

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

RIGOBERTO ISMAEL SIMON  
DIYES,

Petitioner,

v.

LADEON FRANCIS, Field Office  
Director of Enforcement and Removal  
Operations, Atlanta Field Office,  
TODD LYONS, in his official capacity  
as Acting director of Immigration and  
Customs Enforcement;  
KRISTI NOEM, Secretary, U.S.  
Department of Homeland Security; U.S.  
DEPARTMENT OF HOMELAND  
SECURITY;  
PAMELA BONDI, U.S. Attorney  
General; EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW;  
Tony Normand, Warden of FOLKSTON  
DETENTION CENTER,

Respondents.

Case No.

**PETITION FOR WRIT OF  
HABEAS CORPUS**



1 immigration judge has no authority to consider bond requests for any person who entered  
2 the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216  
3 (BIA 2025). The Board determined that such individuals are subject to detention under 8  
4 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5 6. Petitioner's detention on this basis violates the plain language of the  
6 Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals  
7 like Petitioner who previously entered and are now residing in the United States. Instead,  
8 such individuals are subject to a different statute, § 1226(a), that allows for release on  
9 conditional parole or bond. That statute expressly applies to people who, like Petitioner,  
10 are charged as inadmissible for having entered the United States without inspection.

11 7. Respondents' new legal interpretation is plainly contrary to the statutory  
12 framework and contrary to decades of agency practice applying § 1226(a) to people like  
13 Petitioner.

14 8. More importantly, the Government itself has made an abrupt about-face  
15 on this issue. Respondents should be judicially estopped from asserting their current  
16 interpretation of 8 U.S.C. § 1225(b)(2)(A), because they previously prevailed in litigation  
17 after asserting the opposite interpretation. As explained in *New Hampshire v. Maine*, 532  
18 U.S. 742 (2001), judicial estoppel applies when a party assumes a position in a legal  
19 proceeding, succeeds in maintaining that position, and then adopts a contrary position in  
20 a subsequent proceeding to gain an unfair advantage. Here, Respondents previously, and  
21 successfully, argued that individuals who entered the United States without inspection  
22 were subject to detention under § 1226(a), and not § 1225(b)(2)(A), and courts accepted  
23 that position. Respondents now reverse course and assert that such individuals are subject

1 to mandatory detention under § 1225(b)(2)(A), thereby denying them bond hearings. This  
2 shift in legal position undermines the integrity of the judicial process and imposes an  
3 unfair detriment on Petitioners who relied on the prior interpretation. Accordingly,  
4 Respondents should be estopped from asserting this inconsistent position.

5 9. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released  
6 unless Respondents provide a bond hearing under § 1226(a) within seven days.

### 7 JURISDICTION

8 10. Petitioner is in the physical custody of Respondents. Petitioner is detained at the  
9 FOLKSTON DETENTION CENTER in Folkston, GEORGIA.

10 11. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. §  
11 1331 (federal question), and Article I, section 9, clause 2 of the United States  
12 Constitution (the Suspension Clause).

13 12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,  
14 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

### 15 VENUE

16 13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500  
17 (1973), venue lies in the United States District Court for the SOUTHERN DISTRICT OF  
18 GEORGIA, the judicial district in which Petitioner currently is detained.

19 14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
20 Respondents are employees, officers, and agencies of the United States, and because a  
21 substantial part of the events or omissions giving rise to the claims occurred in the  
22 SOUTHERN DISTRICT OF GEORGIA.

23

**REQUIREMENTS OF 28 U.S.C. § 2243**

15. 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.*

16. 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**

17. Petitioner RIGOBERTO ISMAEL SIMON DIYES is a citizen of Guatemala who has been in immigration detention since the 11th of October 2025. After arresting Petitioner at his home in New Jersey, and transferring him to Folkston Detention Center, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Due to this erroneous decision, it would be futile for Petitioner to apply to EOIR without the intervention of this honorable Court.

18. Respondent LADEON FRANCIS is the Director of the Atlanta Field Office of ICE’s Enforcement and Removal Operations division; however, on information and belief, the DHS is rotating their Field Office Director without publishing a schedule of rotation. As such, LADEON FRANCIS or his unknown, unannounced provisional replacement is

1           Petitioner's immediate custodian and is responsible for Petitioner's detention and  
2           removal. He or his acting counterpart is named in his or her official capacity. Respondent  
3           Francis's address is 180 Ted Turner Dr Se, Ste 522. Atlanta GA 30303.

4           19. Respondent Todd Lyons is named in his official capacity as the Acting Director of the  
5           Immigration and Customs Enforcement ("ICE"). As the senior Official Performing the  
6           duties of the Director of ICE, he is responsible for the administration and enforcement of  
7           the immigration laws of the United States; routinely transacts business in the Southern  
8           District of Georgia; is legally responsible for any effort to detain Petitioner; and as such  
9           is a custodian of the Petitioner. His address is ICE, Office of the Principal Legal  
10          Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

11          20. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is  
12          responsible for the implementation and enforcement of the Immigration and Nationality  
13          Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem  
14          has ultimate custodial authority over Petitioner and is sued in her official capacity.  
15          Respondent Noem's address is U.S. Department of Homeland Security, Office of the  
16          General Counsel, 2707 Martin Luther King Jr Ave Se Washington DC 20528-0525.

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

20          22. Respondent Pamela Bondi is the Attorney General of the United States. She is  
21          responsible for the Department of Justice, of which the Executive Office for Immigration  
22          Review and the immigration court system it operates is a component agency. She is sued

1 in her official capacity. Respondent Bondi's address is U.S. Department of Justice, 950  
2 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

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

6 24. Respondent, Warden Tony Normand, is employed by the private, for-profit detention  
7 corporation contracted by the Government as an agent to confine immigrants at Folkston  
8 Detention Center, where Petitioner is detained. He has immediate physical custody of  
9 Petitioner. He is sued in his official capacity. Respondent Warden's address is Warden,  
10 ICE processing center, 2500 South Highway 1, Folkston GA 31539.

#### 11 **LEGAL FRAMEWORK**

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

14 26. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal  
15 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are  
16 generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§  
17 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or  
18 convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

19 27. Second, the INA provides for mandatory detention of noncitizens subject to expedited  
20 removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission  
21 referred to under § 1225(b)(2).

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

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

1 30. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal  
2 Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.  
3 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585.  
4 Section 1226(a) was most recently amended earlier this year by the Laken Riley Act,  
5 Pub. L. No. 119-1, 139 Stat. 3 (2025).

6 31. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in  
7 general, people who entered the country without inspection were not considered detained  
8 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and  
9 Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal  
10 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

11 32. Thus, in the decades that followed, most people who entered without inspection and were  
12 placed in standard removal proceedings received bond hearings, unless their criminal  
13 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was  
14 consistent with many more decades of prior practice, in which noncitizens who were not  
15 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer.  
16 *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996)  
17 (noting that § 1226(a) simply “restates” the detention authority previously found at §  
18 1252(a)).

19 33. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly  
20 acknowledged that individuals who have already entered the United States and are not  
21 apprehended within 100 miles of the border or within 14 days of entry are subject to  
22 discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under §  
23 1225(b). During oral argument on November 30, 2016, then–Solicitor General Ian

1 Gershengorn stated: “If they are not detained within 100 miles of the border or within 14  
2 days... then they are under 1226(a) and not 1226(c)” and further clarified, in response to  
3 a question concerning “an alien who has come into the United States illegally without  
4 being admitted [and] who takes up residence 50 miles from the border,” the Government  
5 responded, “The answer is they are held under 1226(a) and that they get a bond  
6 hearing...” Transcript of Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. \_\_\_\_  
7 (2018) (No. 15-1204). DHS reiterated that such individuals “would be held under  
8 1226(a)” and cited the administrative record to support that position. *Id.* These statements  
9 reflect DHS’s prior litigation stance that § 1226(a) governs detention for noncitizens who  
10 have entered and are residing in the United States, a position directly contrary to the  
11 agency’s current interpretation applying § 1225(b)(2)(A) to such individuals. Having  
12 prevailed in *Jennings* after taking this position, they should be estopped from taking the  
13 contrary position now simply because their political or litigation interests have changed.  
14 Estoppel in this case is necessary to preserve the predictability inherent in the rule of law  
15 and due process under the Fifth Amendment, as well as to protect the integrity of the  
16 judicial system.

17 34. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected  
18 well-established understanding of the statutory framework and reversed decades of  
19 practice.

20 35. The new policy, entitled “Interim Guidance Regarding Detention Authority for  
21 Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States  
22 without inspection shall now be subject to mandatory detention provision under §

---

<sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects  
2 those who have resided in the United States for months, years, and even decades.

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

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

10 38. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma,  
11 Washington, immigration court stopped providing bond hearings for persons who entered  
12 the United States without inspection and who have since resided here. There, the U.S.  
13 District Court in the Western District of Washington found that such a reading of the INA  
14 is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not  
15 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F.  
16 Supp. 3d 1239 (W.D. Wash. 2025).

17 39. A growing number of federal courts have rejected ICE and EOIR's expanded  
18 interpretation of the Immigration and Nationality Act's detention provisions. These  
19 courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention  
20 authority applicable in these cases. For example, courts in Georgia, Massachusetts,  
21 Arizona, New York, Minnesota, California, and Nebraska have reached this conclusion.  
22 *See J.A.M. v. Streeval*, No. 4:24-cv-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1,  
23 2025), *Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v.*

1 *Figueroa*, No. CV 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez*  
2 *v. Francis*, No. 25 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*,  
3 No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-  
4 11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-  
5 BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3,  
6 2025).

7 40. These decisions reflect a clear judicial consensus that the government’s reliance on §  
8 1225(b)(2) is misplaced in cases involving those whose immigration status lawfully falls  
9 under § 1226(a).

10 41. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies  
11 the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the  
12 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like  
13 Petitioner.

14 42. Section 1226(a) applies by default to all persons “pending a decision on whether the  
15 [noncitizen] is to be removed from the United States.” These removal hearings are held  
16 under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

17 43. The text of § 1226 also explicitly applies to people charged as being inadmissible,  
18 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E).

19 Subparagraph (E)’s reference to such people makes clear that, by default, such people are  
20 afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained,  
21 “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that  
22 absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp.

1 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S.  
2 393, 400 (2010); *see also Gomes*, 2025 WL 1869299, at \*7.

3 44. Section 1226 therefore leaves no doubt that it applies to people who face charges of being  
4 inadmissible to the United States, including those who are present without admission or  
5 parole.

6 45. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently  
7 entered the United States and were not free to mingle with the general population after  
8 being free from official restraint. The statute's entire framework is premised on  
9 inspections at the border of people who are "seeking admission" to the United States. 8  
10 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory  
11 detention scheme applies "at the Nation's borders and ports of entry, where the  
12 Government must determine whether [a] [noncitizen] seeking to enter the country is  
13 admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

14 46. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to  
15 people like Petitioner, who were encountered at the border and released after a quasi-  
16 judicial determination by an immigration official designating the Respondent an  
17 Unaccompanied Minor. The Government's own designation of the Petitioner and  
18 releasing him from ORR custody pursuant to 8 U.S.C. § 1226(a) reflects a discretionary,  
19 fact-based determination that Petitioner was not subject to mandatory detention under §  
20 1225(b)(2)(A). This quasi-judicial decision was made by DHS at the outset of  
21 proceedings, based on the facts available to both parties and Petitioner's own admissions.

22 47. A growing number of federal courts have rejected ICE and EOIR's expanded  
23 interpretation of the Immigration and Nationality Act's detention provisions, specifically

1 in reference to Unaccompanied Minors, like the Petitioner. These courts have  
2 consistently held that Noncitizens previously released as Unaccompanied Minors and  
3 detained by ICE years later were detained pursuant to § 1226(a), not § 1225(b)(2). Thus §  
4 1226(a) governs the detention authority applicable in these cases. For example, such  
5 courts in Florida, Massachusetts, New Jersey, Virginia, Tennessee, and Maine have  
6 reached this conclusion. *See Aguilar Merino v. Ripa*, No. 25-23845, 2025 WL 2941609  
7 (S.D. Fla. Oct. 15, 2025); *Oliviera Gomez v. Hyde*, No. 25-cv-11571, 2025 WL 1869299,  
8 at \*5–7 (D. Mass. July 7, 2025); *Doe v. Moniz*, No. 1:25-CV-12094-IT, 2025 WL  
9 2576819, at \*5 (D. Mass. Sept. 5, 2025); *Inlago Tocagon v. Moniz*, No. 25-CV-12453-  
10 MJJ, 2025 WL 2778023, at \*4 (D. Mass. Sept. 29, 2025); *Lopez Sarmiento v. Perry*, No.  
11 25-CV-01644, 2025 WL 3091140 (E.D. Va. Nov. 5, 2025); *Patel v. Almodovar*, No. 25-  
12 15345, 2025 WL 3012323 (D.N.J. Oct. 28, 2025); *Godinez-Lopez v. Ladwig*, No. 25-CV-  
13 02962-SHL-ATC, 2025 WL 3047889 (W.D. Tenn. Oct. 31, 2025); *Maldonado v. Olson*,  
14 No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at \*12 (D. Minn. Aug. 15, 2025);  
15 *Aguilar Guerra v. Joyce*, No. 25-cv-00534-SDN, 2025 WL 2999042 (D. Me. Oct. 24,  
16 2025).

17 48. These decisions reflect a clear judicial consensus that the government’s reliance on §  
18 1225(b)(2) is misplaced in cases involving those whose immigration status lawfully falls  
19 under § 1226(a).

20 49. Once released, Due Process requires that a person like the Petitioner receives a hearing  
21 before a neutral decisionmaker to determine whether any re-detention is justified, and  
22 whether the person is a flight risk or danger to the community.  
23

**FACTS**

1  
2 50. Mr. RIGOBERTO ISMAEL SIMON DIYES (“Mr. Simon”) is a twenty-year-old citizen  
3 and national of Guatemala.

4 51. Mr. Simon fled Guatemala seeking asylum and related protections from persecution in  
5 the United States.

6 52. On or about November 6, 2022, Mr. Simon entered the United States at the age of 17 and  
7 was designated an Unaccompanied Minor.

8 53. On or around December 2, 2022, Mr. Simon was released to the custody of his Aunt in  
9 New Jersey.

10 54. Following his release on December 19, 2024, Mr. Simon timely filed form I-589,  
11 Application for Asylum and Withholding of Removal as an Unaccompanied Minor Child.  
12 This application remains pending.

13 55. Additionally, on January 26, 2025, the Superior Court of New Jersey found Mr. Simon  
14 dependent upon the state and issued a dependency order allowing him to initiate filing  
15 Form I-360, Special Immigrant Juvenile Status with USCIS.

16 56. Mr. Simon filed his Form I-360 on May 27, 2025, this petition remains pending.

17 57. Mr. Simon has applied for and maintained lawful work authorization as well as graduated  
18 high school since his entry into the United States.

19 58. Despite conformance with the law on October 11, 2025, in Elizabeth, New Jersey, ICE  
20 officials arrived at Mr. Simon’s home.

21 59. Mr. Simon was returning from the store with his Aunt. As his Aunt entered their home,  
22 and Mr. Simon was left alone outside, ICE officials approached Mr. Simon and detained  
23 him.

1 60. Despite providing evidence of pending applications and receipt notices, ICE officers  
2 detained and transported Mr. Simon to the Elizabeth Detention Center in New Jersey. Mr.  
3 Simon is now detained at the Folkston Detention Center in Folkston, Georgia.

4 61. Mr. Simon's detention has inflicted profound harm on his mental health and physical strain  
5 on his body. Specifically, Mr. Simon suffers from asthma and has not had access to his  
6 inhaler and any other medication since his detention.

7 62. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider  
8 Petitioner's bond request, and his unlawful detention cannot be litigated before that body,  
9 who collaborated with the DHS – who is a party to these contested proceedings – to adopt  
10 the DHS position wholesale, because such efforts would be futile.

11 63. As a result, Petitioner remains in detention. Without relief from this court, he faces the  
12 prospect of months, or even years, in immigration custody, separated from his family and  
13 community while his relief remains pending.

14 **CLAIMS FOR RELIEF**  
15 **COUNT I**

16 **Violation of the INA**

17 64. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
18 paragraphs.  
19

20 65. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
21 noncitizens residing in the United States who are subject to the grounds of  
22 inadmissibility.  
23

24 66. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued  
25 detention and violates the INA.  
26

**COUNT II**  
**Violation of the Bond Regulations**

1  
2  
3  
4 67. Petitioner incorporates by reference the allegations of fact set forth in preceding  
5 paragraphs.

6 68. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-  
7 Immigration and Naturalization Service issued an interim rule to interpret and apply  
8 IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of  
9 [Noncitizens],” the agencies explained that “[d]espite being applicants for admission,  
10 [noncitizens] who are present without having been admitted or paroled (formerly referred  
11 to as [noncitizens] who entered without inspection) will be eligible for bond and bond  
12 redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear  
13 that individuals who had entered without inspection were eligible for consideration for  
14 bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing  
15 regulations.

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

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

**COUNT III**  
**Violation of Due Process**

20  
21  
22 71. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in  
23 the preceding paragraphs as if fully set forth herein.

24 72. The government may not deprive a person of life, liberty, or property without due process  
25 of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,

1 detention, or other forms of physical restraint—lies at the heart of the liberty that the  
2 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

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

4 74. The government’s detention of Petitioner without a bond redetermination hearing to  
5 determine whether he is a flight risk or danger to others violates his right to due process.

6 **Judicial Estoppel**

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

9 76. The Government is judicially estopped from asserting that Petitioner is subject to  
10 mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation,  
11 including *Jennings v. Rodriguez*, the Government successfully argued that individuals who  
12 entered without inspection and were not apprehended near the border or within 14 days  
13 were subject to discretionary detention under § 1226(a), not mandatory detention under §  
14 1225(b)(2)(A). See *Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg. at 7–8 (Nov. 30,  
15 2016). Courts accepted that position. Now, the Government reverses course and asserts the  
16 opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S.  
17 742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then  
18 adopts a contrary position to gain an unfair advantage. The Government’s reversal  
19 undermines the integrity of the judicial process and prejudices Petitioners who relied on  
20 the prior interpretation.

21 **PRAYER FOR RELIEF**

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

23 a. Assume jurisdiction over this matter;

- 1           b.     Order that Petitioner shall not be transferred outside the Southern District of  
2                 Georgia while this habeas petition is pending;
- 3           c.     Issue an Order to Show Cause ordering Respondents to show cause why this  
4                 Petition should not be granted within three days;
- 5           d.     Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in  
6                 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §  
7                 1226(a) within seven days;
- 8           e.     Declare that Petitioner’s detention is unlawful;
- 9           f.     Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act  
10                (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under  
11                law; and
- 12          g.     Grant any other and further relief that this Court deems just and proper.

13  
14  
15  
16 DATED this 14th of November 2025.

17 /s/ Eszter Bardi , Esq.  
18 Eszter Bardi, Esq.  
19 Attorney for Petitioner  
20 Georgia Bar No. 200449  
21 The Sonoda Law Firm  
22 1849 Clairmont Road  
23 Decatur GA 30033  
24 Telephone: (404)525-0430  
25 Email:  
26 Ebardi@sonodlaw.com  
27 *Attorney for Petitioner*  
28  
29

1  
2 **28 U.S.C. § 2242 VERIFICATION STATEMENT**  
3

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

9  
10 DATED this 14th of November 2025.

11 /s/ Eszter Bardi , Esq.

12 Eszter Bardi, Esq.

13 Attorney for Petitioner

14 Georgia Bar No. 200449

15 The Sonoda Law Firm

16 1849 Clairmont Road

17 Decatur GA 30033

18 Telephone: (404)525-0430

19 Email:

20 Ebardi@sonodlaw.com

21 *Attorney for Petitioner*  
22  
23