

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

CERDA MOYA, Merling Elizabet)
Petitioner,)
)
v.)
)
Jason STREEVAL, *in his*)
official capacity as Warden of Stewart)
Detention Center, and Todd LYONS,)
in his official capacity as Acting)
Director of Immigration and Customs)
Enforcement, and Ladeon)
FRANCIS, *Field Office Director ICE*)
Atlanta Field Office, and Kristi NOEM,)
Secretary of Homeland Security, Pamela)
BONDI, *in her official capacity as Attorney*)
General, United States Department of)
Justice)
Respondents.)

Case No. _____

**PETITION FOR
WRIT OF HABEAS CORPUS**

Alien File No. 

I. INTRODUCTION

1. Petitioner, Merling Elizabet Cerda Moya, is a 36-year-old native and citizen of Nicaragua who entered the United States without inspection in 2021.
2. Upon her arrival, Petitioner presented herself to immigration authorities, was briefly detained and later released after being found to have a credible fear of persecution or torture. She has resided in the United States for the past four years and has complied with all immigration requirements.
3. Petitioner was detained on or about October 14, 2025, by the Respondents.

4. Petitioner now seeks a writ of habeas corpus directing the Respondents to provide Petitioner with a bond hearing to determine if she may be released on bond under § 1226(a)(2) and the applicable regulations. See 8 C.F.R. §§ 236.1 & 1236.1.

II. VENUE AND JURISDICTION

5. This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the Constitution (Suspension Clause).
6. Venue lies in this Division because Petitioner is detained at Stewart Detention Center, within the Columbus Division, and Respondent Dickerson is her immediate custodian. See 28 U.S.C. §§ 2241(d), 1391(e).

III. PARTIES

7. Petitioner is a 36-year-old Nicaraguan national who resides in Atlanta, Georgia. She is currently detained at the Stewart Detention Center in Lumpkin, Georgia.
8. Respondent Jason Streeval is the Warden of Stewart Detention Center. As such, Respondent Streeval is responsible for the operation of the Detention Center where Petitioner is detained. Because ICE contracts with private prisons such as Stewart to house immigration detainees such as Ms. Cerda-Moya, Respondent Streeval has immediate physical custody of the Petitioner.
9. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (hereinafter “ICE”). As such, Respondent Lyons is being sued in his official capacity.
10. Respondent Ladeon Francis is the Atlanta Field Office Director for Immigration and Customs Enforcement (hereinafter “FOD”). 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.

11. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (hereinafter “DHS”). As Secretary of DHS, Secretary Noem is responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Noem is being sued in her official capacity.
12. Respondent Pamela Bondi is the Attorney General of the United States, United States Department of Justice. As Attorney General, Bondi is responsible for overseeing the administration and enforcement of federal laws, including matters related to immigration proceedings before the Department of Justice. Respondent Bondi is being sued in her official capacity.

IV. EXHAUSTION OF REMEDIES

13. Petitioner has exhausted her administrative remedies to the extent required by law, and her only remedy is by way of this judicial action.

V. STATEMENT OF FACTS

14. Petitioner, Merling E. Cerda Moya, is a 36-year-old native and citizen of Nicaragua who entered the United States without inspection in 2021 and promptly presented herself to immigration authorities. She was briefly detained and later released, after which she has complied with all immigration requirements and resided continuously in the United States for the past four years. See **Exhibit 1**, *Notice to Appear and North Carolina driver's license*.

15. On July 18, 2022, Petitioner filed Form I-589, Application for Asylum and for Withholding of Removal, which remains pending with U.S. Citizenship and Immigration Services. Based on this filing, Petitioner was issued an Employment Authorization Document (EAD) and subsequently obtained a Social Security number, allowing her to lawfully work and contribute to the community while her asylum case is adjudicated. Petitioner has complied with all requirements imposed by immigration authorities since her release from initial custody. See **Exhibit 2**, *Petitioner's Form I-589, Application for Asylum and for Withholding of Removal, Employment Authorization Document (EAD), and Social Security Card*.
16. On or about October 14, 2025, Petitioner was detained by U.S. Immigration and Customs Enforcement ("ICE") after voluntarily appearing for a scheduled check-in at the ICE office in Charlotte, North Carolina. She is currently held at Stewart Detention Center in Lumpkin, Georgia.
17. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a decision which held that, "[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
18. In light of the BIA's decision in *Matter of Yajure Hurtado*, Petitioner has been deprived of any opportunity to seek release on bond and as of November 13, 2025, she has been detained for 29 days without an individualized custody determination or review before an IJ.

19. Petitioner's continued detention is causing irreparable harm, as Petitioner continues to be traumatized by this unlawful restraint on her liberty.

VI. LEGAL FRAMEWORK

20. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings.

21. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. See 8 U.S.C. § 1229a. This provision applies to “applicants for admission,” defined as those “present in the United States who has not been admitted.” § 1225(a)(1). 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 until their removal proceedings are concluded, *see* 8 U.S.C. § 1226(c).

22. 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).

23. Third, the INA provides for detention of noncitizens who have received a final order of removal from the United States, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231 (a)-(b).

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

VII. CAUSES OF ACTION

COUNT I

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

25. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
26. At the time of her arrest, Petitioner was a noncitizen physically present in the United States who had already filed Form I-589, Application for Asylum and for Withholding of Removal. Having been served with a Notice to Appear and placed in removal proceedings, her detention is therefore governed by § 1226(a)(2).
27. Petitioner is therefore eligible for an individualized custody determination before an IJ and her ongoing detention without such a hearing is unlawful.
28. The IJ and the BIA have wrongfully construed § 1225(b)(2) as applying to all noncitizens who are found in the United States unlawfully, such as the Petitioner. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
29. The IJ's ruling in Petitioner's case and the BIA's decision in *Yajure Hurtado* erroneously synonymize the terms "applicant for admission" and "alien seeking admission" in order to apply mandatory detention under § 1225(b)(2) to an entire class of noncitizens for whom it was never intended by Congress.
30. The unlawful application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention without a discretionary bond hearing and violates the INA.

**COUNT II
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1 and 1003.19
Unlawful Denial of Release on Bond**

31. Petitioner incorporates by reference the allegations and facts set forth in paragraphs 1-28 as if fully set forth herein.

32. In 1997, after Congress amended the INA through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the headings 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.
33. Nonetheless, the IJ and the BIA have asserted that, instead, § 1225(b)(2) should apply to those noncitizens “present without having been admitted or paroled.”
34. 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 Fifth Amendment Due Process Clause

35. Petitioner incorporates by reference the allegations and facts set forth in paragraphs 1-28 as if fully set forth herein.
36. The Fifth Amendment provides that “[n]o person” shall “be deprived of life, liberty, or property, without due process of law.”

37. “Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
38. Moreover, “[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.” *Id.* at 693.
39. Respondents’ detention of Petitioner without consideration for release on bond or access to a bond hearing violates her due process rights.

PRAYER FOR RELIEF

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

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing Respondents to immediately provide Petitioner with a bond hearing to determine if she may be released on bond under § 1226(a)(2) and the applicable regulations. See 8 C.F.R. §§ 236.1, 1236.1.
- 3) Order Respondents to refrain from transferring Petitioner out of the jurisdiction of this court during the pendency of these proceedings and while the Petitioner remains in Respondents’ custody;
- 4) Order Respondents to file a response within 3 days of the filing of this petition;
- 5) Award attorneys’ fees to Petitioner; and
- 6) Grant any other and further relief which this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this 13th day of November, 2025.

/s/ Jessica Calmes
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Verification

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

/s/ Jessica Calmes

Date: November 13, 2025