UNITED STATES DISTRICT COURT
For the Middle District of Georgia

Guerline Cacoute **Petitioner,** **v.** **Todd Lyons, Field Office Director of the U.S. Immigration and Customs Enforcement &Removal Operations, *Atlanta Field Office, Immigration* and Customs Enforcement; Kristin Noem Secretary, U.S. Department of Homeland Security: Pamela Bondi, U.S. Attorney General of the United States; Executive Office For Immigration Review; Jason Streeval, Warden, Stewart Detention Ctr.** **Respondents.**	**Case No.** **25-366** **PETITION FOR WRIT OF HABEAS CORPUS**

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 USC §2241

INTRODUCTION

Petitioner Guerline Cacoute, a native and citizen of Haiti, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 challenging her continued civil immigration detention at the Stewart Detention Center in Lumpkin, Georgia. She seeks immediate release at the recommendation of the Immigration Judge because the Department of Homeland Security (DHS) has failed to remove to Haiti and takes the position that she is subject to mandatory detention.

Petitioner is charged with, inter alia, having entered the United States without being admitted or paroled. 8 U.S. C. § 1182(a)(6)(A)(i).

DHS states that the Immigration Judge does not have jurisdiction over Petitioner because anyone who entered the United States without admission or inspection is subject to detention under 8 USC § 1225(b)(2)(A) and therefore ineligible to be released on bond. In support of its position, DHS cites the BIA precedent decision, which held that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and are ineligible to be released on bond. See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA)

Petitioner argues that her detention violates the plain language of the Immigration and Nationality Act § 1225(b)(2)(A) who previously entered the United States and are now residing in the United States. Such individuals are subject to INA § 1226(a), which allows for release on conditional parle or bond. Said statute expressly applies to individuals like Petitioner who are charged as inadmissible for having entered the United States without inspection.

Respondents' new legal interpretation is plainly contrary to the statutory framework as well as decades of agency practice applying § 126(a) to individuals like the Petitioner.

This action does not seek to adjudicate any substantive immigration relief; it challenges only the legality and constitutionality of Petitioner's prolonged detention. Therefore, it is not barred by 8 U.S.C. § 1252(b)(9) or § 1252(f)(1).

JURISDICTION

Petitioner is in the physical custody of Respondents at the Stewart Detention Center in Lumpkin, Georgia. She now faces unlawful detention because the Immigration and Customs Enforcement has failed to remove her to Haiti within one week, as the Immigration Judge directed them to do on September 16, 2025.

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

This Court may review the legality of Petitioner's ongoing civil detention and to order her release, 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. The petition presents a core habeas challenge to present physical custody.

VENUE

Pursuant to *Branden v. 30th Judicial Circuit Court of Kentucky*, 410, U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Middle District of Georgia, the judicial district in which Petitioner currently is detained.

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 Middle District of Georgia.

Venue and jurisdiction lie in the district of confinement.

REQUIREMENTS OF 28 U.S.C. § 2243

The Court shall 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, Respondents are required to file a return "within three days unless for good cause additional time, not exceeding twenty days is allowed." *Id.*

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 applications." *Yong v. INS*, 208 F. 3d 1116, 1120 (9th Cir. 2000) citation omitted).

PARTIES

Petitioner: Guerline Cacoute, A# [redacted] is a native and a citizen of Haiti. She has been detained at Stewart Detention Center, Lumpkin, since May 28, 2025 to the present. She was arrested outside of the Atlanta Immigration Courtroom following the IJ's dismissal of removal case on May 28, 2025. Since then, ICE did not set a bond and Petitioner is unable to obtain review of her custody by an IJ, pursuant to BIA's decision in *Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025).

Respondent, Todd Lyons is the Field Office Director of the U.S. Immigration and Customs Enforcement's (ICE) Atlanta Filed Office of ICE's Enforcement and Removal Operations division. As such, Todd Lyons is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

Respondent Kristin Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodian authority over Petitioner and is sued in her official capacity.

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

Respondent Pamela Bondi is the Attorney General of the United States. She oversees the Department of Justice, which includes the Executive Office for

Immigration Review and its associated immigration court system as a component agency. She is sued in her official capacity.

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

Respondent Jason Streeval is employed as Warden at Stewart Detention Center that is operated by Core Civic where Petitioner is being detained. Mr. Steeval has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

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

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

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).

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

This case deals with the detention provisions at §§ 1226(a) and 1225(b)(2), which 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. § 1226(a). Said provisions were most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

After the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225, and that they were instead, detained 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).

Consequently, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). This practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *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).

On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention

provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

On September 5, 2025, the BIA adopted the same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025). Subsequently, court after court adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez*

Benitez v. Francis, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

Many courts have now uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others

have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

Historically, § 1226(a) applies by default to all persons with a "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]."

Furthermore, 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 sub§ (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*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

There is no doubt that § 1226 applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole, such as the Petitioner in this case.

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

Even if detention is authorized during processing under INA § 235 and Matter of *M S* or *Yajure Hurtado* removes IJ bond jurisdiction, due process remains operative. *Demore v. Kim* emphasizes detention's constitutionality for a brief period tied to the administrative process; as detention lengthens, an individualized assessment becomes constitutionally required. After roughly five months with no removal executed—and in the context of an IJ's explicit statement that DHS should remove Petitioner within a week—continued detention without a bond hearing or parole determination is excessive and punitive in effect.

A core habeas challenge to present physical custody lies under 28 U.S.C. § 2241, and this Court may order release.

FACTS

Petitioner turned herself into CBP when she entered the United States at the US/Mexico border on or about June 27, 2024. She was not admitted or paroled.

DHS placed Petitioner in removal proceedings before the Immigration Court pursuant to 8 U.S. C. § 1229a. ICE has charged Petitioner with, inter alia, being inadmissible under 8 USC § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

Petitioner filed Form I-589, Application for Asylum and Withholding of Removal.

On May 30, 2025, Petitioner appeared for a Master Calendar Hearing at the Atlanta Immigration Court before Immigration Judge Winfield Murray. Judge Murray dismissed removal proceedings against her.

Immediately after exiting the courtroom, Petitioner was apprehended by ICE and detained. She was transferred to Stewart Detention Center in Lumpkin, Georgia, where she has remained continuously detained since May 27 2025.

On or about September 5, 2025, Petitioner filed a motion for a bond hearing. During said hearing on September 16, 2025, DHS opposed, asserting that the Petitioner is an applicant for admission, and the Immigration Judge lacked jurisdiction over her pursuant to *Matter of M S* and, more recently, the BIA's decision in *Matter of Yajure Hurtado* (Decided Sept. 5, 2025). In both cases, ICE argued that Petitioner is an "applicant for admission" detained under INA § 235 and ineligible for IJ bond, with release only via DHS parole under 8 U.S.C. § 1182(d)(5)(A).
At the September 16, 2025, bond hearing, the Immigration Judge was upset about Petitioner's four months of incarceration and requested for ICE to remove Petitioner from the United States within one week. The judge also recommended that Petitioner file a habeas petition if ICE failed to do so or file some other form of relief so that he could release her.

Petitioner is not a flight risk as she has close family ties in the United States, nor is she a danger to the community as she has never been arrested, yet she remains in detention. Without relief from this court, Petitioner faces the prospect of months, or even years, in immigration custody, separated from her family.

Furthermore, Petitioner suffers from hypertension, causing severe headaches, fatigue, and loss of appetite. Her health has deteriorated during detention due to the conditions of the facility and the stress of indefinite confinement.

CLAIMS FOR RELIEF

COUNT I
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

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

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 in admissibility. As is relevant here, it does not apply to those who have expressed a credible fear and are awaiting an asylum hearing. He/she may request a bond hearing to argue for release from custody, by showing that he/she is not a flight risk or a danger to the community. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

The application of §1225(b)(2) to Petitioner unlawfully mandates her continued detention, in this case, more than five (5) months and violates the INA.

COUNT II
VIOLATION OF BOND REGULATION

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

In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of {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." 62 Fed Req. At 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspections were *eligible for consideration for bond and bond hearings before IJs under 8 USC § 1226* and its implementing regulations.

Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a new policy and practice of applying the mandatory detention provision of § 1225(b)(2) to individuals who have already entered and residing in the United States.

In this case, Petitioner entered the U.S. on or about May 28,2025. She appeared for her Master Calendar Hearing before Immigration Judge Winfield Murray. The IJ dismissed her removal case, and once she stepped outside of the courtroom, she was taken into custody by ICE. After that, ICE claims that the IJ does not have jurisdiction over Petitioner and that Petitioner is subject to mandatory detention pursuant to § 1225(b)(2) *and Matter of Yajure Hurtado*. It is clear from the aforementioned facts that DHS acted in bad faith and violated immigration laws.

The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates §§ 8 C.F.R. § 236.1; 1236.1 and 1003.19.

COUNT III
VIOLATION OF DUE PROCESS

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

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. Even when civil detention is statutorily authorized under *MS* and *Matter of Yajure Hurtado*, due process requires that

detention be reasonably related to its purposes and not excessive in relation to those purposes. *Demore v. Kim* recognizes the constitutionality of brief, limited detention during proceedings but does not authorize prolonged, potentially indefinite detention without adequate process. Petitioner's detention—now approximately five months and ongoing with no removal effected—exceeds the brief period contemplated and requires meaningful process and release absent proof of flight risk or danger by clear and convincing evidence.

Petitioner's five-months continued detention has become unreasonably prolonged without an individualized determination of necessity and without consideration of less restrictive alternatives

COUNT IV

UNLAWFUL POST ORDER DETENTION

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

On September 16, 2025, the IJ directed DHS to end the prolonged incarceration of Petitioner and remove her to Haiti. The IJ further directed that should ICE not remove Petitioner; a Writ of Habeas should be filed or some application that would allow him to release Petitioner from detention. However, DHS has failed to return Petitioner to Haiti or release her. The ongoing detention of Petitioner is in direct violation of the IJ's order.

COUNT IV

ARBITRARY AND CAPRICIOUS DENIAL OF PAROLE AND FAILURE TO CONSIDER LESS RESTRICTIVE ALTERNATIVES

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

Under 8 U.S.C. § 1182(d)(5)(A), DHS may parole applicants for admission for urgent humanitarian reasons or significant public benefit. Petitioner's deteriorating hypertension and the absence of imminent removal constitute urgent humanitarian grounds. The government's categorical refusal to consider or grant parole, especially after the IJ recognized the untenability of continued detention, is arbitrary and capricious and violates due process. Agency bond jurisdiction does not permit indefinite or needlessly prolonged detention where appropriate remedies such as parole or conditions of supervision would adequately serve any legitimate government interests.

This Court may order Petitioner's release or DHS to conduct a good faith consideration of parole of Petitioner or, in the alternative.

PRAYER FOR RELIEF

Petitioner respectfully requests that the Court:

1. Issue an order to show cause directing Respondents to justify the legality of Petitioner's continued detention;

2. Grant the writ and order Petitioner's immediate release from custody;

3. In the alternative, require DHS to consider other less restrictive alternatives;

4. Order Respondents to promptly and meaningfully consider parole under 8 U.S.C. § 1182(d)(5)(A), taking into account Petitioner's medical condition and humanitarian factors;

5. Award attorneys' fees and costs as permitted by law and any other relief the Court deems just and proper.

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