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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

JOSE GABRIEL VELILLA NISPERUZA,  
  
Petitioner,

v.

LADEON FRANCIS, Field Office Director of  
Enforcement and Removal Operations,  
ATLANTA Field Office, 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, *in their official  
capacities*

Respondents.

Case No.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

Agency number: A



## INTRODUCTION

1. Petitioner JOSE GABRIEL VELILLA NISPERUZA is in the physical custody of Respondents at the STEWART DETENTION CENTER. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) will refuse to hold a bond hearing claiming to have no jurisdiction.

2. Petitioner came to the United States seeking refuge due to persecution he was suffering in Venezuela, he was released into the United States on or about August 13, 2021 under an Order of Release on Recognizance; Petitioner then applied for Asylum with US Citizenship and Immigration Services while he waited for commencement of Removal Proceedings pursuant to a Notice to Appear issued August 16, 2021, which charged him with having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. It is to note that Petitioner's Release on Recognizance specifically references Section 236 of the Immigration and Nationality Act, Petitioner believes he was in full compliance with the conditions of his release, as he had not changed residences, appeared at all ICE Appointments, and had not committed any crimes. He was detained during his yearly ICE check in appointment on or about January 15, 2026 seemingly for no reason at all. Since then, he has been transferred to the Stewart Detention Center in Lumpkin.

4. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days. Petitioner asks this Court to find that Respondents' attempts to detain and transfer Petitioner are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing Petitioner's transfer out of this district.

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2 **JURISDICTION**

3 5. Petitioner is in the physical custody of Respondents. Petitioner is detained at the  
4 STEWART DETENTION CENTER located in Lumpkin, Georgia.

5 6. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C.  
6 § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the  
7 Suspension Clause).

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

10 **VENUE**

11 8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-  
12 500 (1973), venue lies in the United States District Court for the MIDDLE DISTRICT OF  
13 GEORGIA, the judicial district in which Petitioner currently is detained.

14 9. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
15 Respondents are employees, officers, and agencies of the United States, and because a substantial  
16 part of the events or omissions giving rise to the claims occurred in the MIDDLE DISTRICT OF  
17 GEORGIA.

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

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

24 11. Habeas corpus is “perhaps the most important writ known to the constitutional  
law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or

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2 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the  
3 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and  
4 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208  
5 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

6 **PARTIES**

7 12. Petitioner Jose Gabriel Velilla Nisperuza is a citizen of Venezuela who has been  
8 in immigration detention since January 15, 2026 and is currently detained at the Stewart  
9 Detention Center.

10 13. Respondent Ladeon Fracis is the Director of the Atlanta Field Office of ICE’s  
11 Enforcement and Removal Operations division. As such, Ladeon Francis is Petitioner’s  
12 immediate custodian and is responsible for Petitioner’s detention and removal. She is named in  
13 her official capacity.

14 14. Respondent Kristi Noem is the Secretary of the Department of Homeland  
15 Security. She is responsible for the implementation and enforcement of the Immigration and  
16 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms.  
17 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

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

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

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

5 18. Respondent Jason Streeval is employed by CoreCivic as Warden of the Stewart  
6 Detention Center where Petitioner is detained. He has immediate physical custody of Petitioner.  
7 He is sued in his official capacity.

### 8 LEGAL FRAMEWORK

9 19. Immigration detention should not be used as a punishment and should only be used when,  
10 under an individualized determination, a noncitizen is a flight risk because they are unlikely  
11 to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S.  
12 678, 690 (2001).

13 20. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth  
14 Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

15 21. The Immigration and Nationality Act (INA) establishes various procedures through which  
16 individuals may be detained pending a decision on whether the noncitizen is to be removed.  
17 8 U.S.C. § 1226(a).

18 22. Removal proceedings described in section 240 of the INA are used to determine whether  
19 individuals, such as Petitioner, should be removed from the United States. See 8 U.S.C. §  
20 1229a.

21 23. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to  
22 apply for asylum to individuals seeking safe haven in the United States. The purpose of the  
23 Refugee Act is to enforce the “historic policy of the United States to respond to the urgent  
24 needs of persons subject to persecution in their homelands.” Refugee Act of 1980, § 101(a),  
Pub.L. No. 96-212, 94 Stat. 102 (1980).

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2 24. The “motivation for the enactment of the Refugee Act” was the United Nations Protocol  
3 Relating to the Status of Refugees, “to which the United States had been bound since 1968.”  
4 *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a  
5 legislative purpose “to give ‘statutory meaning to our national commitment to human rights  
6 and humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

7 25. The Refugee Act established the right to apply for asylum in the United States and defines  
8 the standards for granting asylum. It is codified in various sections of the INA.

9 26. The INA gives the Attorney General or the Secretary of Homeland Security  
10 discretion to grant asylum to noncitizens who satisfy the definition of “refugee.” Under  
11 that definition, individuals generally are eligible for asylum if they have experienced past  
12 persecution or have a well-founded fear of future persecution on account of race, religion,  
13 nationality, membership in a particular social group, or political opinion and if they are  
14 unable or unwilling to return to and avail themselves of the protection of their homeland  
15 because of that persecution or fear. 8 U.S.C. § 1101(a)(42)(A).

16 27. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The  
17 Refugee Act broadly affords a right to apply for asylum to any noncitizen “who is  
18 physically present in the United States or who arrives in the United States[.]” 8 U.S.C. §  
19 1158(a)(1).

20 28. Immigration detention is a form of civil confinement that “constitutes a significant  
21 deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441  
22 U.S. 418, 4253 (1979).

23 29. Custody determinations for individuals in 1229a removal proceedings are governed by 8  
24 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a

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2 danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690  
3 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

4 30. Custody determinations under § 1226(a) are individualized and based on the facts  
5 presented in those cases. Unlike § 1226(c), which can provide for categorical  
6 determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a  
7 case-by-case review of the facts and circumstances.

8 31. Once a determination to release an individual from custody is made, the release order may  
9 be revisited when the facts or circumstances warrant revocation or reconsideration. 8  
10 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may  
11 take that individual back into custody by revoking the individual's release when the facts  
12 and circumstances warrant it.

13 32. Revocation and return to custody is authorized only based on the individualized facts and  
14 circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in  
15 nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).

16 **FACTUAL BACKGROUND**

17 33. Petitioner is a native and citizen of Venezuela who came to the United States on or about  
18 August 13, 2021 in order to seek asylum due to persecution he was suffering in his Country.

19 34. Upon presenting himself at the border, Petitioner was detained by Customs and Border  
20 patrol and was subsequently released under an Order of Release on Recognizance on  
21 August 16, 2021 indicating "you have been arrested and placed in removal proceedings. In  
22 accordance with section 236 of the Immigration and Nationality Act and the applicable  
23 provisions of Title 8 of the code of federal regulations, you are being released on your own  
24 recognizance provided you comply with the following conditions. . ." The conditions  
included reporting to any hearings or interviews as instructed, surrendering for removal if

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2 so ordered, reporting as directed, securing written permission before changing place of  
3 residence, not violating any laws, and assisting ICE in obtaining any necessary travel  
4 documents.

5 35. Petitioner was simultaneously issued a Notice to Appear dated August 16, 2021, charging  
6 Petitioner as being an alien present in the United States without being admitted or paroled  
7 under 212(a)(6)(A)(i). He never had a Credible Fear Interview.

8 36. On June 27, 2022, Petitioner filed an Asylum Application with US Citizenship and  
9 Immigration Services in order to comply with the statutory one year deadline filing  
10 requirement for Asylum.

11 37. Petitioner was believed to be in full compliance with his Order of Release on Recognizance  
12 when on January 15, 2026 he reported to ICE pursuant to his yearly check in requirements.  
13 Petitioner was taken into custody by ICE and transferred to the Stewart Detention Center.  
14 Petitioner was issued a new Notice to Appear dated January 15, 2026, and was told that he  
15 was being detained simply because he had no Immigration Court date.

16 38. Since his entry in August of 2021, Petitioner has been residing in Charlotte, North Carolina,  
17 working with valid authorization pursuant to his pending application for asylum.

18 39. Petitioner lives with and is financially providing for his girlfriend, who also has an  
19 application for asylum pending, and for his 18-year-old son.

20 40. Petitioner is neither a danger to the community nor a flight risk, however, the Respondents  
21 are holding Petitioner without bond and any request for bond is futile as EOIR Immigration  
22 Judges are claiming that they lack jurisdiction to conduct a bond redetermination hearing  
23 for similarly situated Petitioners, claiming that they are “applicants for admission.” Any  
24 appeal to the Board of Immigration Appeals is also futile.

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41. On information and belief, Petitioner has no criminal history.

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**CLAIMS FOR RELIEF**

**COUNT ONE**

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

**Abuse of Discretion**

**Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

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

43. 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).

44. 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)).

45. 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).

46. By detaining and transferring the Petitioner categorically, Respondents have further

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2 abused their discretion because there have been no changes to his facts or circumstances  
3 since the agency made its initial custody determinations that support the revocation of his  
4 release from custody.

5 47. Respondents have already considered Petitioner's facts and circumstances and determined  
6 that he was not a flight risk or danger to the community. There have been no changes to  
7 the facts that justify this revocation of his release on his own recognizance. The fact that  
8 Petitioner has already been granted release by Respondents under the same facts and  
9 circumstances shows that Respondents do not consider him, on an individualized basis, to  
10 be a danger to the community or a flight risk. Moreover, Respondents had even lessened  
11 the conditions of his release by not requiring him to wear an electronic ankle monitor  
12 device as a term of his Order of Release on Recognizance.

13 **COUNT TWO**

14 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)**  
15 **Not in Accordance with Law and in Excess of Statutory Authority**  
16 **Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

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

18 49. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in  
19 accordance with law;” “contrary to constitutional right;” “in excess of statutory  
20 jurisdiction, authority, or limitations;” or “without observance of procedure required  
21 by law.” 5 U.S.C. § 706(2)(A)-(D).

22 50. 8 U.S.C. § 1226(b) authorizes that “[t]he Attorney General at any time may  
23 revoke a bond or parole authorized under [8 U.S.C. § 1226(a)]” and rearrest a noncitizen  
24 under the initial warrant. In implementing this statutory provision, 8 C.F.R. § 1236.1(c)(9)  
clarifies that such revocations of release from custody may only be carried out in the

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2 “discretion of the district director, acting district director, deputy district director, assistant  
3 district director for investigations, assistant district director for detention and deportation,  
4 or officer in charge (except foreign).”

5 51. It is a well-established administrative principle that “agency action taken without lawful  
6 authority is at least voidable, if not void *ab initio*.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d  
7 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015);  
8 *see also Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016)  
9 (invalidating agency action because it was taken by unauthorized official).

10 52. On information and belief, Respondents have revoked or are revoking Petitioner’s prior  
11 custody determination as a result of a categorical policy prepared by and implemented by  
12 unidentified government officials in Washington, not through the individual exercise of  
13 discretion required by law or by the individuals enumerated by regulation to do so.

14 53. Because Petitioner’s revocation of release from custody has been made or will be  
15 categorically directed by government officials not authorized by law to make this  
16 determination, Respondents’ detention of Petitioner is not in accordance with law and in  
17 excess of statutory authority.

1  
2 **COUNT THREE**  
3 **Violation of Fifth Amendment Right to Due Process**  
4 **Procedural Due Process**

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

6 55. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the  
7 federal government from depriving any person of “life, liberty, or property, without due  
8 process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the  
9 United States, including [non-citizens], whether their presence here is lawful, unlawful,  
10 temporary, or permanent.” *Zadvydas*, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306.

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

13 57. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a)  
14 and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not  
15 “unlimited” and must comport with constitutional due process. *See Zadvydas*, 533  
16 U.S. at 698.

17 58. Here, Respondents have chosen to revoke Petitioner’s release in an arbitrary manner and  
18 not based on a rational and individualized determination of whether he is a safety or flight  
19 risk, in violation of due process. Because no individualized custody revocation has been  
20 made and no circumstances have changed to make Petitioner a flight risk or a danger to  
21 the community, Respondents’ revocation of Petitioner’s release violates his right to  
22 procedural due process.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- 1 (1) Assume jurisdiction over this matter;
- 2 (2) Issue an Order to Show Cause ordering Respondents to show cause why this
- 3 Petition should not be granted within three days;
- 4 (3) Declare that Petitioner's detention without an individualized determination
- 5 violates the Due Process Clause of the Fifth Amendment;
- 6 (4) Declare that Petitioner's revocation of parole from custody was made in
- 7 violation of statute and regulation;
- 8 (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner
- 9 from custody, or to hold a bond hearing;
- 10 (6) Issue an Order prohibiting the Respondents from transferring Petitioner from
- 11 the district without the court's approval;
- 12 (7) Award Petitioner attorney's fees and costs under the Equal Access to Justice
- 13 Act, and on any other basis justified under law; and
- 14 (8) Grant any further relief this Court deems just and proper.

15 Respectfully submitted,

Date:

16  
17 s/Matthew O. Boles

January 23, 2026

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**Verification**

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

S/Matthew Boles

Date: January 23, 2026