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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

CONCEPCION HERANDEZ PEREZ,



Petitioner,

v.

JASON STREEVAL, Warden of the  
Stewart Detention Center

Respondent.

Case No. 4:26-cv-60

**PETITION FOR WRIT OF  
HABEAS CORPUS**

1 INTRODUCTION

2 1. Petitioner Ms. Concepcion Hernandez Perez is in the physical custody  
3 of Respondents at the Stewart Detention Center. She now faces unlawful detention  
4 because the Department of Homeland Security (DHS) and the Executive Office of  
5 Immigration Review (EOIR) have concluded Petitioner is subject to mandatory  
6 detention.  
7

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

10 3. Based on this allegation in Petitioner’s removal proceedings, DHS  
11 denied Petitioner release from immigration custody, consistent with a new DHS  
12 policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement  
13 (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e.,  
14 those who entered the United States without admission or inspection—to be subject  
15 to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released  
16 on bond.  
17

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

3         5. Petitioner’s detention on this basis violates the plain language of the  
4 Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to  
5 individuals like Petitioner who previously entered and are now residing in the United  
6 States. Instead, such individuals are subject to a different statute, § 1226(a), that  
7 allows for release on conditional parole or bond.

9         6. Respondents’ new legal interpretation is plainly contrary to the  
10 statutory framework, contrary to decades of agency practice applying § 1226(a), and  
11 contrary to recent federal decisions—including decisions of this Court—holding that  
12 § 1225(b)(2) applies only to individuals who are “seeking admission” in the context  
13 of an arrival inspection by an examining immigration officer.

15         7. Notably, Petitioner is a member of the certified class in *Lazaro*  
16 *Maidonado Bautista v. Santacruz*, No. 5:25-cv-1873-SSS-BFM, 2025 WL 3288403  
17 (C.D. Cal. Nov. 25, 2025), which rejected Respondents’ interpretation of §  
18 1225(b)(2). Yet despite this class-wide decision, and despite this Court’s own  
19 holdings, the Stewart Immigration Court continues to refuse to find jurisdiction to  
20 conduct bond hearings for individuals like Petitioner—leaving habeas corpus as the  
21 only available mechanism for judicial review of Petitioner’s detention.







1 States years ago, resided here, and was apprehended within the interior, not at a port  
2 of entry.

3 23. Historically, individuals who entered without inspection and were later  
4 placed in § 1229a removal proceedings were treated as detained under § 1226, not §  
5 1225. EOIR regulations following IIRIRA confirm that such individuals were not  
6 considered “arriving” and therefore were eligible for bond hearings. *See* 62 Fed.  
7 Reg. 10312, 10323 (Mar. 6, 1997).

9 24. For decades, consistent with this regulatory framework and prior  
10 immigration law, noncitizens who entered without inspection and were apprehended  
11 inside the United States received custody redeterminations unless subject to §  
12 1226(c). *See* former 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229  
13 (1996).

### 15 **The Government’s Recent Policy Shift**

16 25. On July 8, 2025, ICE—“in coordination with” DOJ—issued guidance  
17 declaring that all individuals who entered without inspection must now be detained  
18 under § 1225(b)(2)(A), regardless of when they entered the United States or whether  
19 they were ever inspected by an immigration officer.

21 26. On September 5, 2025, the BIA adopted this new position in *Matter of*  
22 *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that any noncitizen who  
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1 entered without admission is subject to § 1225(b)(2)(A) and categorically barred  
2 from a bond hearing.

3 **This Court Has Rejected Respondents' Interpretation**

4  
5 27. This Court has already rejected the government's reading of §  
6 1225(b)(2). In *J.A.M. v. Streeval*, Case No. 4:25-cv-342 (CDL), 2025 WL 3050094  
7 (M.D. Ga. Nov. 1, 2025), the Court held that § 1225(b)(2) applies only to noncitizens  
8 who are "seeking admission" in the context of an arrival inspection by an examining  
9 immigration officer.

10  
11 28. The Court explained that "seeking admission" requires an affirmative  
12 act at or near the time of arrival to obtain legal entry, coupled with contemporaneous  
13 inspection. The Court rejected DHS's argument that individuals apprehended years  
14 after entering the United States may be treated as if they were seeking admission. *Id.*  
15 at 3.

16  
17 29. Applying that interpretation, the Court concluded that § 1225(b)(2)  
18 does not apply to individuals like Petitioner, whose alleged inadmissibility is based  
19 on conduct occurring long after entry and not in connection with an arrival  
20 inspection.

21  
22 **The Bautista Class Action Confirms Petitioner's Eligibility for Bond**

1           30. Petitioner is also a member of the certified class in *Lazaro Maidonado*  
2 *Bautista v. Santacruz*, No. 5:25-cv-1873-SSS-BFM, 2025 WL 3288403 (C.D. Cal.  
3 Nov. 25, 2025), which likewise held that § 1225(b)(2) mandatory detention does not  
4 apply absent an arrival inspection. DHS has acknowledged in other litigation that it  
5 is still “developing its decision” concerning the application of that ruling.  
6

### 7 **Courts Nationwide Have Rejected the Government’s Theory**

8           31. Federal courts across the country have agreed that § 1226(a)—not §  
9 1225(b)—governs detention of individuals apprehended inside the United States,  
10 even when they originally entered without inspection. *See, e.g., Rodriguez Vazquez*  
11 *v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, 2025 WL  
12 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, 2025 WL 2084238 (D.  
13 Mass. July 24, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11,  
14 2025); *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025);  
15 *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Pizarro*  
16 *Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025).  
17

18           32. These courts uniformly conclude that Respondents’ interpretation  
19 contradicts the statutory text, structure, and decades of agency practice.  
20

### 21 **Stewart Immigration Court’s Continued Refusal to Exercise Jurisdiction**

22           33. Despite this Court’s binding precedent and the *Bautista* class decision,  
23 the Stewart Immigration Court continues to decline jurisdiction over custody  
24

1 redeterminations for noncitizens like Petitioner, based on the BIA's erroneous  
2 decision in *Matter of Yajure Hurtado*.

3 34. Because Petitioner has no administrative avenue to challenge her  
4 custody, habeas corpus is the only remedy capable of addressing the ongoing  
5 violation of federal law

### 7 FACTUAL BACKGROUND

8 35. Petitioner entered the United States in 2004 without inspection. Since  
9 that time, she has established a life and family in the United States.


10 36. Petitioner has two United States citizen children in the United States.  
11 Petitioner is a single mother raising her two United States children ages 13 and 20.  
12

13 37. Petitioner's eldest United States Citizen son, to wit: E [REDACTED]  
14 is a sophomore at the [REDACTED]

15 38. Petitioner's youngest child, to wit: [REDACTED], is 13 years old  
16 attending [REDACTED] as he is in 7<sup>th</sup> grade. Since Petitioner's detention,  
17 [REDACTED] has been staying with various extended family members awaiting the  
18 release of his mother.

19 39. Petitioner has no criminal history other than traffic violations for no  
20 license. Unfortunately, Petitioner was victim of aggravated battery in 2017,  
21 perpetrated by a former domestic partner, who has now been removed from the  
22 United States.  
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1 40. Petitioner, was a passenger in a vehicle traveling to work in the early  
2 morning hours, when the vehicle was stopped by ICE. Petitioner was not the person  
3 of interest in the traffic stop but was apprehended as a collateral pickup.

4 41. Petitioner's ongoing detention imposes severe financial and emotional  
5 hardship on her U.S. citizen family, including their minor child and eldest son  
6 attending 

8 42. Prior to her detention, Petitioner worked full-time in a factory and has  
9 a history of steady employment. She is known as a hard-working individual who  
10 supports her family and contributes to her community.

11 43. Petitioner and her family regularly attend church, where she is known  
12 as a peaceful, responsible, and respected member of her faith community.

14 44. Petitioner poses no danger to the community and is not a flight risk. Her  
15 family ties, employment history, lack of criminal record, and consistent community  
16 involvement demonstrate that she is an appropriate candidate for release under §  
17 1226(a).

18 45. Petitioner's continued detention also violates **due process** because it is  
19 based on an unlawful statutory interpretation already rejected by this Court and by a  
20 certified nationwide class action. In *J.A.M. v. Streeval*, this Court held that § U.S.C.  
21 § 1225(b)(2) applies only when a noncitizen is "seeking admission" in the context  
22 of an **arrival inspection** by an examining immigration officer. Petitioner, however,  
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1 was apprehended inside the United States years after her entry and therefore falls  
2 squarely within the detention framework of § 1226(a), which entitles him to a bond  
3 hearing.

4 46. Likewise, Petitioner is a member of the certified class in *Lazaro*  
5 *Maldonado Bautista v. Santacruz*, which likewise held that § 1225(b)(2) mandatory  
6 detention cannot apply absent an arrival inspection. Nevertheless, ICE continues to  
7 detain Petitioner under § 1225(b)(2), and the Stewart Immigration Court refuses to  
8 exercise jurisdiction to conduct a bond hearing. Because Petitioner is a long-term  
9 resident with deep family ties, no criminal history, a disabled U.S. citizen daughter,  
10 including the three grandchildren and a young U.S. citizen special needs-child who  
11 depend on him, his **prolonged imprisonment without any opportunity for**  
12 **individualized custody review** violates the fundamental requirements of due  
13 process and reinforces the necessity of habeas relief.

## 16 CLAIMS FOR RELIEF

### 17 COUNT I 18 Violation of the INA

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

21 48. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not  
22 apply to all noncitizens residing in the United States who are subject to the grounds  
23 of inadmissibility. As relevant here, it does not apply to those who previously  
24

1 entered the country and have been residing in the United States prior to being  
2 apprehended and placed in removal proceedings by Respondents. Such noncitizens  
3 are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or  
4 § 1231.  
5

6 49. The application of § 1225(b)(2) to Petitioner unlawfully mandates her  
7 continued detention and violates the INA.  
8

9 **COUNT II**

10 **Violation of the Bond Regulations**

11 50. Petitioner incorporates by reference the allegations of fact set forth in  
12 preceding paragraphs.  
13

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

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

5 53. The application of § 1225(b)(2) to Petitioner unlawfully mandates her  
6 continued detention and violates 8 C.F.R. §§ 236.1, 236.1, and 1003.19.  
7

8  
9 **COUNT III**  
10 **Violation of Due Process**

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

13 55. The government may not deprive a person of life, liberty, or property  
14 without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—  
15 from government custody, detention, or other forms of physical restraint—lies at the  
16 heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690  
17 (2001).  
18

19 56. Petitioner has a fundamental interest in liberty and being free from  
20 official restraint.

21 57. The government’s detention of Petitioner without a bond  
22 redetermination hearing to determine whether she is a flight risk or danger to others  
23 violates her right to due process.  
24

1 **PRAYER FOR RELIEF**

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

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

15 DATED this 13th day of January, 2026.

16 /s/ Matthew K. Winchester  
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6 **VERIFICATION PURSUANT TO 28 U.S.C. 2242**

7 I represent Petitioner, Ms. Concepcion Hernandez Perez, and submit this  
8 verification on her behalf. I hereby verify that the factual statements made in the  
9 foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my  
10 knowledge.  
11

12 DATED this 13th day of January, 2026.

13  
14 /s/ Uriel N. Delgado

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