

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

MAIRA ABIGAIL PORTILLO GARCIA,)

Petitioner,)

v.)

WARDEN of Stewart Detention Center;)

KRISTIN SULLIVAN, Acting Director,)

Immigration and Customs Enforcement)

and Removal Operations (“ICE/ERO”))

Field Office, Atlanta;)

KRISTI NOEM, Secretary of the)

Department of Homeland Security (“DHS”);)

and PAMELA BONDI, Attorney General)

of the United States,)

in their official capacities,)

Respondents.)

Case No. 4:26-cv-103

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Maira Abigail Portillo Garcia, a 33-year-old citizen of El Salvador, respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge the legality of her detention by Immigration and Customs Enforcement (“ICE”), a component of the U.S. Department of Homeland

Security (“DHS”). She is detained at the Stewart Detention Center in Lumpkin, Georgia, where she has been held since November 15, 2025.

2. Petitioner faces unlawful detention because the DHS and Executive Office of Immigration Review (“EOIR”) have concluded Petitioner is subject to mandatory detention based on a recently released ICE memo directing a new interpretation of the law. *See* Ex. 1, ICE Memo “Interim Guidance Regarding Detention Authority for Applicants for Admission” dated July 8, 2025 (hereinafter “ICE Memo”). This memo admittedly states that it “has revisited its legal position on detention and release authorities.” *See id.* It further states that the DHS policy was issued “in coordination with the Department of Justice (DOJ).” *Id.*

3. Petitioner fled El Salvador and entered the U.S. on September 20, 2024, at an unknown location. *See* Ex. 2, Notice to Appear.

4. The DHS created Petitioner’s Notice to Appear (“NTA”) on October 4, 2024, and docketed it with EOIR. *See id.* This initial NTA charged Petitioner as removable under § 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”), for being “an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.” INA § 212(a)(6)(A)(i); 8 U.S.C. § 1182(a)(6)(A)(i). *See id.* Additionally, the DHS charged the Petitioner as removable under INA § 212(a)(7)(A)(i)(I), which states:

“[A]s amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.”

INA § 212(a)(7)(A)(i)(I); 8 U.S.C. § 1182(a)(7)(A)(i)(I).

5. Petitioner’s NTA further notes that such notice was “being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.” *See Ex. 2, Notice to Appear*. Beneath that note is another stating that “Section 235(b)(1) order was vacated pursuant to 8 CFR 208.30.” Thus, any expedited removal track the Petitioner was initially placed on when encountered ended when Respondents determined she indeed had a credible fear of persecution or torture. The NTA did not designate her as an “arriving alien,” and she was not issued an NTA until she had been in the interior for two months. Thus, it’s clear that any potential detention via 235(b) was foreclosed by the issuance of Petitioner’s NTA.

6. On or about November 15, 2025, Petitioner was detained by the U.S. Immigration and Customs Enforcement (“ICE”), while attending her ICE Check-in appointment. She had been living in the interior of the U.S. since her entry in September 2024.

7. Petitioner is presently detained at the Stewart Detention Center, located at: 146 CCA Road, Lumpkin, GA 31815.

8. On information and belief, Petitioner regularly complied with and appeared for ICE check-ins, and has no criminal history.

9. On December 16, 2025, Petitioner filed a Motion for Bond and Custody Redetermination with EOIR. *See Ex. 3, Bond Motion.*

10. On December 19, 2025, Immigration Judge Jerrica Harness, presiding over the Stewart Immigration Court, issued an order denying Petitioner's request for change in custody status, concluding that Petitioner is not eligible for release on bond pursuant to *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See Ex. 4, Immigration Judge Order Denying Bond for Lack of Jurisdiction.* This was consistent with the new DHS policy issued on July 8, 2025, instructing all ICE employees to consider anyone inadmissible under § 1182(a)(6)(A)(i) –i.e., those who entered the U.S. without inspection—to be an “applicant for admission” under 8 § 1225(b)(2)(A) and therefore subject to mandatory detention. *See Ex. 1, ICE Memo.*

11. Petitioner is in pending removal proceedings, with her next scheduled hearing to take place on February 4, 2026. *See Ex. 5, Hearing Notice.*

12. Petitioner filed Form I-589 with EOIR, asserting that she fled El Salvador due to extreme violence she suffered at the hands of her ex-partner there due to her social status and gender. *See Ex. 6, Form I-589 Application for Asylum.*¹

13. Under 8 U.S.C. §1225(b)(2)(A), an applicant for admission seeking admission shall be detained for a removal proceeding. It is now the position of the EOIR, which houses both the Board of Immigration Appeals (“BIA”) and immigration judges, that 8 U.S.C. § 1225(b)(2)(A) applies to *all* individuals who arrived in the United States without documents, regardless of how long they have lived in the United States and regardless of how far they were apprehended from the border.

14. However, § 1225(b)(2)(A) does not apply to individuals like Petitioner, who were already present in the United States when apprehended. Petitioner lived in the U.S. for over a year before being arrested by ICE. Such individuals are subject to detention under a different statute, § 1226(a), and eligible for release on bond.

15. Nevertheless, the July 2025 ICE Memo instructs its attorneys to coordinate with the Department of Justice to reject bond redetermination hearings for applicants who previously arrived in the United States without documents.

¹Note that this initial filing with EOIR was rejected due to an issue with Petitioner’s improper signature, as a result of her being detained. Her counsel before the immigration court is working to obtain the proper signature and will re-file before the Petitioner’s Master Calendar hearing. *See Ex. 7, EOIR Rejection Notice.*

16. The BIA adopted the same position as the July 8, 2025 ICE policy by issuing a decision holding that an immigration judge has no authority to consider bond requests for any person who entered the U.S. without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228-29 (BIA 2025).

17. On November 25, 2025, the U.S. District Court for Central District of California rejected this position, issuing an order certifying a nationwide class consisting of noncitizens who have entered the United States without inspection and who were not apprehended upon arrival and who are not otherwise subject to detention under INA §§ 236(c), 235(b)(1), or 241. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Nov. 25, 2025 C.D. Cal.) (Order Granting Plaintiff-Petitioners' Motion for Class Certification). On November 20, 2025, the Court issued an order granting declaratory relief concluding that the detention of class members is governed by INA § 236(a) and that class members are not subject to mandatory detention pursuant to INA § 235(b)(2). *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Nov. 20, 2025 C.D. Cal.) (Order Granting Petitioners' Motion for Partial Summary Judgement). *Maldonado Bautista* rejected the Board's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

18. The U.S. District Court for the Central District of California issued a final judgment on December 18, 2025. *Maldonado Bautista v. Santacruz*, No.

5:25-CV-01873-SSS-BFM (Dec. 18, 2025 C.D. Cal.) (Order of Final Judgment). In its final order, the Court declared the class is detained under INA § 236(a) (8 U.S.C. § 1226(a))—not INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)), and thus, class members are entitled to bond consideration. *See id.* The decision also vacated DHS’s new “policy” as articulated in its July 8, 2025 “Interim Guidance Regarding Detention Authority for Applicants for Admission” as unlawful under the Administrative Procedure Act (“APA”). *Id.*

19. Petitioner asserts her detention is illegal to the extent she has been denied the possibility for bond. The Respondents’ position and Immigration Judge’s decision violated her Fifth Amendment right to due process of law as well as the INA and APA, as articulated in *Maldonado Bautista*. Petitioner is properly in detention under § 1226(a), as she lived in the U.S. for over a year before being detained, and she is thus bond-eligible.

20. Petitioner thus remains illegally detained without any determination of her individual flight risk or danger to society.

21. Any appeal to the BIA is futile. Petitioner is within the 30-day window to file appeal to the BIA but due to DHS’s new policy being issued “in coordination with DOJ,” which oversees the immigration courts, such appeal will be futile and take months of further detention. Petitioner will be filing an appeal to preserve her rights, but it will not remedy the current harm of unlawful detention.

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

23. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner. Notably, the vast majority of federal courts to consider this issue, including this Court, have agreed. *See, e.g., J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) (finding petitioners' detention governed by 8 U.S.C. § 1226(a)); *P.R.S. v. Streeval*, No. 4:25-cv-343-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025) (same).

24. As such, Petitioner seeks a writ of habeas corpus requiring that she be released unless Respondents provide a bond hearing under § 1226(a) within three (3) days.

JURISDICTION AND VENUE

25. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq.*

26. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

27. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

28. “A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may, . . . be brought in any judicial district in which a defendant in the action resides . . . *See* 28 U.S.C. § 1391(e).

29. The Supreme Court articulated in *Rumsfeld v. Padilla* the standard for determining if a court has jurisdiction to consider a habeas corpus petition, which breaks down into two subquestions— (1) who is the proper respondent to the petition, and (2) does the Court have jurisdiction over that respondent. *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004).

30. Under *Padilla*, the “immediate custodian” of the detained petitioner is the proper respondent in such habeas actions, which is typically the warden of the facility in which the petitioner is being housed. *See id.* at 443 (“The plain language of the habeas statute thus confirms the general rule that for core habeas petitions

challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.”)

31. Here, under *Padilla*, the immediate custodian of the Petitioner, and thus the proper Respondent, is the Warden of the Stewart Detention Center in Lumpkin, Georgia. *See id.* Because this Court has jurisdiction over actions arising in Stewart, Georgia, the venue is proper in this case.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

32. Petitioner has exhausted her administrative remedies to the extent required by law. There is no statutory exhaustion requirement in 28 U.S.C. § 2241. However, “that does not mean that courts may disregard a failure to exhaust and grant relief on the merits if the respondent properly asserts the defense.” *Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015). “To properly exhaust administrative remedies, a petitioner must comply with an agency’s deadlines and procedural rules.” *Straughter v. Warden, FCC Coleman - Low*, 699 F. Supp. 3d 1304, 1306 (M.D. Fla. 2023) (citing *Woodford v. Ngo*, 548 U.S. 81, 90–91 (2006) (discussing the Prison Litigation Reform Act’s (PLRA) exhaustion requirement)). It is the Respondent’s burden to prove that the Petitioner has “failed to exhaust all available administrative remedies.” *Id.* at 1307.

33. However, in detention cases such as the Petitioner's, appeals to the Board of Immigration Appeals ("BIA") take several months or years. Thus, here, requiring the Petitioner to appeal her bond denial to the BIA to prudentially exhaust is not efficient, would cause irreparable harm by continuing to deprive her of her liberty, and would be futile so long as *Matter of Hurtado* remains in effect. *See McCarthy v. Madigan*, 503 U.S. 140, 146-49 (1992) *superseded by statute on other grounds as stated in Booth v. Churner*, 532 U.S. 731 (2001) (noting that traditional exceptions include where exhaustion would cause "undue prejudice to subsequent assertion of a court action" or "irreparable harm" to the petitioner, where there is "some doubt as to whether the agency was empowered to grant effective relief," or where it would be futile because "the administrative body is shown to be biased or has otherwise predetermined the issue before it") (internal quotation marks omitted). Additionally, the BIA cannot adjudicate constitutional issues, as it lacks the authority to rule that USCIS action violates the Constitution. Instead, constitutional claims are a matter for federal courts.

REQUIREMENTS OF 28 U.S.C. § 2243

34. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the

Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

35. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, 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).

PARTIES

36. Petitioner is a noncitizen who is currently detained at the Stewart Detention Center. She is in the custody, and under the direct control, of Respondents and their agents.

37. Respondent Warden of the Stewart Detention Center is sued in their official capacity. Respondent Warden is the immediate custodian of the Petitioner.

38. Respondent Kristin Sullivan is sued in her official capacity as the Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Atlanta Field Office. Respondent Sullivan is a legal custodian of Petitioner and has authority to release her.

39. Respondent Kristi Noem is sued in her official capacity as the Secretary of the DHS. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

40. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

LEGAL FRAMEWORK

41. U.S.C. § 2241(c)(3) authorizes federal courts to grant habeas relief to prisoners or detainees who are "in custody in violation of the Constitution or laws or treaties of the United States." Federal courts retain jurisdiction under § 2241 to review purely legal statutory and constitutional claims regarding the government's detention authority, but jurisdiction does not extend to "discretionary judgment," "action," or "decision" by the Attorney General with respect to either detention or

removal. *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (citing, *inter alia*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003)).

42. Petitioner asserts that (1) her Fifth Amendment right to due process of law was violated when the Respondents subjected her to mandatory detention with no individualized bond hearing; (2) the Respondents' actions violated both the INA and the APA when they detained her under 8 U.S.C. § 1225(b)(2)(A), rather than 8 U.S.C. § 1226(a); and (3) the Respondents' actions in denying Petitioner an individualized bond hearing violated the final order in *Maldonado Bautista*. See *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Nov. 20, 2025 C.D. Cal.) (vacating the ICE memo).

1. *Due Process*

43. The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding her detention. As the Supreme Court has explained, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint— lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

44. The INA envisions three basic forms of detention for noncitizens in removal proceedings. First is detention for noncitizens in regular, non-expedited removal proceedings. See 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while

noncitizens who have committed certain crimes are subject to mandatory detention.

See id. § 1226(c).

45. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, *id.* § 1231(a)(6). *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111-13 (W.D. Wash. 2019) (providing overview of INA's detention authorities).

46. To guarantee against arbitrary detention and to guarantee the right to liberty, due process requires “adequate procedural protections” that ensure the government’s asserted justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

47. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.

48. To justify immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

49. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

50. First, incarceration deprives noncitizens of a “profound” liberty interest—one that always requires some form of procedural protections. *Diouf*, 634 F.3d at 1091- 92; *see also Foucha*, 504 U.S. at 80 (“It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” (citation omitted)).

51. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at parental termination proceedings because “numerous factors combine to magnify the risk of erroneous factfinding” including that “parents subject to termination proceedings are often poor, uneducated, or members of minority groups” and “[t]he State’s attorney usually will be expert on the issues contested”). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing.

52. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen’s immigration

records and other information that it can use to make its case for continued detention.

53. In light of these considerations, “[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process.” *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).

54. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen’s appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE’s alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). It follows that alternatives to detention must be considered in determining whether further incarceration is warranted, particularly where the Petitioner was regularly attending ICE check-ins and otherwise behaving lawfully.

55. Immigration detainees face severe hardships while incarcerated.

Immigration detainees are held in lock-down facilities, with limited freedom of movement and access to their families: “the circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); accord *Chavez-Alvarez v. U.S. Att’y Gen.*, 783 F.3d 478 (3d Cir. 2015); *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir. 2016). “And in some cases[,] the conditions of their confinement are inappropriately poor.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities (2017) (reporting instances of invasive procedures, substandard care, and mistreatment, e.g., indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee)).

56. These conditions and obstacles only further underscore the serious due process concerns that immigration detention poses for noncitizens like the Petitioner and reflect the need for a decision before a neutral decisionmaker regarding further detention.

2. INA

57. The Petitioner is not properly detained under 8 U.S.C. § 1225(b)(2)(A), as the immigration judge asserted in the denial of bond, and as Respondents will now assert, but under 8 U.S.C. § 1226(a). Under 8 U.S.C. § 1225(b)(2)(A):

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, the alien shall be detained for a proceeding under section 1229a of this title [i.e., removal proceedings].

58. Petitioner maintains that he is detained under 8 U.S.C. § 1226(a), which provides that:

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) [mandating the detention of certain criminal aliens] and pending such decision, the Attorney General -

(1) may continue to detain the arrested alien; and

(2) may release the alien on -

(A) bond of at least \$1,500 with security approved by, and containing conditions described by, the Attorney General;

or (B) conditional parole; but

(3) may not provide the alien with work authorization ... unless the alien is lawfully admitted for permanent residence or otherwise would ... be provided such authorization.

59. “Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.” *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985). Thus, the Court’s “first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Id.* (citing, *inter alia*, *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 477 (1992)).

60. Thus, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), was wrongly decided and should not be given weight. In that case, the Board held that “[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.” *Id.*

61. This Court has previously rejected the reasoning and holding of *Yajure Hurtado*. As this Court noted in the recent case *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025), “under no reasonable interpretation is ‘alien seeking admission’ synonymous with ‘any alien

present in the United States who has not been admitted.” See *J.A.M.*, No. 4:25-cv-342-CDL at *5; see also *J.A.M. v. Streeval*, No. 4:25-CV-342 (CDL), 2025 WL 3050094, at *1 (M.D. Ga. Nov. 1, 2025) (“The Court has previously rejected Respondents’ broad interpretation of § 1225(b)(2) that detention is mandatory for any alien who has not been lawfully admitted.”).

62. Accordingly, the Petitioner’s detention violates the INA, and she is entitled to a bond hearing.

3. *Administrative Procedure Act*

63. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

64. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

65. Accordingly, because Petitioner's categorical detention without any determination of her flight risk or danger to society was arbitrary, it violates the APA.

4. Maldonado Bautista

66. Regardless of Petitioner's class membership, the final decision in *Bautista* vacating the ICE Memo still applies equally to her. Notably, the reasoning in *Matter of Hurtado*, on which the IJ relied in finding she lacked jurisdiction to adjudicate a bond hearing for Petitioner, is based on the same reasoning as that in the ICE Memo. *See Maldonado Bautista v. Santacruz*, No.

5:25-CV-01873-SSS-BFM (Dec. 18, 2025 C.D. Cal.) (Order of Final Judgment); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

67. As the Court in *Maldonado Bautista* held, the ICE Memo violates the APA.

68. Petitioner is accordingly entitled to a bond hearing.

CLAIMS FOR RELIEF

COUNT ONE

Respondents Violated Petitioner's Fifth Amendment Right to Due Process

Procedural Due Process

PETITION FOR WRIT OF HABEAS CORPUS

69. The allegations in the above paragraphs are realleged and incorporated herein.

70. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

71. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

72. Here, Petitioner is entitled to due process protections under the Fifth Amendment of the U.S. Constitution. Respondents’ refusal to provide Petitioner with an individualized bond hearing—and the IJ’s reliance on *Matter of Yajure-Hurtado* to conclude that no jurisdiction exists—violated Petitioner’s rights under the Due Process Clause.

73. Under the three-part test of *Mathews*, 424 U.S., the balance overwhelmingly favors Petitioner. Her interest in liberty and family unity is paramount; the Government’s blanket detention policy under *Yajure Hurtado* creates an extreme risk of erroneous deprivation by denying her any opportunity to demonstrate eligibility for release; and the Respondent’s interest in ensuring

appearance can be served by far less restrictive means. Accordingly, due process requires an individualized bond hearing under § 1226(a).

74. The Respondents have shown neither that the continued detention of petitioner following her initial detention is reasonably related to the original purpose nor that the *Mathews* tests are satisfied. And importantly, no procedural safeguards were provided to the Petitioner as the IJ found she had no right to a bond hearing under *Matter of Hurtado*.

75. Petitioner was inside the interior of the U.S. for two months when she was arrested in the interior, yet DHS asserts mandatory detention under INA § 235 without initiating expedited removal or processing her as an actual applicant for admission. Civil detention without an individualized determination of danger or flight risk is unconstitutional. *See Zadvydas*, 533 U.S. 678; *Demore*, 538 U.S. 510 (as limited by subsequent authority); U.S. Const. amend. V.

COUNT TWO

Statutory Violation: Petitioner is Detained Under INA § 236, Not § 235

76. The allegations in the above paragraphs are realleged and incorporated herein.

77. Here, the Petitioner is clearly not an “applicant for admission.” Her NTA charged her as an “alien present without admission,” and thus, she should be

treated by law as someone who has already entered the U.S. Accordingly, her detention is governed exclusively by INA § 236(a). Respondents did not process the Petitioner as an arriving alien, expressly declined to place her in expedited removal, and did not issue or reinstate a removal order. The IJ's reliance on *Hurtado* was thus contrary to the statutory framework, which mandates bond jurisdiction in § 236(a) cases.

78. Further, contrary to the language of § 1225(b), § 1226(a) does not specify a class or classes of aliens who should be detained under the provision, but governs more generally the “apprehension and detention of aliens.” As opposed to the inspection regime for aliens entering the United States set forth in § 1225, the Supreme Court has characterized § 1226(a) as “authoriz[ing] the government to detain certain aliens already in the country pending the outcome of removal proceedings[.]” *Jennings*, 583 U.S. at 289 (emphasis added).

79. Petitioner had appeared for an ICE check-in when she was detained suddenly and without warning. Indeed, she had been at liberty in the interior of the U.S. after being in the country for over one year.

80. The IJ's refusal to exercise bond jurisdiction contradicts the plain text of §§ 1225 and 1226, longstanding agency practice, and federal case law holding that DHS's charging decision determines the statutory detention authority. By

treating Petitioner as subject to § 1225(b) detention without statutory authorization, Respondents acted *ultra vires* and contrary to law.

81. Further, the IJ's conclusion that *Hurtado* removes all bond jurisdiction whenever DHS claims § 235 authority grants the agency unfettered power to eliminate bond hearings for any noncitizen arrested in the interior, simply by labeling them as an "applicant for admission" without following statutory procedures for expedited removal. Such a reading raises grave Due Process concerns and cannot reflect congressional intent. Because Petitioner is detained under § 236(a), she is entitled to an individualized custody hearing, and the IJ's refusal to consider bond violated the INA.

82. Thus, Petitioner was entitled to a bond hearing "at the outset of detention" as established by existing federal regulations. *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

83. This Court came to the same conclusion in recent habeas decisions regarding the applicability of INA § 236 and § 235 to detained immigrants who had lived in the interior of the country for a period of time before being arrested. *See J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, No. 4:25-cv-343-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025). Petitioner is therefore entitled to an immediate bond hearing.

COUNT THREE

PETITION FOR WRIT OF HABEAS CORPUS

**Respondents Violated of the Administrative Procedure Act – 5 U.S.C. §
706(2)(A)**

*Not in Accordance with Law
and in Excess of Statutory Authority Unlawful Detention*

84. Petitioner restates and realleges all paragraphs as if fully set forth here.

85. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

86. The *Bautista* court recently vacated the ICE Memo because it violates the APA. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Dec. 18, 2025 C.D. Cal.) (Order of Final Judgment).

87. Here, by detaining the Petitioner without any consideration of her individualized facts and circumstances, Respondents have violated the APA.

88. Respondents have made no finding that Petitioner is a danger to the community.

89. Respondents have made no finding that Petitioner is a flight risk.

90. By detaining the Petitioner categorically, Respondents have further abused their discretion.

91. The IJ's refusal to conduct a bond hearing based on *Matter of Yajure-Hurtado* constitutes final agency action that is contrary to statutory text, unsupported by facts, and irrational. Petitioner was apprehended at an ICE check-in in the interior, with no prior removal order. Applying *Hurtado* to Petitioner's facts is arbitrary, capricious, and legally erroneous. The resulting deprivation of bond eligibility is therefore unlawful under the APA.

COUNT FIVE

Unlawful Detention in Violation of the Laws of the United States

Maldonado Bautista Vacated the ICE Memo

92. Petitioner restates and realleges all paragraphs as if fully set forth here.

93. Respondents are bound by the final judgment in *Maldonado Bautista*. Nevertheless, Respondents continue to flagrantly defy the judgment in that case.

94. Immigration judges have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

95. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista*, i.e. that the ICE Memo has been overturned, the Court should accordingly order that Respondents must immediately provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a).

96. Alternatively, the Court should order Petitioner's immediate release.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
3. Declare that the Petitioner's detention violates the INA;
4. Declare that the Petitioner's detention violates the APA;
5. Declare that Petitioner is entitled to a bond hearing;
6. Issue a Writ of Habeas Corpus ordering Respondents to order Respondents to conduct a bond hearing immediately, or in the alternative, release Petitioner from custody immediately;
7. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
8. Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Brittany S. Pierce

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Counsel for Petitioner

Dated: 20 January, 2026

EXHIBITS

- EX. 1 - ICE Memo “Interim Guidance Regarding Detention Authority for Applicants for Admission” dated July 8, 2025**
- EX. 2 - Notice to Appear**
- EX. 3 - Bond Motion**
- EX. 4 - Immigration Judge Order Denying Bond for Lack of Jurisdiction**
- EX. 5 - Hearing Notice**
- EX. 6 - Form I-589, Application for Asylum**
- EX. 7 - EOIR Rejection Notice**

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Maira Abigail Portillo Garcia, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 20th day of January, 2026.

s/Brittany S. Pierce

Brittany S. Pierce