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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

Jaime Noel LEMUS BERGANZA,

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. 

1 INTRODUCTION

2 1. Petitioner, Jaime Noel Lemus Berganza, is a forty-eight-year-old native and  
3 citizen of Guatemala who entered the United States without inspection on or around September  
4 16, 1992, and has resided in the United States for thirty-three years.

5 2. Petitioner is in the physical custody of Respondents at the Stewart Detention  
6 Center in Lumpkin, Georgia. He now faces unlawful detention because the Department of  
7 Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have  
8 concluded Petitioner is subject to mandatory detention.

9 3. Petitioner is charged with, inter alia, having entered the United States without  
10 admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

11 4. Based on this allegation in Petitioner's removal proceedings, DHS denied the  
12 Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8,  
13 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone  
14 inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without  
15 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and  
16 therefore ineligible to be released on bond.

17 5. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or  
18 Board) issued a precedent decision, binding on all immigration judges, holding that an  
19 immigration judge has no authority to consider bond requests for any person who entered the  
20 United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).  
21 The Board determined that such individuals are subject to detention under 8 U.S.C. §  
22 1225(b)(2)(A) and therefore ineligible to be released on bond.



1 13. Respondent Dickerson is his immediate custodian.

2 14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
3 Respondents are employees, officers, and agencies of the United States, and because a  
4 substantial part of the events or omissions giving rise to the claims occurred in the Middle  
5 District of Georgia.

6  
7 **REQUIREMENTS OF 28 U.S.C. § 2243**

8 15. The Court must grant the petition for writ of habeas corpus or order Respondents  
9 to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an  
10 order to show cause is issued, Respondents must file a return “within three days unless for good  
11 cause additional time, not exceeding twenty days, is allowed.” *Id.*

12 16. Habeas corpus is “perhaps the most important writ known to the constitutional  
13 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or  
14 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the  
15 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and  
16 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208  
17 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

18 **PARTIES**

19 17. Petitioner Jaime Noel Lemus Berganza is a citizen and national of Guatemala  
20 who has been in immigration detention since November 4, 2025. After arresting Petitioner in  
21 Atlanta, Georgia, ICE did not set bond and Petitioner is unable to obtain review of his custody by  
22 an immigration judge, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N.

1 Dec. 216 (BIA 2025). Petitioner is currently detained at the Stewart Detention Center in  
2 Lumpkin, Georgia.

3 18. Respondent Jason Streeval is the Warden of the Stewart Detention Center. As  
4 such, Respondent Streeval is responsible for the operation of the Detention Center where  
5 Petitioner is detained. As ICE contracts with private prisons such as the Stewart Detention Center  
6 to house immigration detainees such as the Petitioner, Respondent Streeval has immediate  
7 physical custody of the Petitioner.

8 19. Respondent Todd Lyons is the Director of the Field Office of ICE's Enforcement  
9 and Removal Operations division. As such, Respondent Lyons is being sued in his official  
10 capacity.

11 20. Respondent Ladeon Francis is the Atlanta Field Office Director for Immigration  
12 and Customs Enforcement (hereinafter FOD). As such, Respondent Francis is responsible for  
13 the oversight of ICE operations at the Stewart Detention Center. Respondent Sterling is being  
14 sued in his official capacity.

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

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

1 **LEGAL FRAMEWORK**

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

4 24. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal  
5 proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a)  
6 detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§  
7 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of  
8 certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

15 28. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
16 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.  
17 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section  
18 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1,  
19 139 Stat. 3 (2025).

20 29. Following the enactment of the IIRIRA, EOIR crafted new regulations explaining  
21 that, in general, people who entered the country without inspection were not considered detained  
22 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited  
23  
24

1 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;  
2 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

3 30. Thus, in the decades that followed, most people who entered without inspection  
4 and were placed in standard removal proceedings received bond hearings, unless their criminal  
5 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent  
6 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”  
7 were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8  
8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that  
9 § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

10 31. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
11 rejected well-established understanding of the statutory framework and reversed decades of  
12 practice.

13 32. The new policy, entitled “Interim Guidance Regarding Detention Authority for  
14 Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without  
15 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The  
16 policy applies regardless of when a person is apprehended, and affects those who have resided in  
17 the United States for months, years, and even decades.

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

22  
23  
24 <sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

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

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

11           36.     Subsequently, court after court has adopted the same reading of the INA's  
12 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*,  
13 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,  
14 No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025);  
15 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,  
16 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL  
17 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025  
18 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE,  
19 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-  
20 ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-  
21 BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH),  
22 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-  
23 BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-

1 02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kosiak v. Trump*, No. 3:25-cv-01093-  
2 JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051  
3 (ECT/DJF), --- F. Supp. 3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v.*  
4 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);  
5 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,  
6 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.  
7 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.  
8 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.  
9 Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2  
10 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not §  
11 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL  
12 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-  
13 RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).

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

17 38. Section 1226(a) applies by default to all persons “pending a decision on whether  
18 the [noncitizen] is to be removed from the United States.” These removal hearings are held under  
19 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

20 39. The text of § 1226 also explicitly applies to people charged as being inadmissible,  
21 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph  
22 (E)’s reference to such people makes clear that, by default, such people are afforded a bond  
23 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress  
24

1 creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions,  
2 the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove*  
3 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025  
4 WL 1869299, at \*7.

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

8 41. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
9 recently entered the United States. The statute's entire framework is premised on inspections at  
10 the border of people who are "seeking admission" to the United States. 8 U.S.C.  
11 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme  
12 applies "at the Nation's borders and ports of entry, where the Government must determine  
13 whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583  
14 U.S. 281, 287 (2018).

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

## 18 FACTS

19 43. Petitioner is a forty-eight-year-old native and citizen of Guatemala. *See Exhibit 1,*  
20 *Petitioner's Passport.*

21 44. Petitioner has resided in the United States since 1992 and lives in Conyers,  
22 Georgia.

1 45. On November 4, 2025, Petitioner was arrested while reporting for an Order of  
2 Supervision (OSUP) check-in. Petitioner had previously been detained and was released on May  
3 31, 2017, on his own recognizance with the requirement that he report for OSUP check-ins. This  
4 release on Petitioner's own recognizance cite to 8 U.S.C. § 1226 as authority for such release.

5 *See Exhibit 2, Petitioner's May 31, 2017 Order of Release on Recognizance.*

6 46. Since petitioner's May 31, 2017 release, petitioner has not violated the conditions  
7 of his release.

8 47. Petitioner is now detained at the Stewart Detention Center.

9 48. Petitioner is the father of four (4) United States citizen (USC) children. His two  
10 biological children are [REDACTED] born on [REDACTED], and [REDACTED]  
11 [REDACTED], born on [REDACTED]. His two stepchildren are [REDACTED]  
12 born on [REDACTED], and [REDACTED], born on [REDACTED] *See Exhibit*  
13 *3, Birth Certificates for Petitioner's USC Children.*

14 49. Petitioner's criminal history consists of a domestic violence charge from 2015 that  
15 was reduced to disorderly conduct and minor traffic violations. Petitioner is neither a flight risk  
16 nor a danger to the community.

17 50. On November 17, 2025, Petitioner, through counsel, filed a Motion for Bond with  
18 the immigration judge. *See Exhibit 4, Petitioner's Motion for Bond Filed with the Immigration*  
19 *Judge.*

20 51. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider  
21 Petitioner's bond request. *See Exhibit 5, Immigration Judge's Order Denying Bond for Lack of*  
22 *Jurisdiction.*

1 52. As a result, Petitioner remains in detention. Without relief from this court, He  
2 faces the prospect of months, or even years, in immigration custody, separated from his family  
3 and community.

4 **CLAIMS FOR RELIEF**

5 **COUNT I**  
6 **Violation of the INA**

7 53. Petitioner incorporates by reference the allegations of fact set forth in the  
8 preceding paragraphs.

9 54. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
10 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As  
11 relevant here, it does not apply to those who previously entered the country and have been  
12 residing in the United States prior to being apprehended and placed in removal proceedings by  
13 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to  
14 § 1225(b)(1), § 1226(c), or § 1231.

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

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

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

21 57. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-  
22 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.  
23 Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the  
24 agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present

1 without having been admitted or paroled (formerly referred to as [noncitizens] who entered  
2 without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323  
3 (emphasis added). The agencies thus made clear that individuals who had entered without  
4 inspection were eligible for consideration for bond and bond hearings before immigration judges  
5 under 8 U.S.C. § 1226 and its implementing regulations.

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

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

10 **COUNT III**  
11 **Violation of Due Process**

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

14 61. The government may not deprive a person of life, liberty, or property without due process  
15 of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,  
16 detention, or other forms of physical restraint—lies at the heart of the liberty that the  
17 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

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

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

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 Middle 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 DATED this 21st day of November, 2025.

14 By: 

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