UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

GERARDO BANCHI ELIAS,
A# [redacted],

Petitioner,

v.

JASON STREEVAL, Warden of Stewart Detention Center,
LADEON FRANCIS, Field Office Director of Enforcement and Removal Operations, Atlanta, GA Field Office, Immigration and Customs Enforcement;
TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, U.S. Department of Homeland Security;
PAMELA BONDI, U.S. Attorney General; and
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Respondents.

Civile Action No.:

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner GERARDO BANCHI ELIAS, A# [redacted], is in the physical custody of Respondents at the Stewart Detention Center. *See Exhibit A, Printout from ICE Online Detainee Locator System dated 11/9/2025.* Petitioner challenges his ongoing unlawful and unconstitutional detention.
2. Petitioner is a 41-year old Mexican national who entered the United States in 2000. Petitioner was not apprehended at the time of his arrival but spent twenty four years living in the United States. Petitioner was apprehended in the interior of the United States on or about August 8, 2025, when Petitioner was stopped by Immigration and Customs Enforcement (ICE) on his way to work. Petitioner was taken into custody and was served with a Notice to Appear, initiating removal proceedings before the Executive Office for Immigration Review (EOIR). *See Exhibit B, Notice to Appear.*
3. On August 29, 2025, Petitioner appeared for a custody re-determination hearing before the Immigration Judge (IJ). The IJ granted Petitioner's custody re-determination request and issued a $5,000.00 bond order. *See Exhibit C, Immigration Judge's Bond Order.* On September 4, 2025, the Department of Homeland Security (DHS) appealed the grant of bond to the Board of Immigration Appeals (BIA) and continued to hold Petitioner in their custody. DHS argued that Petitioner, who has been present in the

United States without admission or parole since 2000 is deemed to be an "applicant for admission" and that the applicable detention authority for Petitioner should be 8 U.S.C. § 1225(b)(2) and not 8 U.S.C. § 1226(a). *See Exhibit D, DHS Notice of Bond Appeal.*

4. To date, the bond appeal remains pending before the BIA and Petitioner remains in ICE custody even though Petitioner is neither a flight risk nor a danger to the community according to the IJ's August 29, 2025 determination.

5. Petitioner's continued detention by ICE is unlawful and unconstitutional. The government's recent policy shift—reclassifying noncitizens who entered without inspection as "arriving aliens" subject to mandatory detention under 8 U.S.C. § 1225(b)—contradicts the statute, decades of established statutory interpretation, agency regulations and practice, and binding precedent. Petitioner, apprehended in the interior years after entry, is entitled to discretionary bond hearings under 8 U.S.C. § 1226(a), not mandatory detention without judicial review.

6. Additionally, on September 5, 2025, the BIA issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec.

216 (BIA 2025). The BIA determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

7. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like Petitioner, who were detained in the interior of the United States many years after their arrival. 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.

8. 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.

9. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution by depriving Petitioner of liberty without individualized assessment or a meaningful opportunity to be heard before a neutral decisionmaker. The agencies' interpretation also contravenes the INA and its implementing regulations, the Administrative Procedure Act (APA), and the Accardi doctrine, which obligates

administrative agencies to follow their own rules, procedures, and instructions. Numerous federal courts, including this very court, have rejected the government's novel reading of the detention statutes, reaffirming that interior apprehensions are governed by § 1226(a) and entitled to bond review. *Arizmendi Mora v. Streeval et al.*, Civ. No. 4:25-cv-00342-CDL-AGH, (M.D.G.A. Nov. 3, 2025)

10. Accordingly, Petitioner seeks from this Court a writ of habeas corpus and a declaratory judgment affirming that Respondent's detention should be under 8 U.S.C. § 1226(a). The Petitioner requests an order for his release within 48 hours unless the government can demonstrate, by clear and convincing evidence, that he poses a danger to the community or is a flight risk. Alternatively, the Petitioner seeks an order for a discretionary bond hearing under § 1226(a) before an Immigration Judge within seven (7) days, where the government must prove by clear and convincing evidence that he is a danger to the community or a flight risk. Additionally, the Petitioner requests that Respondents be prohibited from re-detaining him unless they can meet the same requisite evidentiary standard.

JURISDICTION

11. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Stewart Detention Center in Lumpkin, Georgia.

12. 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).

13. 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.

14. Additionally, this Court has authority to issue a declaratory judgement and to grant temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure (FRCP), as well as 28 U.S.C. §§ 2201-2202.

15. To prevent ouster of this Court's habeas jurisdiction, the Court should, pursuant to 28 U.S.C. § 1651(a) (All Writs Act) and 28 U.S.C. § 2241, issue an immediate limited order prohibiting Respondents from transferring Petitioner outside the court's District or otherwise changing Petitioner's immediate custodian without prior leave of Court while this action is pending. Such relief is necessary in aid of jurisdiction because habeas is governed by the district-of-confinement/immediate-custodian rule, and transfer can frustrate effective review. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2000); *Ex parte Endo*, 323 U.S. 283, 307 (1944); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

VENUE

16. Habeas petitions generally are filed in the district court with jurisdiction over the filer's place of custody, also known as the district of confinement, pursuant to 28 U.S.C. § 2241. 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 Middle District of Georgia, the judicial district in which Petitioner currently is detained.

17. Additionally, with respect to Petitioner's non-habeas claims seeking prospective declaratory and injunctive relief against federal officials (agencies and officers of the United States) sued in their official capacities, venue is proper under 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to these claims, including the initial arrest and continued detention of Petitioner and the enforcement of the mandatory detention agency interpretation, occurred in the Middle District of Georgia. Furthermore, the Respondents are officers of United States agencies, the Petitioner resides within this District, and there is no real property involved in this action.

REQUIREMENTS OF 28 U.S.C. § 2243

16 . 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, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

17 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

18. Petitioner GERARDO BANCHI ELIAS is a 41-year-old citizen and national of Mexico who has resided in the United States since 2000, after entering the United States undetected. He is not a danger to the community and not a flight risk, as determined by the IJ's August 29, 2025 bond determination. He is father to two U.S. Citizen children born in 2006, and 2010. His youngest child has been diagnosed with major depressive disorder and attempted to commit suicide on two different occasions. His suicidal ideations have increased since Petitioner's apprehension and detention. Prior to Petitioner's detention, he resided with his partner and three U.S.

Citizen children in Atlanta, GA. Petitioner has been in immigration detention since August 8, 2025. ICE has not set a bond for Petitioner but has appealed the IJ's August 29, 2025 bond order and continued to hold Petitioner in custody.

19. Respondent Jason Streeval is employed by The GEO Group, Inc. as Warden of the Stewart Detention Center, where Petitioner is detained. This Respondent is responsible for the operation of the Detention Center where Petitioner is detained and is the immediate custodian who is currently holding Petitioner in physical custody. Because ICE contracts with private and county-operated detention facilities to house immigration detainees, Respondent Warden of the Stewart Detention Center has immediate physical custody of the Petitioner and is sued in his or her official capacity.

20. Respondent LaDeon Francis is the Atlanta Field Office Director (FOD) for ICE. As such, Respondent Francis is responsible for the oversight of ICE operations at the Stewart Detention Center. Respondent Francis is being sued in his official capacity. He is the head of the ICE office that unlawfully arrested Petitioner, and such arrest took place under his direction and supervision. He is the immediate legal custodian of Petitioner.

21. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). As such, Respondent Lyons is responsible for the

oversight of ICE operations and the head of the federal agency responsible for all immigration enforcement in the United States. Respondent Lyons is being sued in his official capacity.

22. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). As Secretary of DHS, Secretary Noem is the cabinet-level official responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.

23. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity since U.S. government agencies are Respondents in this complaint. Furthermore, the Immigration Judges who decide removal cases and applications for bond and relief from removal do so as her designees at the Executive Office for Immigration Review (EOIR).

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

25. Petitioner acknowledges that under *Rumsfeld v. Padilla*, 542 U.S. 426 (2000), the proper respondent to the habeas claim is the immediate custodian, and Petitioner does not rely on these officials as "habeas respondents." Petitioner names federal officials in their official capacities

solely to ensure the Court can issue effective relief on non-habeas claims, consistent with *Rumsfeld v. Padilla*. To the extent the Court deems them improper Respondents on the habeas count, Petitioner respectfully requests that any dismissal be limited to that claim and without prejudice to their continued status as Respondents on the non-core claims, such as declaratory judgement and injunctive relief, so that effective, agency-directed relief can issue to the officials with authority to implement it.

EXHAUSTION OF REMEDIES

26. Neither the Immigration and Nationality Act (INA) nor the applicable federal habeas corpus statute requires administrative exhaustion for immigration detention-based claims. Compare 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only prior to challenging a removal order in circuit court), with 28 U.S.C. § 2241 (including no requirement for administrative exhaustion); *see also Santiago-Lugo v. Warden*, 785 F.3d 467, 474–75 (11th Cir. 2015) ("It is no longer the law of this circuit that exhaustion of administrative remedies is a jurisdictional requirement in a § 2241 proceeding.").

27. Petitioner is not required to exhaust his administrative remedies. Even if he were required to exhaust administrative remedies, because all Respondents continue to treat Petitioner as detained under § 1225(b), any request for bond

redetermination before an Immigration Judge would be futile, as the Immigration Court has already disclaimed jurisdiction over such requests. Accordingly, habeas relief is the only available and effective remedy to secure Petitioner's release or a lawful custody hearing.

28. Even if Petitioner were to file for a bond redetermination with the immigration judge, such request would be denied pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). Accordingly, it would be futile for Petitioner to request a bond for release from an Immigration Judge. Habeas corpus is the only effective remedy in Respondent's situation.

29. Here, Respondent has, in fact exhausted his remedies. He was granted a $5,000 bond by the IJ on August 29, 2025, but DHS appealed this bond decision and has not released Petitioner from custody during the ongoing appeal process.

LEGAL FRAMEWORK

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

31. 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).

32. 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).

33. Last, 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).

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

35. The detention provisions at § 1226(a) and § 1225(b)(2) 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. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

36. Following 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).

37. Thus, 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). That 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)).

38. 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.

39. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

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.

40. On September 5, 2025, the BIA adopted this 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.

41. 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.

42. 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).

43. Subsequently, court after court, including the Middle District of Georgia, has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g.*, *Arizmendi Mora v. Streeval et al.*, Civ. No. 4:25-cv-00342-CDL-AGH, (M.D.G.A. Nov. 3, 2025); *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. September 4, 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).

44. Courts have 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.

45. 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]."

46. 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*, 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.

47. 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.

48. 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).

49. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

FACTS

50. Petitioner entered the United States at an unknown place along the U.S. Mexico border in 2000 and has continuously resided in the United States. He was apprehended by ICE on or about August 8, 2025, when he was transferred into ICE custody following an ICE stop on his way to work. He was then placed into removal proceedings and charged as "an alien present in the United States who has not been admitted or paroled". *See Exhibit B, Notice to Appear.* Petitioner was not apprehended at the border and the ICE charging document itself declined to classify Petitioner as an "arriving alien". *Id.*

51. On August 29, 2025, the IJ granted a $5,000 bond to the Petitioner, finding that Petitioner is neither a flight risk nor a danger to the community. DHS

appealed the August 29, 2025 bond decision to the BIA and refused to release Petitioner from its custody. To date, the bond appeal remains pending and Petitioner remains in ICE custody.

52. Because Petitioner was arrested in the interior of the United States approximately twenty-four years after his arrival to the United States, his detention should fall under 8 U.S.C. § 1226(a), which authorizes release on bond or recognizance. Nevertheless, Respondents claim Petitioner is an arriving alien, thereby denying him eligibility for a custody redetermination by an Immigration Judge.

53. Pursuant to 8 U.S.C. § 1357(a)(2), immigration officers may arrest and briefly detain noncitizens believed to be in violation of immigration laws, but such detention may last no more than forty-eight (48) hours—excluding weekends and holidays—unless a warrant is issued and removal proceedings are formally initiated.

54. Petitioner is neither a flight risk nor a danger to the community.

55. To date, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

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

57. 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.

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

COUNT II
Violation of the Bond Regulations

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

60. 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]," the agencies explained that "[d]espite being applicants for admission, [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. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

61. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individual like Petitioner.

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

COUNT III
Violation of Due Process

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

64. 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 (2001).

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

66. 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. Order that Petitioner shall not be transferred outside the Middle District of Georgia while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

e. Declare that Petitioner's detention is unlawful;

f. 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

g. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted this 9th day of November, 2025.

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's family members and have reviewed various documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

Respectfully submitted this 9th day of November, 2025.

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