

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

ALVARO NIEBLES SOTO,

Petitioner,

v.

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;
Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, U.S.
Department of Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY;
PAMELA BONDI, U.S. Attorney
General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW;
JASON STREEVAL, Warden of
STEWART DETENTION CENTER,

Respondents.

Case No. 4:26-cv-00111

**PETITION FOR WRIT OF
HABEAS CORPUS**

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INTRODUCTION

1. Petitioner ALVARO NIEBLES SOTO is in the physical custody of Respondents at the STEWART DETENTION CENTER. He now faces unlawful detention because the Department of Homeland Security (DHS), in direct collaboration with the adjudicative body with jurisdiction over immigrants (the Executive Office of Immigration Review) (EOIR) have concluded Petitioner is subject to mandatory detention.

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

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

4. On September 5, 2025, the Board of Immigration Appeals (BIA or Board) 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 Board 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.

5. Petitioner’s detention on this 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

1 individuals are subject to a different statute, § 1226(a), that allows for release on
2 conditional parole or bond. That statute expressly applies to people who, like Petitioner,
3 are charged as inadmissible for having entered the United States without inspection.

4 6. Respondents' new legal interpretation is plainly contrary to the statutory
5 framework and contrary to decades of agency practice applying § 1226(a) to people like
6 Petitioner.

7 7. More importantly, the Government itself has made an abrupt about-face on
8 this issue. Respondents should be judicially estopped from asserting their current
9 interpretation of 8 U.S.C. § 1225(b)(2)(A), because they previously prevailed in litigation
10 after asserting the opposite interpretation. As explained in *New Hampshire v. Maine*, 532
11 U.S. 742 (2001), judicial estoppel applies when a party assumes a position in a legal
12 proceeding, succeeds in maintaining that position, and then adopts a contrary position in a
13 subsequent proceeding to gain an unfair advantage. Here, Respondents previously, and
14 successfully, argued that individuals who entered the United States without inspection were
15 subject to detention under § 1226(a), and not § 1225(b)(2)(A), and courts accepted that
16 position. Respondents now reverse course and assert that such individuals are subject to
17 mandatory detention under § 1225(b)(2)(A), thereby denying them bond hearings. This
18 shift in legal position undermines the integrity of the judicial process and imposes an unfair
19 detriment on Petitioners who relied on the prior interpretation. Accordingly, Respondents
20 should be estopped from asserting this inconsistent position.

21 8. Furthermore, The Government's own issuance of an I-220A placing
22 Petitioner in custody under 8 U.S.C. § 1226(a) reflects a discretionary, fact-based
23 determination that Petitioner was not subject to mandatory detention under §

1 1225(b)(2)(A). This quasi-judicial decision was made by DHS at the outset of proceedings,
2 based on the facts available to both parties and Petitioner's own admissions. This reversal
3 undermines the integrity of the adjudicative process and triggers the principles of issue
4 preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015),
5 which require courts to respect agency determinations when the ordinary elements of
6 preclusion are met.

7 9. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released
8 unless Respondents provide a bond hearing under § 1226(a) within seven days.

9 **JURISDICTION**

10 10. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
11 STEWART DETENTION CENTER in LUMPKIN, GEORGIA.

12 11. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331
13 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the
14 Suspension Clause).

15 12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,
16 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

17 **VENUE**

18 13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500
19 (1973), venue lies in the United States District Court for the MIDDLE DISTRICT OF
20 GEORGIA, the judicial district in which Petitioner currently is detained.

21 14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents
22 are employees, officers, and agencies of the United States, and because a substantial part

1 of the events or omissions giving rise to the claims occurred in the MIDDLE DISTRICT
2 OF GEORGIA.

3 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

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

14 **PARTIES**

15 17. Petitioner ALVARO NIEBLES SOTO (“Mr. Niebles”) is a citizen of Venezuela who has
16 been in immigration detention since the of December 17, 2025. Petitioner was reporting to
17 probation when he was detained and transferred to the Stewart Detention Center, ICE did
18 not set bond. Petitioner requested a bond hearing pro se and it was ultimately denied with
19 the immigration judge finding he lacked jurisdiction to hear Petitioner’s Bond request.
20 Accordingly, Petitioner is unable to obtain review of his custody by an IJ, pursuant to the
21 Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

22 18. Respondent Todd Lyons is named in his official capacity as the Acting Director of the
23 Immigration and Customs Enforcement (“ICE”). As the senior Official Performing the

1 duties of the Director of ICE, he is responsible for the administration and enforcement of
2 the immigration laws of the United States; routinely transacts business in the Southern
3 District of Georgia; is legally responsible for any effort to detain Petitioner; and as such is
4 a custodian of the Petitioner. His address is ICE, Office of the Principal Legal Advisor, 500
5 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

6 19. Respondent Ladeon Francis is the Director of the Atlanta Field Office of ICE's
7 Enforcement and Removal Operations division; however, on information and belief, the
8 DHS is rotating their Field Office Director without publishing a schedule of rotation. As
9 such, Ladeon Francis or his unknown, unannounced provisional replacement is Petitioner's
10 immediate custodian and is responsible for Petitioner's detention and removal. He or his
11 acting counterpart is named in his or her official capacity. Respondent Francis's address is
12 180 Ted Turner Dr Se, Ste 522. Atlanta GA 30303.

13 20. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is
14 responsible for the implementation and enforcement of the Immigration and Nationality
15 Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem
16 has ultimate custodial authority over Petitioner and is sued in her official capacity.
17 Respondent Noem's address is U.S. Department of Homeland Security, Office of the
18 General Counsel, 2707 Martin Luther King Jr Ave Se Washington DC 20528-0525.

19 21. Respondent Department of Homeland Security (DHS) is the federal agency responsible for
20 implementing and enforcing the INA, including the detention and removal of noncitizens.

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

1 capacity. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania
2 Avenue, NW, Washington, DC 20530-0001.

3 23. Respondent Executive Office for Immigration Review (EOIR) is the federal agency
4 responsible for implementing and enforcing the INA in removal proceedings, including for
5 custody redeterminations in bond hearings.

6 24. Respondent, Warden Jason Streeval is, is employed by the private, for-profit detention
7 corporation contracted by the Government as an agent to confine immigrants at Stewart
8 Detention Center, where Petitioner is detained. He has immediate physical custody of
9 Petitioner. He is sued in his official capacity. Respondent Warden's address is Warden,
10 Stewart Detention Center, 1116 S Washington Ave, Lumpkin, GA 39862.

11 **LEGAL FRAMEWORK**

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

14 26. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
15 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are
16 generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§
17 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or
18 convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

1 30. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal
2 Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-
3 -208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section
4 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L.
5 No.119-1, 139 Stat. 3 (2025).

6 31. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in
7 general, people who entered the country without inspection were not considered detained
8 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and
9 Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
10 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

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

18 33. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly
19 acknowledged that individuals who have already entered the United States and are not
20 apprehended within 100 miles of the border or within 14 days of entry are subject to
21 discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b).
22 During oral argument on November 30, 2016, then-Solicitor General Ian Gershengorn
23 stated: “If they are not detained within 100 miles of the border or within 14 days... then

1 they are under 1226(a) and not 1226(c)” and further clarified, in response to a question
2 concerning “an alien who has come into the United States illegally without being admitted
3 [and] who takes up residence 50 miles from the border,” the Government responded, “The
4 answer is they are held under 1226(a) and that they get a bond hearing...” Transcript of
5 Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. ____ (2018) (No. 15-1204). DHS
6 reiterated that such individuals “would be held under 1226(a)” and cited the administrative
7 record to support that position. *Id.* These statements reflect DHS’s prior litigation stance
8 that § 1226(a) governs detention for noncitizens who have entered and are residing in the
9 United States, a position directly contrary to the agency’s current interpretation applying §
10 1225(b)(2)(A) to such individuals. Having prevailed in *Jennings* after taking this position,
11 they should be estopped from taking the contrary position now simply because their
12 political or litigation interests have changed. Estoppel in this case is necessary to preserve
13 the predictability inherent in the rule of law and due process under the Fifth Amendment,
14 as well as to protect the integrity of the judicial system.

15 34. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected
16 well-established understanding of the statutory framework and reversed decades of
17 practice.

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

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

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

5 37. Since Respondents adopted their new policies, several federal courts have rejected their
6 new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter*
7 *of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

8 38. This Court has held in similar cases that petitioners present in the United States at the time
9 of their detention, who have not been lawfully admitted and are not attempting to be
10 lawfully admitted, like the Petitioner, are subject to detention under INA § 1226(a). *J.A.M.*
11 *v. Streeval*, No. 4:25-CV342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025).

12 **FACTS**

13 39. Mr. Niebles has resided in the United States since 2022 and currently resides physically in
14 Lumpkin, Georgia, where he is detained.

15 40. Upon his entry into the United States, the DHS released respondent into the country and
16 issued form I-220A, *Order of Release on Recognizance*, or "OREC" and placed him into
17 removal proceedings pursuant to § 236 of the Immigration and Nationality Act.

18 41. The DHS filed a Notice to Appear with EOIR alleging that Petitioner entered the United
19 States and was not then admitted or paroled.

20 42. On or about December 17, 2025, Mr. Niebles was detained by ICE officials.

21 43. Mr. Niebles was then transferred to the Stewart Detention Center in Lumpkin Georgia
22 where he remains detained.

1 44. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider Mr.
2 Niebles bond request, and his unlawful detention cannot be litigated before that body, who
3 collaborated with the DHS – who is a party to these contested proceedings – to adopt the
4 DHS position wholesale, because such efforts have proven futile.

5 45. As a result, Mr. Niebles remains in detention. Without relief from this court, he faces the
6 prospect of months, or even years, in immigration custody, separated from his family and
7 community while his relief remains pending.

8 **CLAIMS FOR RELIEF**

9
10 **COUNT I**

11 **Violation of the INA**

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13 46. Petitioner incorporates by reference the allegations of fact set forth in the preceding
14 paragraphs.

15 47. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
16 noncitizens residing in the United States who are subject to the grounds of inadmissibility.
17 As relevant here, it does not apply to those who received an I-220A and who were
18 subsequently accused by DHS of having “entered” the United States. Those actions by
19 DHS, followed by the Petitioner’s concession to those charges before EOIR, represent a
20 quasi-judicial determination by an agency which precludes further litigation of the issue
21 unless new, material, and previously unavailable facts emerge. Such noncitizens continue
22 to be detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or §
23 1231.

24 48. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued
25 detention and violates the INA.
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COUNT II
Violation of the Bond Regulations

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

50. 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.

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

52. 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 Process

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

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

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

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

8 **PRAYER FOR RELIEF**

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

- 10 a. Assume jurisdiction over this matter;
- 11 b. Order that Petitioner shall not be transferred outside the Middle District of
12 Georgia while this habeas petition is pending;
- 13 c. Issue an Order to Show Cause ordering Respondents to show cause why this
14 Petition should not be granted within three days;
- 15 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
16 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
17 1226(a) within seven days;
- 18 e. Declare that Petitioner’s detention is unlawful;
- 19 f. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act
20 (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under
21 law; and
- 22 g. Grant any other and further relief that this Court deems just and proper.
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DATED this 21st day of January, 2026.

/s/ Peter Tadeo, Esq.
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5 **28 U.S.C. § 2242 VERIFICATION STATEMENT**
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7 I am submitting this verification on behalf of the Petitioner because I am the
8 Petitioner's attorney. I have discussed with Petitioner's family members and have reviewed various
9 documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed
10 the foregoing Petition and that the facts and statements made in this Petition and Complaint are
11 true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

12
13 DATED this 21st day of January, 2026.

14 /s/ Peter Tadeo, Esq.
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22
23 *Attorney for Petitioner*
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