

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

---

**SIMION HERNDANDEZ,**  
a/k/a SIMON HERNANDEZ VELIZ  
a/k/a SIMON HERNANDEZ

*Petitioner,*

v.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

Case No. 3:26-cv-00019

**RONNIE WOODALL,** Warden, Baker  
Correctional Institution, in his official  
capacity as Warden, Baker Correctional  
Institution;

**GARRETT RIPA,** in his official  
capacity as Field Office Director, Miami  
Field Office, U.S. Immigration and  
Customs Enforcement;

**KRISTI NOEM;** in her official capacity  
as Secretary of the U.S. Department of  
Homeland Security,

**PAM BONDI,** in her official capacity as  
Attorney General of the United States,

**SIRCE OWEN,** in her official capacity,  
Acting Director for Executive Office for  
Immigration Review;

**EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW;**

*Respondents.*

---

**INTRODUCTION**

1. This case challenges the unlawful detention of SIMION HERNANDEZ ("Petitioner" or "Mr. Hernandez," who is currently in the custody

of Immigration and Customs Enforcement (“ICE”) at the Baker Correctional Institution, (also known as “North Florida Detention Center”) located in Baker County, Florida.

2. Petitioner, a citizen of Guatemala, entered the United States without inspection and without entry documents over 30 years ago in October of 1995 and he has not left the United States since that time.

3. On December 17, 2025, Petitioner was taken into custody by ICE and detained under 8 U.S.C. §1225(b)(2) and issued no bond.

4. Petitioner challenges his unlawful detention under 8 U.S.C. §1225.

#### **PARTIES**

5. Petitioner, SIMION HERNANDEZ has lived in the United States for approximately 30 years. Prior to Petitioner’s detention on or about December 17, 2025, he was residing in Levy County, Florida. Petitioner is currently detained at the Baker Correctional Institution, also known as the North Florida Detention Center.

6. Respondent, RONNIE WOODALL, warden of the Baker Correctional Institution, is sued in his official capacity as Warden of the Baker Correctional Institution, where Petitioner is currently detained.

7. Respondent GARRETT RIPA is sued in his official capacity as the ICE Field Office Director for Miami, which includes the Baker Correctional Institution.

8. Respondent, KRISTI NOEM is sued in her official capacity as the Secretary of the Department of Homeland Security.

9. Respondent PAM BONDI is sued in her official capacity as the Attorney General of the United States.

10. Respondent, SIRCE OWEN, is sued in her official capacity, Acting Director for Executive Office for Immigration Review;

11. Respondent, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR) is a federal agency responsible for overseeing immigration bond hearings in the United States.

### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the United States Constitution because this action is a habeas corpus petition and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*

13. Venue is proper in this district because Respondent Warden RONNIE WOODALL is Petitioner's immediate custodian and under 28 U.S.C. § 1391(e)(1) because Respondents are officers of United States agencies, Petitioner currently resides within this District, and there is no real property involved in this action.

**STATEMENT OF FACTS AND PROCEDURAL HISTORY**

14. Petitioner, a citizen of Guatemala, entered the United States without inspection over 30 years ago in October of 1995 and he has not left the United States since that time.

15. Petitioner affirmatively applied for asylum around 1996. An interview notice was sent to the address that Petitioner listed on the asylum application, however, Petitioner did not receive the notice and he did not appear at the interview.

16. The government issued a Notice to Appear for immigration court and mailed it to the same address that was listed on the asylum application. Petitioner did not receive the notice of a court date and subsequently failed to appear for the scheduled court date. At the court date, an immigration judge entered an in absentia order of removal.

17. On November 10, 2015, Petitioner's wife, who is a United States Citizen, filed a Form I-130 Petition for Alien Relative, with the United States Citizenship and Immigration Services ("USCIS") listing Petitioner as the beneficiary.

18. On April 1, 2016, the Form I-130 was approved.

19. In 2020, Petitioner, after learning that he had an in absentia order of removal, filed a motion to reopen his immigration proceedings which was granted by the immigration judge.

20. On August 7, 2023, the immigration judge granted a motion to administratively close Petitioner's immigration proceedings while Petitioner filed an I-601A provisional waiver request with USCIS. An I-601A provisional waiver allows certain relatives of U.S. citizens or lawful permanent residents to request a provisional waiver of the unlawful presence grounds of inadmissibility under 18 U.S.C. §1182(a)(9)(B) before they depart the United States to appear at a U.S. Embassy or Consulate for an immigrant visa interview.

21. On November 30, 2023, Petitioner filed the Form I-601A provisional waiver with USCIS, which is still pending with USCIS.

22. On May 16, 2025, the Department of Homeland Security ("DHS") filed a motion to recalendar the administratively closed proceedings.

23. On July 8, 2025, DHS issued a notice to all ICE employees stating that 8 U.S.C. §1225(b)(2) applied to any alien present in the United States, "who has not been admitted...whether or not at a designated port of arrival." *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, AILA Doc. No. 25071607 (July 8, 2025). The notice states, "it is the position of DHS that such aliens are subject to detention under INA §235(b) [8 U.S.C. §1225(b)] and may not be released from ICE custody except by INA §212(d)(5) parole." *Id.* The notice also states "[t]hese aliens are also ineligible for a custody redetermination hearing (bond hearing) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS.

For custody purposes, these aliens are now treated in the same manner that ‘arriving aliens’ have historically been treated.” *Id.*

24. On September 5, 2025, the Board of Immigration Appeals decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Yajure Hurtado*, the BIA held that an immigration judge lacks authority to hear a noncitizen’s bond request if that noncitizen entered the United States without inspection, even if that noncitizen has resided within the United States for more than 2 years. *Id.* *Matter of Yajure Hurtado* is a published and precedential decision that is binding on immigration judges. 8 C.F.R. §1003.1(g)(2).

25. Based on the new DHS policy that any noncitizen who entered the U.S. without inspection is subject to mandatory detention under 8 U.S.C. §1225, Petitioner was arrested and detained by ICE.

26. On September 9, 2025, the immigration judge denied DHS’ motion to recalendar his administratively closed immigration case.

27. On November 20, 2025, the district court in *Bautista v. Santacruz*, 2025 U.S. Dist. LEXIS 233085 (C.D.Cal. Nov. 20, 2025 ) granted partial summary judgment on behalf of individual plaintiffs challenging the interpretation that noncitizens who entered the United States without inspection fell under the mandatory detention provision in 8 U.S.C. §1225(b)(2). On November 25, 2025, the district court in *Bautista* certified a nationwide class and extended declaratory judgment to the certified class. *Bautista*, 2025 U.S. Dist. LEXIS 231977 (C.D. Cal.

Nov. 25, 2025)(order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment). The declaratory judgment stated that the Bond Denial Class members are detained under 8 U.S.C. §1226(a), and therefore may not be denied for release consideration under 8 U.S.C. §1225(b)(2)(A). *Id.*

28. Despite the court order in *Bautista*, immigration judges throughout the United States continued to deny bond hearings to members of the certified class holding that *Matter of Yajure Hurtado* still controlled.

29. On December 18, 2025, the district court in *Bautista* issued an order clarifying that the court's previous order declared DHS policy unlawful and granted vacatur under the American Procedures Act and the district court entered a final judgment. *Bautista*, 2025 U.S. Dist. LEXIS 262265 (C.D.Cal. December 18, 2025).

30. Despite the new clarifying order, immigration judges throughout the United States have continued to apply 8 U.S.C. §1225(b)(2)(A) and have denied bond hearings to any individual who entered the United States without inspection, holding that those individuals are subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A).

31. On December 17, 2025, Petitioner was taken into custody by ICE and detained under 8 U.S.C. §1225(b)(2) and issued no bond.

32. Petitioner was transferred to the Baker Correctional Institution, also known as the North Florida Detention Center, where Petitioner is currently being detained by Respondents.

33. Petitioner does not have lawful status in the United States and is currently detained, he entered the United States without inspection approximately 30 years ago and was not apprehended upon arrival, and he is not detained under 8 U.S.C. §1226(c), §1225(b)(1), or §1231.

### **LEGAL FRAMEWORK**

34. This petition concerns the legal interpretation and interplay between two statutory provisions, 8 U.S.C. §1225 and 8 U.S.C. §1226, governing detention of noncitizens placed in removal proceedings.

35. Respondents have detained Petitioner under 8 U.S.C. §1225(b)(2), which applies to the inspection, detention and removal of applicants for admission. An “applicant for admission” is defined as “[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters.” 8 U.S.C. §1225(a)(1).

36. “Applicants for admission” who are “seeking admission” must remain in custody throughout immigration proceedings. 8 U.S.C. §1225(b)(2); see also *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018).

37. 8 U.S.C. §1225(b)(2)(A) requires detention “...in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted...” [emphasis added].

38. However, 8 U.S.C. §1225 does not apply to Petitioner because he has remained continuously inside the United States for approximately 30 years and is not “seeking admission”, which is required for that provision to apply. Rather, Petitioner is entitled to a bond hearing under 8 U.S.C. §1226(a).

39. 8 U.S.C. §1226(a) is the general detention statute that provides the framework for arrest, detention and release of noncitizens in removal proceedings. A person arrested and detained under 8 U.S.C. §1226(a) may be released on a bond of at least \$1,500 or on conditional parole. 8 U.S.C. §1226(a)(2).

40. 8 C.F.R. §236.1(d)(1) provides the regulatory framework for immigration judges to consider motions for bond reconsideration when DHS makes an initial determination that the noncitizen should be detained.

41. As opposed to a noncitizen arriving at the border, a noncitizen already present inside the United States “has a constitutional liberty interest to remain in the U.S.” *Knauff v. Shaughnessy*, 338 U.S. 537 (1950).

42. Respondents’ own agencies have historically applied §1226(a) to noncitizens who have entered the United States without inspection and have since resided inside the United States, while applying §1225(b)(2) only to those

encountered at the border. *Maldonado v. Feely et al.*, Case No. 25-cv-01542-RFB-EJY (D.Nev. Sept. 17, 2025).

43. DHS initially proceeded under 8 U.S.C. §1226 by charging Petitioner in the NTA with being present in the United States without admission or parole, as opposed to charging him as an “arriving alien.” DHS’ decision not to charge Petitioner as an arriving alien is evidence that 8 U.S.C. §1226 applies. *Boffil v. Field Off. Dir., Mia. Field Off.*, 25-cv-25179 (S.D.Fla. November 20, 2025, citing *Pizarro Reyes v. Raycraft*, No. 25-cv-12546 (E.D.Mich. Sep. 9, 2025).

44. Respondents’ interpretation of §1225(b)(2) is in contradiction to the plain meaning of the statutes, the legislative history of each statute, and the interpretation of each statute by courts in multiple jurisdictions.

45. The vast majority of district courts within the United States have all held that 8 U.S.C. §1225(b)(2) does not apply to noncitizens who are detained inside the United States. *See Bautista v. Noem*, 2025 U.S. Dist. LEXIS 227222 (M.D.Fla. November 19, 2025); *Merino v. Ripa et al.*, Case No. 25-23845-CIV-MARTINEZ (S.D. Fla. October 15, 2025); *J.A.M. v. Streeval*, 2025 U.S. Dist. LEXIS 215437 (M.D. Fla. November 1, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486 (E.D. Mich. Aug. 29, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK (D. Mass. July 7, 2025); *Martinez v. Hyde*, 1:25-cv-11613-BEM (D. Mass. July 24, 2025); *Rosado v. Figueroa et al.*, No. 2:25-cv-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez*

*Benitez v. Francis et al.*, No. 1:25-cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Gonzalez et al. v. Noem et al.*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. Aug. 13, 2025); *Santos v. Noem*, No. 1 :25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Romero v. Hyde, et al.*, No. 1:25-cv-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Benitez et al. v. Noem et al.*, No. 5:25-cv-02190-RGK-AS (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump et al.*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).

46. The district court's order in *Bautista* on November 25, 2025 and clarified on December 18, 2025, granted declaratory relief to members of the certified class nationwide.

47. Respondents have refused to provide bond redetermination hearings on jurisdiction grounds and have refused to abide by the declaratory relief order and have continued to deny motions for bond redetermination on jurisdiction grounds for members of the certified class.

**CLAIMS FOR RELIEF**

**Count One  
Relief Pursuant to *Bautista***

48. Petitioner realleges all paragraphs above as if fully set forth here.

49. Petitioner is a member of the Bond Eligible Class in *Bautista* and is therefore entitled to release and/or a bond redetermination hearing pursuant to 8 U.S.C. §1226(a).

50. The order granting partial summary judgment and the clarifying order hold that Respondents violate the Immigration and Nationality Act (“INA”) by applying the mandatory detention statute of 8 U.S.C. §1225(b)(2) to class members.

51. The district court’s order has the full force and effect of a final judgment. 28 U.S.C. §2201(a).

52. Respondents have continued to detain Petitioner in violation of the district court’s order and have continued to deny motions for bond redetermination based on *Matter of Yajure Hurtado*.

**Count Two**  
**Violation of the Immigration and Nationality Act, 8 U.S.C. §1226(a) and Regulations**

53. Petitioner realleges all paragraphs above as if fully set forth here.

54. 8 U.S.C. §1226(a) provides Petitioner with statutory right to a bond redetermination hearing.

55. Respondents have unlawfully detained Petitioner under 8 U.S.C. §1225(b)(2), which applies only to “applicants for admission” who are “seeking admission.”

56. Respondents have also detained Petitioner in violation of the regulatory procedure outlined in 8 C.F.R. §236.1, §1236.1. and §1003.19.

**Count Three**  
**Violation of the Fifth Amendment of the U.S. Constitution**  
**Substantive Due Process**

57. Petitioner realleges all paragraphs above as if fully set forth here.

58. Petitioner's detention is in violation of Petitioner's Fifth Amendment right to liberty with due process.

59. The Due Process Clause of the Fifth Amendment applies to all persons within the United States, which includes noncitizens "whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).

60. Petitioner was detained based on a mistaken interpretation of the relevant immigration detention statutes

**Count Four**  
**Violation of the Fifth Amendment of the U.S. Constitution**  
**Procedural Due Process**

61. Plaintiff realleges all paragraphs above as if fully set forth here.

62. *Mathews v. Eldridge*, 424 U.S. 319, 333, instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and

administrative burdens that additional or substitute procedural requirements entail.

63. The first factor, the private interest at issue, favors Petitioner. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects.” *Zadvyda*, 533 U.S. at 690 (2001).

64. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. To safeguard against erroneous deprivations of liberty, statutory provisions and regulations specify the circumstances when a noncitizen shall be detained and when a noncitizen is eligible for release and what procedures the noncitizen is afforded in seeking release. Respondents violated those statutes and regulations here, leaving the risk of erroneous deprivation of liberty not just high, but certain.

65. The third factor, the government’s interest, also favors Petitioner. When the government misinterprets the law, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. The government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law.

66. For these reasons, detaining Petitioner under §1225, as opposed to §1226 has failed to provide Petitioner with the procedural due process he is entitled to under §1226.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Exercise jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;
- c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. §1226(a) within seven days;
- d. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;
- e. Award Petitioner costs and reasonable attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. §504 ; and
- f. Order such other relief as this Court may deem just and proper.

Respectfully submitted,

DATED: January 6, 2026

By: /s/Jeremy Lasnetski  
JEREMY LASNETSKI  
Attorney for Petitioner  
Florida Bar No. 0512524  
Lasnetski Gihon Law  
121 W. Forsyth St., Ste. 510

Jacksonville, Florida 32202  
Telephone: (904) 642-3332  
Facsimile: (904) 685-4580  
Email: [jeremy@lglawflorida.com](mailto:jeremy@lglawflorida.com)

**DECLARATION UNDER PENALTY OF PERJURY**

I, Simion Hernandez, hereby declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of material fact may serve as the basis for a prosecution for perjury.

  
\_\_\_\_\_  
Simion Hernandez

1-6-26  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jeremy Lasnetski, Attorney for Petitioner

1/6/2026  
\_\_\_\_\_  
Date