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3 UNITED STATES DISTRICT COURT
4 MIDDLE DISTRICT OF GEORGIA
5 COLUMBUS DIVISION

6 NERY MOLAR GOMEZ FUEGOS,

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8 Petitioner,

9 v.

10 JASON STREEVAL, Warden of the
11 Stewart Detention Center

12 Respondent.

Case No. 4:26-cv-161

**PETITION FOR WRIT OF
HABEAS CORPUS**

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1 **INTRODUCTION**

2 1. Petitioner Mr. Nery Molar Gomez Fuegos is in the custody of
3 Respondent at the Stewart Detention Center. Petitioner now faces unlawful detention
4 because the Department of Homeland Security (DHS) and the Executive Office of
5 Immigration Review (EOIR) have concluded Petitioner is subject to mandatory
6 detention.
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8 2. Petitioner is charged with, inter alia, having entered the United States
9 without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

10 3. Based on this allegation in Petitioner’s removal proceedings, DHS
11 denied Petitioner release from immigration custody, consistent with a new DHS
12 policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement
13 (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e.,
14 those who entered the United States without admission or inspection—to be subject
15 to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released
16 on bond.
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18 4. Similarly, on September 5, 2025, the Board of Immigration Appeals
19 (BIA or Board) issued a precedent decision, binding on all immigration judges,
20 holding that an immigration judge has no authority to consider bond requests for any
21 person who entered the United States without admission. *See Matter of Yajure*
22 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The BIA in *Yajure Hurtado* determined
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1 that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and
2 therefore ineligible to be released on bond.

3 5. Petitioner’s detention on this basis violates the plain language of the
4 Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to
5 individuals like Petitioner who previously entered and are now residing in the United
6 States. Instead, such individuals are subject to a different statute, § 1226(a), that
7 allows for release on conditional parole or bond.
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9 6. Respondent’s new legal interpretation is plainly contrary to the
10 statutory framework, contrary to decades of agency practice applying § 1226(a), and
11 contrary to recent federal decisions—including decisions of this Court—holding that
12 § 1225(b)(2) applies only to individuals who are “seeking admission” in the context
13 of an arrival inspection by an examining immigration officer.
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15 7. Notably, Petitioner is a member of the certified class in *Lazaro*
16 *Maldonado Bautista v. Santacruz*, No. 5:25-cv-1873-SSS-BFM, 2025 WL 3288403
17 (C.D. Cal. Nov. 25, 2025), which rejected Respondents’ interpretation of §
18 1225(b)(2). Yet despite this class-wide decision, and despite this Court’s own
19 holdings, the Stewart Immigration Court continues to refuse to find jurisdiction to
20 conduct bond hearings for individuals like Petitioner—leaving habeas corpus as the
21 only available mechanism for judicial review of Petitioner’s detention.
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1 8. Thus, Petitioner seeks a writ of habeas corpus requiring that he be
2 released less Respondent provides a bond hearing under § 1226(a) within seven days.

3 JURISDICTION

4 9. Petitioner is in the custody of Respondent. Petitioner is detained at the
5 Stewart Detention Center located in Lumpkin, Georgia.

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

9 11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the
10 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.
11 § 1651.

12 VENUE

13 12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
14 484, 493- 500 (1973), venue lies in the United States District Court for the Middle
15 District of Georgia, the judicial district in which Petitioner is detained.

16 13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e)
17 because Respondent is an employees, officers, and agencies of the United States,
18 and because a substantial part of the events or omissions giving rise to the claims
19 occurred in the Middle District of Georgia.
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1 States years ago, resided here, and was apprehended within the interior, not at a port
2 of entry.

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

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

14
15 **The Government’s Recent Policy Shift**

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

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

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

4 27. This Court has already rejected the government's reading of §
5 1225(b)(2). In *J.A.M. v. Streeval*, Case No. 4:25-cv-342 (CDL), 2025 WL 3050094
6 (M.D. Ga. Nov. 1, 2025), the Court held that § 1225(b)(2) applies only to noncitizens
7 who are "seeking admission" in the context of an arrival inspection by an examining
8 immigration officer.
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10 28. *J.A.M.* explained that "seeking admission" requires an affirmative act
11 at or near the time of arrival to obtain legal entry, coupled with contemporaneous
12 inspection. *J.A.M.* rejected DHS's argument that individuals apprehended years after
13 entering the United States may be treated as if they were seeking admission. *Id.* at 3.
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15 29. Applying that interpretation, the Court concluded that § 1225(b)(2)
16 does not apply to individuals like Petitioner, whose alleged inadmissibility is based
17 on conduct occurring long after entry and not in connection with an arrival
18 inspection.
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20 **The Bautista Class Action Confirms Petitioner's Eligibility for Bond**

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

3 **Courts Nationwide Have Rejected the Government’s Theory**

4 31. Federal courts across the country have agreed that § 1226(a)—not §
5 1225(b)—governs detention of individuals apprehended inside the United States,
6 even when they originally entered without inspection. *See, e.g., Rodriguez Vazquez*
7 *v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, 2025 WL
8 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, 2025 WL 2084238 (D.
9 Mass. July 24, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11,
10 2025); *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025);
11 *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Pizarro*
12 *Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025).

15 32. These courts uniformly conclude that Respondent’s interpretation
16 contradicts the statutory text, structure, and decades of agency practice.

17 **Stewart Immigration Court’s Continued Refusal to Exercise Jurisdiction**

18 33. Despite this Court’s binding precedent and the *Bautista* class decision,
19 the Stewart Immigration Court continues to decline jurisdiction over custody
20 redeterminations for noncitizens like Petitioner, based on the BIA’s erroneous
21 decision in *Matter of Yajure Hurtado*.
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1 34. Because Petitioner has no administrative avenue to challenge his
2 custody, habeas corpus is the only remedy capable of addressing the ongoing
3 violation of federal law.

4 **FACTUAL BACKGROUND**

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6 35. Petitioner is a 51-year-old Guatemalan national that entered the United
7 States in 2017 without inspection. Since that time, he has established a life and
8 relationship ties in the United States.

9 36. Petitioner has no criminal history other than traffic violations for no
10 license.

11
12 37. Petitioner, was stopped by DHS on November 18, 2025, via a traffic
13 stop and was apprehended.

14 38. Petitioner's ongoing detention imposes severe financial and emotional
15 hardship.

16 39. Prior to his detention, Petitioner worked full-time as a construction
17 worker and has a history of steady employment. Petitioner is known as a hard-
18 working individual that contributes to his community.

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20 40. Petitioner poses no danger to the community and is not a flight risk. His
21 employment history, lack of criminal record, and consistent community involvement
22 demonstrate that he is an appropriate candidate for release under § 1226(a).

1 41. Petitioner's continued detention also violates due process because it is
2 based on an unlawful statutory interpretation already rejected by this Court and by a
3 certified nationwide class action. In *J.A.M. v. Streeval*, this Court held that 8 U.S.C.
4 § 1225(b)(2) applies only when a noncitizen is "seeking admission" in the context
5 of an arrival inspection by an examining immigration officer. Petitioner, however,
6 was apprehended inside the United States years after his entry and therefore falls
7 squarely within the detention framework of § 1226(a), which entitles him to a bond
8 hearing.
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10 42. Likewise, Petitioner is a member of the certified class in *Lazaro*
11 *Maldonado Bautista v. Santacruz*, which likewise held that § 1225(b)(2) mandatory
12 detention cannot apply absent an arrival inspection. Nevertheless, ICE continues to
13 detain Petitioner under § 1225(b)(2), and the Stewart Immigration Court refuses to
14 exercise jurisdiction to conduct a bond hearing. Because Petitioner is a long-term
15 resident with deep ties, no criminal history, his prolonged imprisonment without any
16 opportunity for individualized custody review violates the fundamental
17 requirements of due process and reinforces the necessity of habeas relief.
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20 **CLAIMS FOR RELIEF**

21 **COUNT I**
22 **Violation of the INA**

23 43. Petitioner incorporates by reference the allegations of fact set forth in
24 the preceding paragraphs.

1 44. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not
2 apply to all noncitizens residing in the United States who are subject to the grounds
3 of inadmissibility. As relevant here, it does not apply to those who previously
4 entered the country and have been residing in the United States prior to being
5 apprehended and placed in removal proceedings by Respondents. Such noncitizens
6 are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or
7 § 1231.
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9 45. The application of § 1225(b)(2) to Petitioner unlawfully mandates his
10 continued detention and violates the INA.
11

12 COUNT II

13 **Violation of the Bond Regulations**

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

16 47. In 1997, after Congress amended the INA through IIRIRA, EOIR and
17 the then-Immigration and Naturalization Service issued an interim rule to interpret
18 and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and
19 Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants
20 for admission, [noncitizens] who are present without having been admitted or
21 paroled (formerly referred to as [noncitizens] who entered without inspection) will
22 be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis
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24

1 added). The agencies thus made clear that individuals who had entered without
2 inspection were eligible for consideration for bond and bond hearings before IJs
3 under 8 U.S.C. § 1226 and its implementing regulations.

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

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

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

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

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

18
19 52. Petitioner has a fundamental interest in liberty and being free from
20 official restraint.

21 53. The government’s detention of Petitioner without a bond
22 redetermination hearing to determine whether he is a flight risk or danger to others
23 violates his right to due process.
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1 **PRAYER FOR RELIEF**

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

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

15 DATED this 27th day of January, 2026.

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6 **VERIFICATION PURSUANT TO 28 U.S.C. 2242**

7 I represent Petitioner, Mr. Nery Molar Gomez Fuegos, and submit this
8 verification on his behalf. I hereby verify that the factual statements made in the
9 foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my
10 knowledge.
11

12 DATED this 27th day of January, 2026.

13
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