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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA

TITO FARAON PEREZ ESTEBAN,

Petitioner,

v.

JOHN TSOUKARIS, 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,

Respondents.

Case No.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

1 **INTRODUCTION**

2 1. Petitioner **TITO FARAON PEREZ ESTEBAN** brings this petition for a writ of habeas  
3 corpus to seek enforcement of the Immigration and Nationality Act's (INA) provisions for bond  
4 hearings before an Immigration Judge. Petitioner is in the physical custody of Respondents at the  
5 **Stewart Detention Center in Lumpkin, Georgia**. Petitioner now faces unlawful detention  
6 because the Department of Homeland Security (DHS) and the Executive Office for Immigration  
7 Review (EOIR) have continued to deny bond hearings under INA 236, instead treating unlawful  
8 entrants, even of longstanding residence in the U.S., under the mandatory detention scheme at  
9 INA 235.

10 2. Immigration Judges at Stewart Immigration Detention Center continue to decline  
11 jurisdiction, despite the fact that hundreds of Courts have found DHS's policy regarding  
12 detention of unlawful entrants without bond hearings to be unlawful. The Executive Office for  
13 Immigration Review and its subagency the Immigration Court and the Department of Homeland  
14 Security (DHS) have now created a de facto procedural detour: what would previously have been  
15 a straightforward, discretionary procedure where a detained Respondent could vindicate his  
16 rights expeditiously and economically by requesting a bond hearing, EOIR now in effect requires  
17 this honorable Court to, once again, order the agency to hold the very bond hearing which the  
18 statute requires.

19 **JURISDICTION**

20 3. Petitioner is in the physical custody of Respondents. Petitioner is detained at the  
21 **STEWART DETENTION CENTER in LUMPKIN, GEORGIA**. Exhibit 1, Detainee  
22 Locator.

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

4 5. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,  
5 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

6 **VENUE**

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

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

14  
15 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

20 9. Habeas corpus is “perhaps the most important writ known to the constitutional law . . .  
21 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or  
22 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application  
23 for the writ usurps the attention and displaces the calendar of the judge or justice who  
24

1 entertains it and receives prompt action from him within the four corners of the application.”  
2 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

3 10. The Court should grant the petition for writ of habeas corpus “forthwith,” as the  
4 legal issues have already been resolved for class members in *Maldonado Bautista*.

5 **PARTIES**

6 11. Petitioner TITO FARAON PEREZ ESTEBAN is alleged to be a citizen of  
7 GUATEMALA who is in immigration detention at Stewart Immigration Detention Center  
8 under the auspices of the Stewart Immigration Court in Lumpkin, Georgia, where  
9 Respondents continue to require a Federal District Court Order before they will grant a bond  
10 hearing.

11 12. Respondent JOHN TSOUKARIS is the Director of the Atlanta Field Office of  
12 ICE’s Enforcement and Removal Operations division; however, on information and belief,  
13 the DHS is rotating their Field Office Director without publishing a schedule of rotation. As  
14 such, JOHN TSOUKARIS or his unknown, unannounced provisional replacement is  
15 Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal.  
16 He or his acting counterpart is named in his or her official capacity.

17 13. Respondent Kristi Noem is the Secretary of the Department of Homeland  
18 Security. She is responsible for the implementation and enforcement of the Immigration and  
19 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention.  
20 Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official  
21 capacity.  
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1 14. Respondent Department of Homeland Security (DHS) is the federal agency  
2 responsible for implementing and enforcing the INA, including the detention and removal of  
3 noncitizens.

4 15. Respondent Pamela Bondi is the Attorney General of the United States. She is  
5 responsible for the Department of Justice, of which the Executive Office for Immigration  
6 Review and the immigration court system it operates is a component agency. She is sued in  
7 her official capacity.

8 16. Respondent Executive Office for Immigration Review (EOIR) is the federal  
9 agency responsible for implementing and enforcing the INA in removal proceedings,  
10 including for custody redeterminations in bond hearings.

11 17. Respondent, Warden Jason Streevalis, is employed by the private, for-profit  
12 detention corporation contracted by the Government as an agent to confine immigrants at  
13 Stewart Detention Center, where Petitioner is detained. He has immediate physical custody  
14 of Petitioner. He is sued in his official capacity.

15 **CLAIMS FOR RELIEF**

16 **COUNT I**

17 **Violation of the INA and Bond Regulations**

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

20 19. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-  
21 Immigration and Naturalization Service issued an interim rule to interpret and apply  
22 IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of  
23 [Noncitizens]," the agencies explained that "[d]espite being applicants for admission,  
24 [noncitizens] who are present without having been admitted or paroled (formerly referred to

1 as [noncitizens] who entered without inspection) will be eligible for bond and bond  
2 redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear  
3 that individuals who had entered without inspection were eligible for consideration for bond  
4 and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

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

7 21. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued  
8 detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

9 **COUNT II**  
10 **Violation of Due Process**

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

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

17 24. Petitioner has a fundamental interest in liberty and being free from official  
18 restraint.

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

21 **LEGAL FRAMEWORK**

22 26. The INA prescribes three basic forms of detention for the vast majority of  
23 noncitizens in removal proceedings.  
24

1 27. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal  
2 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are  
3 generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§  
4 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or  
5 convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

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

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

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

8 34. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly  
9 acknowledged that individuals who have already entered the United States and are not  
10 apprehended within 100 miles of the border or within 14 days of entry are subject to  
11 discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b).  
12 During oral argument on November 30, 2016, then-Solicitor General Ian Gershengorn  
13 stated: “If they are not detained within 100 miles of the border or within 14 days... then  
14 they are under 1226(a) and not 1226(c)” and further clarified, in response to a question  
15 concerning “an alien who has come into the United States illegally without being admitted  
16 [and] who takes up residence 50 miles from the border,” the Government responded, “The  
17 answer is they are held under 1226(a) and that they get a bond hearing...” Transcript of Oral  
18 Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. \_\_\_\_ (2018) (No. 15-1204). DHS  
19 reiterated that such individuals “would be held under 1226(a)” and cited the administrative  
20 record to support that position. *Id.* These statements reflect DHS’s prior litigation stance that  
21 § 1226(a) governs detention for noncitizens who have entered and are residing in the United  
22 States, a position directly contrary to the agency’s current interpretation applying §  
23 1225(b)(2)(A) to such individuals. Having prevailed in *Jennings* after taking this position,  
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1 they should be estopped from taking the contrary position now simply because their political  
2 or litigation interests have changed. Estoppel in this case is necessary to preserve the  
3 predictability inherent in the rule of law and due process under the Fifth Amendment, as  
4 well as to protect the integrity of the judicial system.

5 35. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
6 rejected well-established understanding of the statutory framework and reversed decades of  
7 practice.

8 36. The new policy, entitled “Interim Guidance Regarding Detention Authority for  
9 Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without  
10 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A).  
11 The policy applies regardless of when a person is apprehended, and affects those who have  
12 resided in the United States for months, years, and even decades.

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

17 38. Since Respondents adopted their new policies, several federal courts have rejected  
18 their new interpretation of the INA’s detention authorities. Courts have likewise rejected  
19 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

20 39. A growing number of federal courts have rejected ICE and EOIR’s expanded  
21 interpretation of the Immigration and Nationality Act’s detention provisions. These courts  
22 have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority

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

1 applicable in these cases. For example, courts in Massachusetts, Arizona, New York,  
2 Minnesota, California, and Nebraska have reached this conclusion. See: *Gomes v. Hyde*, No.  
3 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX  
4 DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH)  
5 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn.  
6 Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez*  
7 *Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*,  
8 No. 8:25CV494 (D. Neb. Sept. 3, 2025).

9 40. As of December 18<sup>th</sup>, 2025, the DHS policy was VACATED. *Maldonado*  
10 *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL  
11 3549826, at \*8–9 (C.D. Cal. Dec. 18, 2025) (vacating DHS’s July 8, 2025 “Interim  
12 Guidance Regarding Detention Authority for Applicants for Admission” under the  
13 Administrative Procedure Act); *id.*, 2025 WL 3549854, at \*2 (entering final judgment as to  
14 Counts I–III).

15 41. These decisions reflect a clear judicial consensus, now binding nationally as to  
16 class members, that the government’s reliance on § 1225(b)(2) is misplaced in cases  
17 involving those whose immigration status lawfully falls under § 1226(a).

18 42. Section 1226 therefore leaves no doubt that it applies to people who face charges  
19 of being inadmissible to the United States, including those who are present without  
20 admission or parole.

21 43. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
22 recently entered the United States and were not free to mingle with the general population  
23 after being free from official restraint. The statute’s entire framework is premised on  
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1 inspections at the border of people who are “seeking admission” to the United States. 8  
2 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory  
3 detention scheme applies “at the Nation’s borders and ports of entry, where the Government  
4 must determine whether a[] [noncitizen] seeking to enter the country is admissible.”

5 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

6 44. One quirk in this case would present an additional issue for this honorable Court  
7 were it not easily explained as an irregularity, whether by policy or mistake: the Petitioner is  
8 simultaneously charged as an Arriving Alien and as having entered the U.S. without  
9 inspection. An individual in removal proceedings cannot simultaneously be charged as an  
10 arriving alien and as one who entered without inspection, because the two classifications  
11 rest on mutually exclusive legal predicates. “Entry” is a term of art that requires physical  
12 presence combined with freedom from official restraint. *Matter of Patel*, 20 I. & N. Dec.  
13 368, 370 (B.I.A. 1991). An arriving alien, however, has not effected an “entry” at all,  
14 because applicants for admission—even those physically located just inside the border—  
15 remain legally treated as seeking to enter, not as persons who have entered the United  
16 States. As Justice Alito explained, “§ 1225(b) ... authorizes the detention of certain aliens  
17 seeking to enter the country,” emphasizing that such individuals are processed as applicants  
18 for admission even when already within U.S. territory. *Jennings v. Rodriguez*, 583 U.S. \_\_\_\_,  
19 slip op. at 3 (2018). One cannot both seek to enter the country as an arriving alien and also  
20 enter the country – for the immigrant to be classified as an Arriving Alien who seeks entry  
21 precludes the factual allegation of unlawful entry without inspection. Clearly, the box  
22 designation was in error.

1 45. Because arriving aliens are processed under 8 U.S.C. § 1225(b) and remain under  
2 official restraint, the government cannot charge them simultaneously under 8 U.S.C.  
3 § 1182(a)(6)(A)(i) as individuals who “entered without inspection,” a charge that  
4 presupposes the completion of an “entry” as defined in *Patel*. The distinct statutory  
5 detention regimes further underscore this incompatibility: arriving aliens fall within the  
6 mandatory § 1225(b) framework, whereas those alleged to have entered without inspection  
7 fall under § 1226. Consequently, DHS must select a single, legally coherent classification  
8 and may not pursue allegations premised on contradictory theories of entry status.  
9

#### 10 FACTS

11 46. Petitioner TITO FARAON PEREZ ESTEBAN is a citizen of GUATEMALA who  
12 has resided in the United States for decades, having fathered a U.S. citizen child born in  
13 2005. He entered without inspection and was not apprehended upon arrival. On December  
14 31<sup>st</sup>, 2025, Petitioner was stopped for speeding and arrested for driving without a license,  
15 then transferred to DHS custody at the Stewart Detention Center. ICE did not set bond.

16 47. DHS’s charging document designates Petitioner as an Arriving Alien while also  
17 charging him with unlawful entry. Exhibit 2, NTA. There is no date or time listed for  
18 Petitioner’s entry or arrival.

19 48. Petitioner is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. DHS  
20 has charged Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and placed him in  
21 removal proceedings pursuant to 8 U.S.C. § 1229a. Petitioner is a member of the Bond  
22 Eligible Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM  
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1 (C.D. Cal.), which includes noncitizens without lawful status who entered without  
2 inspection and are not subject to mandatory detention under the INA.

3 49. Despite the intervention of hundreds of Federal District Courts holding that class  
4 members are detained under 8 U.S.C. § 1226(a) and entitled to consideration for release on  
5 bond—Respondents continue to apply § 1225(b)(2) and deny bond hearings to class  
6 members, including Petitioner. Immigration Judges at Stewart Detention Center have  
7 refused jurisdiction, citing agency directives to disregard the Court’s earlier rulings, and  
8 insisting on awaiting guidance from the 11<sup>th</sup> Circuit or EOIR to assume jurisdiction.  
9 Respondents’ continued detention of Petitioner violates the INA.

10  
11 **PRAYER FOR RELIEF**

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

- 13 a. Assume jurisdiction over this matter;
- 14 b. Issue a writ of habeas corpus requiring that within one day, Respondents release  
15 Petitioner;
- 16 c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner  
17 unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;
- 18 d. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act (EAJA),  
19 as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- 20 e. Grant any other and further relief that this Court deems just and proper.
- 21

22 DATED this 26<sup>th</sup> day of January, 2026.

23  
24 /s/ **Joshua McCall, Esq.**

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