurisdiction over ICE detention facilities in Georgia, including the Stewart Detention Center. He exercises authority over Petitioner's detention and is sued in his official capacity.

14. Respondent Todd Lyons is the Acting Director of ICE. He is responsible for the overall administration of ICE and for the implementation and enforcement of the immigration laws, including immigrant detention. As such, Mr. Lyons is a legal custodian of Petitioner. He is sued in his official capacity.

15. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). DHS is responsible for the administration of ICE, a component agency, and for the implementation and enforcement of the immigration laws. As such, Secretary Noem is a legal custodian of Petitioner. She is sued in her official capacity.

16. Respondent Pamela Bondi is the Attorney General of the United States and head of

the Department of Justice, which encompasses the Board of Immigration Appeals (BIA) and the Immigration Courts. The Attorney General shares responsibility for the implementation and enforcement of the immigration laws with Respondents Lyons and Noem. Attorney General Bondi is a legal custodian of Petitioner and is sued in her official capacity.

17. Respondent Daren K. Margolin is the Director of the Executive Office for Immigration Review (EOIR). He has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including the conduct of bond hearings. Director Margolin is sued in his official capacity.

FACTS

18. Petitioner Octavio Cruz Moreno is a native and citizen of Mexico who entered the United States without inspection more than twenty-five years ago. Since that time, he has made his life in this country. He is the husband of a U.S. citizen.

19. Petitioner Octavio Cruz Moreno is the beneficiary of an approved I-130, Petition for Alien Relative, filed by his U.S. citizen wife, Yady Liliana Rivera Tovar.

20. On or about October 2025, officers of U.S. Immigration and Customs Enforcement (ICE) arrested Mr. Cruz Moreno after a traffic stop in which he was a passenger. He was subsequently transferred to the Stewart Detention Center in Lumpkin, Georgia, where he has remained in custody since that date.

21. Mr. Cruz Moreno has no criminal history beyond minor traffic infractions for driving without a license. He has never been convicted of any crime that would subject him to mandatory detention under INA § 236(c). He is not subject to a final order of removal.

22. Historically, individuals like Mr. Cruz Moreno—long-time residents apprehended in the interior of the United States and charged as inadmissible for entering without inspection—

were detained under INA § 236(a), 8 U.S.C. § 1226(a), which provides for release on bond or conditional parole.

23. In July 2025, however, the Department of Homeland Security (DHS) adopted a new policy instructing that all noncitizens inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) are to be detained under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), and deemed ineligible for bond.

24. On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS's position and holding that noncitizens present in the United States without inspection are "applicants for admission" subject to mandatory detention under § 235(b)(2)(A).

25. As a result of this policy and decision, Immigration Judges lack jurisdiction to conduct custody redeterminations for individuals like Mr. Cruz Moreno. He has been categorically denied the opportunity to seek bond, despite his long residence in the United States, his strong family ties, and his minimal record.

26. Federal district courts across the country have rejected DHS's new interpretation of § 235(b)(2), finding instead that detention of long-time residents like Mr. Cruz Moreno must proceed under § 236(a). Nonetheless, ICE continues to hold him without access to a bond hearing.

LEGAL FRAMEWORK

27. Under 8 U.S.C. § 1226(a), individuals are generally entitled to discretionary bond determinations when detained. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). Certain noncitizens who are arrested, charged with, or convicted of specified crimes are subject to mandatory detention until removal proceedings are concluded under 8 U.S.C. § 1226(c).

28. By contrast, 8 U.S.C. § 1225(b) applies to noncitizens encountered at the border or immediately upon arrival. Section 1225(b)(1) governs certain individuals subject to expedited

removal, while § 1225(b)(2) applies to those "seeking admission" at a port of entry or just after entry.

29. Following enactment of these statutes, the Executive Office for Immigration Review issued regulations clarifying that individuals who entered the country without inspection but who were apprehended in the interior were not detained under § 1225, but instead under § 1226(a). 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, aliens who are present without having been admitted or paroled…will be eligible for bond and bond redetermination."). For nearly three decades, this was the consistent practice.

30. In July 2025, DHS abruptly adopted a new interpretation requiring detention under § 1225(b)(2)(A) for all noncitizens charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS's view and holding that noncitizens present in the United States without admission are "applicants for admission" subject to mandatory detention under § 1225(b)(2)(A). As a result, individuals like Mr. Cruz Moreno, who have lived in the United States for decades, are categorically denied bond hearings.

31. Over 70 federal district courts across the country have rejected this interpretation, holding that detention of long-term residents apprehended in the interior is governed by § 1226(a), not § 1225(b)(2). See, e.g., *Diaz v. Hyde,* Civ. No. 25-11613, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rodriguez Vazquez v. Bostock*, Civ. No. 3:25-cv-05240, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, Civ. No. 1:25-cv-11571, 2025 WL 1869299 (D. Mass. July 7, 2025), *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025); *Rosado v.*

Bondi, Civ. No. 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez-Benitez v. Francis*, Civ. No. 25-5937, 2025 WL 2371588, ---F. Supp.3d ---- (S.D.N.Y. Aug. 13, 2025); *Dos Santos v. Lyons*, Civ. No. 1:25-cv-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, Civ. No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Escalante v. Bondi,* Civ. No. 25-cv-3051, 2025 WL 2212104 (D. Minn. July 31, 2025); *O.E. v. Bondi*, Civ. No. 25-cv-3051, 2025 WL 2235056 (D. Minn. Aug. 3, 2025); *Arrazola-Gonzalez v. Noem*, Civ. No. 5:25-cv-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, Civ. No. 25-cv-3162, 2025 WL 2374223 (D. Neb. Aug. 15, 2025); *Mayo Anicasio v. Kramer*, Civ. No. 4:25-cv-3158, 2025 WL 2374224 (D. Neb. Aug 14, 2025); *Rodriguez de Oliveira v. Joyce*, Civ. No. 2:25-cv-00291, 2025 WL 1826118 (D. Me. July 2, 2025); *Leal-Hernandez v. Noem*, Civ. No. 1:25-cv-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos*, Civ. No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Romero v. Hyde*, Civ. No. 25-11631, --- F. Supp. 3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Doe v. Moniz*, Civ. No. 1:25-cv-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Herrera Torralba*, Civ. No. 2:25-cv-01366, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Kostak v. Trump*, Civ. No. 3:25-1093, 2025 WL 2473136 (W.D. La. Aug. 27, 2025); *Simpiao v. Hyde*, Civ. No. 1:25-cv-11981-JEK, 2025 WL 2607925 (D. Mass Sept. 9, 2024); *Garcia Cortes v. Noem*, Civ. No. 1:25-cv-02677, 2025 WL 2652990 (D. Colo. Sept. 16, 2026); *Jimenez v. Warden*, Civ. No. 25-cv-326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Cuevas Guzman v. Andrews*, Civ. No. 1:25-cv-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Velasquez Salazar v. Dedos*, Civ. No. 1:25-cv-00835, 2025 WL 2676729 (D.N.M. Sept., 17, 2025); *Hasan v. Crawford*, Civ. No. 1:25-cv-1408, 2025 WL 2682255 (E.D. Va., Sept. 19, 2025); *Singh v. Lewis*, Civ. No. 4:25-cv-96, 2025 WL 2699219 (W.D.Ky., Sept. 22, 2025); *Beltran Barrera v. Tindall*, Civ. No. 3:25-cv-541, 2025 WL 2690565 (W.D.Ky., Sept. 19, 2025); *Chogllo Chafla v.*

Scott, 2025 WL 2688541, (D.Me., Sept. 21, 2025); *Chiliquinga Yumbillo v. Stamper*, Civ. No. 2:25-cv-00479 (D.Me., Sept. 19, 2025).

32. One of the only courts that ruled to the contrary, *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025), concerned a different issue as to the effect of an approved family petition and is therefore not relevant to the instant case, as a different judge from that same district recognized. *Romero*, --- F. Supp. 3d ----, 2025 WL 2403827, at *1 n.1. The only other case that appears to support Respondents' position, *Chavez v. Noem*, No. 3:25-cv-02324, 2025 WL 2730228 (S.D. Cal., Sept. 24, 2025), essentially regurgitates the Board of Immigration Appeals' opinion in *Yajure Hurtado*, which this Court owes no deference. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). Further, other courts have rejected the decision in *Chavez* and its inability to grapple with the issues in that case. *See Cordero Pelico v. Kaiser*, No. 25-cv-07286, 2025 WL 2822876 (N.D. Cal., Oct. 3, 2025).

33. A court in the Eleventh Circuit recently agreed, finding "[E]very court to address the question presented here has found that an alien who is not presently seeking admission and has been in the United States for an extended time, like [the Petitioner], is appropriately classified under § 1226(a) and not § 1225(b)(2)(A). *Hernandez Lopez v. Hardin*, Civ. No. 2:25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla., Sept. 25, 2025).

34. The government's interpretation defies the INA's text and structure. Section 1226(a) explicitly applies to individuals charged as inadmissible after entry without inspection. Congress reinforced this point in 2025 by amending § 1226(c) through the Laken Riley Act to exclude from bond eligibility certain noncitizens who entered without inspection and committed crimes. If Congress had intended all such individuals to be subject to mandatory detention under § 1225(b)(2)(A), it would not have needed to create these specific carve-outs. Construing

§ 1225(b)(2)(A) as the government suggests renders § 1226(c)(1)(E) superfluous, in violation of the canon against surplusage. See *Corley v. United States*, 556 U.S. 303 (2009).

35. Section 1225(b), on the other hand, is limited to those arriving at ports of entry or apprehended immediately upon entry. In *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the Board explained that § 235(b) applies to individuals arrested without a warrant "while arriving in the United States." The Board distinguished between those apprehended "just inside the southern border" on the same day they crossed, who fall under § 235(b), and those "already present in the United States" who are detained by warrant, who fall under § 236(a). *Id*. at 69–70. Mr. Cruz Moreno—detained in Georgia approximately twenty-five years after his entry—is plainly in the latter category.

36. This approach is consistent with Eleventh Circuit precedent. In *Ortiz-Bouchet v. U.S. Att'y General*, 714 F.3d 1353 (11th Cir. 2013), the court held that noncitizens already present in the United States seeking to adjust status were not "applicants for admission." The Supreme Court has likewise recognized that mandatory detention under § 1225(b) applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is inadmissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

37. Therefore, the mandatory detention provisions of § 1225(b)(2) do not apply to Mr. Cruz Moreno, who entered the United States decades ago and was apprehended hundreds of miles from the border. He is detained under § 1226(a) and is eligible for a bond hearing.

CLAIMS FOR RELIEF

COUNT 1

Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

38. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

39. The mandatory detention provision of § 1225(b)(2) does not apply to noncitizens like Mr. Cruz Moreno who have been residing in the United States for decades, were never apprehended at the border, and are not subject to other statutory grounds of inadmissibility. Such individuals are detained under § 1226(a) and are eligible for release on bond.

40. Respondents' decision to detain Mr. Cruz Moreno under § 1225(b)(2)(A) unlawfully denies his access to a bond hearing in violation of the INA.

COUNT II

Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19

41. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

42. For decades, both Congress and the agencies charged with implementing the INA have recognized that individuals who entered without inspection are detained under § 1226(a) and eligible for bond, as reflected in implementing regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

43. Despite this clear regulatory framework, Respondents have unlawfully detained Mr. Cruz Moreno by misapplying § 1225(b)(2).

44. Because Petitioner's detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires, including access to a bond hearing, his continued detention violates the INA, its implementing regulations, and the Due Process Clause of the Fifth Amendment.

COUNT III

Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and Capricious Agency Policy

45. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

46. Mandatory detention under § 1225(b)(2) does not apply to long-time residents apprehended in the interior of the United States. Such noncitizens, including Mr. Cruz Moreno are detained under § 1226(a) and eligible for release on bond.

47. Respondents' application of § 1225(b)(2) to Petitioner contradicts the statutory scheme and departs from decades of consistent agency interpretation. This policy is arbitrary, capricious, and not in accordance with law, in violation of the APA, 5 U.S.C. § 706(2)(A).

COUNT IV

Violation of the Administrative Procedure Act
Failure to Observe Required Procedures

48. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

49. Under the APA, a reviewing court must set aside agency action "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). The APA requires agencies to engage in public notice-and-comment rulemaking before promulgating new rules or amending existing ones. 5 U.S.C. § 553(b), (c).

50. Respondents failed to comply with the APA by adopting and enforcing a new policy that reclassified individuals like Petitioner as subject to mandatory detention under § 1225(b)(2), without any rulemaking, notice, or opportunity to comment. This unlawful departure from prior regulations violates the APA.

COUNT V

Violation of the Fifth Amendment
Due Process

51. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

52. Under the Fifth Amendment of the Constitution, no person shall be deprived of liberty without due process of law. Freedom from imprisonment and government custody lies at the core of the liberty protected by the Due Process Clause. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The protections of the Due Process Clause extend to all persons within the United States, regardless of immigration status. *Id*. at 693.

53. Respondents' detention of Mr. Cruz Moreno under § 1225(b)(2), without the possibility of release on bond or a meaningful custody redetermination, violates his right to due process under the Fifth Amendment.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted within **three days**, pursuant to 28 U.S.C. § 2243;
3. Grant a writ of habeas corpus declaring that Petitioner's detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), and ordering Respondents to provide him with an immediate bond hearing before an Immigration Judge applying § 236(a);
4. In the alternative, order Petitioner's immediate release from custody under reasonable conditions of supervision if Respondents fail to provide such a bond hearing within a reasonable period of time;

5. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;
6. In the event the Court determines a genuine dispute of material fact exists regarding Petitioner's entitlement to habeas relief, schedule an evidentiary hearing pursuant to 28 U.S.C. § 2243;
7. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;
8. Declare that Petitioner's detention violates the INA;
9. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
10. Declare that Petitioner's detention is arbitrary, capricious, and in violation of the Administrative Procedure Act;
11. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
12. Grant such further relief as this Court deems just and proper.

Dated: October 13, 2025

Respectfully submitted,

/s/ Thomas Evans

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