

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION**

KEVIN SANTIAGO RODRIGUEZ  
RODRIGUEZ,  
A# ,

Petitioner,

v.



**JASON STREEVAL**, Warden of  
Stewart Detention Center,  
**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; and  
**PAMELA BONDI**, U.S. Attorney  
General.

Respondents.

Civile Action No.:

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

## INTRODUCTION

1. Petitioner KEVIN SANTIAGO RODRIGUEZ RODRIGUEZ, A#   
 is in the physical custody of Respondents at the Stewart Detention Center. *See Exhibit A, Printout from ICE Online Detainee Locator System dated 12/11/2025.* Petitioner challenges his ongoing unlawful and unconstitutional detention.
2. Petitioner is a 25-year old Honduran national who entered the United States in 2022. Petitioner applied for admission at the U.S.-Honduras border, was permitted to enter the United States, was released into the interior on his own recognizance, and was placed into removal proceedings. *See Exhibit B, Notice to Appear.*
3. Petitioner was later apprehended in the interior of the United States on or about in 2025 following a routine traffic stop where he was charged with possession of cocaine. Petitioner was transferred into the custody of Immigration and Customs Enforcement (ICE) and was served with a Notice to Appear, initiating removal proceedings before the Executive Office for Immigration Review (EOIR).
4. To date, Petitioner is held in ICE custody without bond.
5. Petitioner's continued detention by ICE is unlawful and unconstitutional. 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.

6. 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.
7. While § 1225 mandates detention without bond for noncitizens apprehended at the border as “seeking admission,” it does not apply to those like the Petitioner, who were detained within the United States long after arrival here.
8. 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 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.

9. 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**

10. 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).

11. 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.

12. Additionally, this Court has authority to issue a declaratory judgment 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.

13. This Court possesses federal question jurisdiction under the APA to “hold unlawful and set aside agency action” deemed “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” as outlined in 5 U.S.C. § 706(2)(A). In the absence of a specific statutory review process, APA review of final agency actions can proceed through “any applicable form of legal action,” which includes actions for declaratory judgments, writs of prohibitory or mandatory injunction, or habeas corpus, in a court of competent jurisdiction, as specified in 5 U.S.C. § 703.

14. Petitioner’s claims challenge only his civil immigration detention and the procedures used to prolong it—not the merits of removability or any final

order of removal—and therefore fall outside 8 U.S.C. § 1252(b)(9)’s channeling provision. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (detention challenges are not “questions of law or fact arising from” removal proceedings). Consistent with that framing, any injunctive relief sought here is strictly as-applied to Petitioner— for example, directing Petitioner’s release under § 1226(a) or barring application of § 1225 as to Petitioner —and does not “enjoin or restrain the operation” of any statute within § 1252(f)(1)’s bar. In any event, § 1252(f)(1) permits individualized, as-applied relief for a single noncitizen, even while prohibiting class-wide injunctions. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–49 (2022).

15. Section 1252(f)(1) does not bar the individualized injunctive relief sought here. That provision limits lower courts’ authority to “enjoin or restrain the operation” of the INA’s detention and removal provisions on a class-wide or programmatic basis but expressly preserves injunctive relief “with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.” 8 U.S.C. § 1252(f)(1); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–50 (2022). Petitioner seeks only as-applied relief tailored to Petitioner —e.g., directing Petitioner’s release under § 1226(a) or precluding DHS from enforcing the “arriving alien” definition of § 1225 toward Petitioner. That relief neither halts the

general operation of any INA provision nor provides class-wide relief and thus falls squarely within § 1252(f)(1)'s carve-out.

16. Section 1252(g) is likewise inapplicable. It is a “narrow” jurisdictional bar that applies only to three discrete decisions or actions: “to commence proceedings, adjudicate cases, or execute removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner does not challenge any such decision. Petitioner challenges ongoing civil detention and DHS’s use of an unlawful interpretation to nullify the plain language of the INA and its regulations as applicable to these agencies. Such detention-related claims and challenges to custody procedures fall outside § 1252(g). See *id.* at 482–83; *cf. Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (§ 1252(b)(9) does not channel detention claims).

17. 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 (2004); *Ex parte Endo*, 323 U.S. 283, 307 (1944); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

## VENUE

18. 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.
19. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Stewart Detention Center in Stewart, Georgia. 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 Southern District of Georgia, the judicial district in which Petitioner currently is detained.
20. 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 Southern 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 KEVIN SANTIAGO RODRIGUEZ RODRIGUEZ is a 25-year-old citizen and national of Honduras who has resided in the United States since 2022. He presented himself at the border and was placed into removal proceedings before being released from custody and allowed to proceed into

the interior of the United States. He has no criminal convictions and is not a danger to the community and not a flight risk. Petitioner's pregnant wife relies on petitioner for financial support.

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. Petitioner acknowledges that under *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), 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**

25. 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 (11<sup>th</sup> Cir. 2015) (“It is no longer the law of this circuit that exhaustion of administrative remedies is a jurisdictional requirement in a § 2241 proceeding.”).

26. 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.

27. 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.

28. 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.

## LEGAL FRAMEWORK

### A. Civil Detention Statutes at Issue

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

30. 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).

31. 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).

32. 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).

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

34. 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).

35. 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).

36. 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)).

37. 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.

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

39. 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

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

subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

40. 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.

41. 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).

## **B. Federal District Courts' Interpretations of Applicable Detention**

### **Statutes**

42. 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, Arizmendi Mora v. Streeval et al.*, Civ. No. 4:25-cv-00342-CDL-AGH, (M.D.G.A. Nov. 3, 2025); *See also, Antonio*

*Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 LX 442534 (S.D. Ga. Nov. 4, 2025). *See also* *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-

EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).

43. 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.

44. Additionally, courts in the Southern District of Texas and the Western District of Texas have held that a person who entered the United States, was apprehended, was placed into removal proceedings, released into the interior, and later apprehended in the interior of the United States similarly

falls under the 8 U.S.C. 1226(a) detention statute. See *Lopez-Tipaz v. Noem et al*, 4:25-cv-04905 (S.D. Tex. Nov. 25, 2025), *Granados v Noem et al*, 5:25-cv-01464 (W.D. Tex. Nov. 26, 2025), *Ramos de Lara v. Noem et al.*, 5:25-cv-01459 (W.D. Tex. Nov. 21, 2025)

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.

**C. This Court's Holding in J.A.M.**

48. In a similar case litigated in this Court, the court found that while Petitioner was not subject to detention under § 1225(b)(2)(A) but that § 1226(a) applies to aliens arrested in the interior, entitling them to a bond hearing.

*See, Arizmendi Mora v. Streeval et al.*, Civ. No. 4:25-cv-00342-CDL-AGH, (M.D.G.A. Nov. 3, 2025).

49. The court rejected the government's argument that all noncitizens present without admission are subject to mandatory detention under § 1225(b), finding that this interpretation would render § 1226(a) superfluous and contradict the statutory structure and legislative history. The court found jurisdiction to review the legality of Petitioner's detention under 28 U.S.C. § 2241, rejecting Respondents' argument that 8 U.S.C. § 1252(g) barred review, as the challenge was to the legal basis of detention, not removal proceedings.

50. The court held that § 1226(a) governs detention of noncitizens arrested in the interior who are not actively seeking admission, entitling them to discretionary bond hearings. The Court found BIA's interpretation in *Yajure Hurtado* unpersuasive and inconsistent with the plain language of the INA, implementing regulations, and fundamental canons of statutory interpretation.

51. By contrast, § 1225(b) applies to people arriving and apprehended 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).

52. 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.

53. Petitioner’s circumstances are the same or similar to the landmark *J.A.M.* case, therefore the Writ of Habeas should be granted for Petitioner and the Court should order similar relief.

#### **D. The Administrative Procedure Act**

54. The APA authorizes judicial review of final agency action. 5 U.S.C. § 704. The APA sets minimum standards for final agency action.

55. Final agency actions are those (1) that “mark the consummation of the agency’s decision making process” and (2) “by which rights or obligations

have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

56. ICE’s “Interim Guidance Regarding Detention Authority for Applications for Admission” constitutes a final agency action, making it subject to this Court’s review in the Petitioner’s case. Under this new interpretation, the agency asserts

**E. The *Accardi* Doctrine Requires Agencies to Follow Internal Rules**

57. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); see also *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”).

58. *Accardi* is not “limited to rules attaining the status of formal regulations.” *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. See *Morton v. Ruiz*, 415 U.S. 199, 235 (affirming reversal of

agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

## FACTS

59. Petitioner entered the United States at an unknown place along the U.S. Mexico border in 2022. He applied for admission and was placed into removal proceedings before being released into the interior of the United States.
60. From 2022 to 2025, Petitioner has been residing in the United States and has made significant family and community ties. Petitioner, whose removal proceedings remain ongoing, was re-apprehended in the interior of the United States in 2025 and is currently being held in detention without custody.
61. Because Petitioner was arrested in the interior of the United States 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.
62. 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.

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

64. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider Petitioner's bond request.

65. As a result, 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**

#### **Statutory Violation of the Immigration and Nationality Act: No-Bond Detention in Violation of 8 U.S.C. § 1226(a) and Unlawful Detention Under Improper Statutory Classification (INA §§ 1225 vs. 1226)**

66. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

67. 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, were released into the interior, and have been residing in the United States. Non-citizens re-apprehended in the interior are

detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231 (which is not the case with Petitioner).

68. Respondents' actions, as detailed herein, infringe upon the Petitioner's statutory right to a bond redetermination hearing before an immigration judge. Additionally, the Respondents' application of § 1225(b)(2) to the Petitioner unlawfully enforces continued detention, contravening both the Immigration and Nationality Act (INA) and the Petitioner's constitutional rights, which will be further addressed below.

69. Petitioner's continued detention under § 1225(b)(2) is therefore unauthorized by statute, contrary to longstanding agency practice, and in violation of the INA and APA.

70. Even if the Petitioner were to have a bond hearing before an immigration judge, the judge would likely deny bond based on the same unlawful and novel statutory interpretation outlined in the *Matter of Yajure Hurtado*, as previously discussed. Consequently, even if such a hearing were granted, Respondents would still infringe upon Petitioner's constitutional rights to a full and fair hearing (as immigration judges are no longer neutral arbitrators), thereby violating his lawful right to bond consideration.

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

***Summary of Claim of Petitioner's Third Claim for Relief: Petitioner alleges that***

*Respondents' refusal to provide a bond hearing violates binding agency regulations, including 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, which require that noncitizens apprehended in the interior be eligible for bond and custody review under § 1226(a).*

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

72. 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.

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

74. 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 Substantive Due Process.**

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

76. All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment.

77. 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 (2022).

78. Under the civil-detention framework set out in *Zadvydas* and its progeny, the Government may deprive a non-citizen of physical liberty only when the confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in relation to, that purpose. Nonpunitive purpose such as preventing danger or flight and may not be excessive in relation to that purpose. *See Jennings*, 583 U.S. at 300–01; *Demore v. Kim*, 538 U.S. 510, 523 (2003).

79. Immigration detention is civil, not criminal, in nature, and therefore cannot be punitive. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community.

Petitioner's detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.

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

81. 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.

#### **COUNT IV**

#### **Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B) Contrary to Law and Constitutional Rights**

82. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

83. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

84. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, any law, and not merely those laws that the agency itself

is charged with administering.” *FCC v. NextWave Pers. Commc’ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

85. The July 2025 ICE memorandum and the EOIR’s decision in *Yajure*

*Hurtado* represent a significant and unauthorized expansion of § 1225(b)(2), categorizing individuals who entered the United States without inspection years ago as perpetual “applicants for admission.” This expansion constitutes a violation of the APA. The ICE memorandum was issued in stealth, without public notice or opportunity for comment, in direct contravention of the APA’s requirements for transparency and public participation in rulemaking.

86. Furthermore, while *Yajure Hurtado* was a published decision by the EOIR, it

conflicts with the plain language of the INA and existing EOIR regulations. The decision appears to have been strategically published by the BIA to constrain immigration judges nationwide, effectively preventing them from granting bond to affected individuals, thereby undermining the procedural fairness guaranteed by the INA and the APA. Up until its publication, immigration judges were granting bonds to individuals who entered without inspection. *See, e.g., Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

87. These actions were contrary to the agencies’ constitutional power under the Fifth Amendment’s Due Process Clause, as explained above. These recent

changes were not in accordance with the plain language of the INA and implementing regulations governing who is an “applicant for admission” or an “arriving alien”, as cited and discussed in the Statutory Framework section above.

88.DHS acted contrary to law. *See also Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (agency must follow its own regulations) (a separate claim to relief under *Accardi* is forthcoming below). These novel interpretations should be held unlawful and set aside because it was contrary to the agency’s constitutional power and not in accordance with the INA and implementing regulations.

### **PRAYER FOR RELIEF**

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

- a. Assume jurisdiction over this matter under 28 U.S.C. §§ 2241 and 1331 and the Suspension Clause;
- b. Order that Petitioner shall not be transferred outside the Middle District of Georgia while this habeas petition is pending pursuant to 28 U.S.C. §§ 1651(a) and 2241;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;

- d. Declare that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a)
- e. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner immediately or, in the alternative, within three (3) days provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a), where the government bears the burden to prove, by clear and convincing evidence, that Petitioner is a flight risk or a danger to the community;
- f. Enjoin Respondents from re-detaining Petitioner in the future pursuant to 8 U.S.C. § 1225; and
- g. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted this 11th day of December, 2025.

//s// Eszter Bardi  
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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 11th day of December, 2025.

          //s// Eszter Bardi            
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