

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

JOSE RAUL HERNANDEZ-REYES,

Petitioner,

v.

JASON STREEVAL, Warden, Stewart
Detention Center; TODD LYONS, Acting
Director, United States Immigration and
Customs Enforcement; KRISTI NOEM,
Secretary of Department of Homeland
Security; and PAMELA BONDI, Attorney
General of the United States,

Respondents.

Civil Action No.

28 U.S.C. § 2241

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Jose Raul Hernandez-Reyes petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to compel his release from custody, as his current civil immigration detention violates the Due Process Clause of the United States Constitution and the Administrative Procedure Act.

JURISDICTION AND VENUE

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et. seq.*
2. This court has subject matter jurisdiction under 28 U.S.C. §§ 2241 and 1331, and Article I, section 9, clause 2 of the United States Constitution.

3. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, and the INA, 8 U.S.C. § 1252(e)(2). This Court also has remedial authority under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

4. Venue is proper in the United States District Court for the Middle District of Georgia, Columbus Division, pursuant to 28 U.S.C. § 1391(e)(1) and Local Rule 3.4, because at least one Respondent is in this District and Division, Petitioner is currently detained in this District and Division, and Petitioner's immediate physical custodian is in this District and Division.

PARTIES AND BACKGROUND

5. **Petitioner Jose Raul Hernandez-Reyes** is a native of Nicaragua, who entered the United States with his wife on or about December 6, 2022 without inspection. Shortly after entry, Petitioner and his wife were apprehended by United States Immigration and Customs Enforcement ("ICE"). They were released from ICE custody on December 7, 2022 with parole under INA § 212(d)(5), which expired on February 7, 2023. *See* I-94, attached as **Exhibit 1**.

6. Petitioner then filed an I-589 petition for asylum. *See* Form I-797C, attached as **Exhibit 2**. Petitioner and his wife obtained work authorization and were required to report to ICE periodically. *See* I-765 Approval, attached as **Exhibit 3**. His asylum application remains pending.

7. Petitioner and his wife were then both arrested by ICE on December 4, 2025 during routine reporting. Petitioner and his wife were both detained at the Stewart

Detention Center in Lumpkin, Georgia, within this District and Division, where Petitioner currently and his wife currently remain.¹ Thus, Petitioner is “in custody” for the purpose of 28 U.S.C. § 2241 because Petitioner is arrested and detained by Respondents.

8. On December 5, 2025, the United States Department of Homeland Security (“DHS”) issued a notice to appear (“NTA”) for Petitioner. *See* NTA, attached as **Exhibit 4**. It was not properly served, and the immigration judge granted termination of his removal proceedings on January 23, 2026. *See* Order Granting Motion to Terminate, attached as **Exhibit 5**. On January 28, 2026, ICE issued a second NTA for Petitioner.

9. Prior to the termination of his deportation proceedings, Petitioner sought a bond hearing under INA section 236, explaining that he has a pending asylum application, including letters of support from the community, and with evidence that Petitioner pays income taxes. On December 15, 2025, the immigration judge (“IJ”) denied Petitioner’s request for a bond, finding it lacked jurisdiction under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), wherein the Board of Immigration Appeals (“BIA”) held on September 5, 2025 that noncitizens present in the United States without admission are “seeking admission” under 8 U.S.C. § 1225(b)(2)(A) and must be detained. Specifically, the IJ found:

pursuant to *Matter of Jonathan Javier YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025), based 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),

¹ On January 23, 2026, Petitioner’s wife, Linda Ines Rojas-Largaespada, also filed a petition for writ of habeas corpus on the same basis as Petitioner. *Rojas-Largaespada v. Streeval et al.*, Case No. 4:26-cv-00134-CDL-AGH (M.D. Ga.). On January 28, Judge Land ordered the same respondents to provide her with a bond determination under section 1226(a).

Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. The evidence shows the Respondent illegally entered the U.S. a few years ago without inspection. There was no evidence submitted to show the Respondent was ever admitted. Therefore, the court lacks jurisdiction to consider bond in this case.

See Order Denying Bond, attached as **Exhibit 6**.

10. **Respondent Jason Streeval** is the Warden of Stewart Detention Center, where Petitioner is being held. Respondent Streeval is a legal custodian of Petitioner and he is sued in his official capacity.

11. **Respondent Todd Lyons** is Acting Director, United States Immigration and Customs Enforcement (“ICE”). ICE is the federal agency responsible for custody decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens. As Acting Director of ICE, Respondent Lyons has authority over its actions, including Petitioner’s detention. He is sued in his official capacity.

12. **Respondent Kristi Noem** is the Secretary of the United States Department of Homeland Security (“DHS”). DHS is the federal agency that has authority over the actions of ICE. As Secretary of DHS, Respondent Noem has authority over its actions, including Petitioner’s detention. She is sued in her official capacity.

13. **Respondent Pamela Bondi** is the Attorney General of the United States and the senior official of the U.S. Department of Justice. She is sued in her official capacity. In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review, which administers the

immigration courts and the BIA. Respondent Bondi is responsible for decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. Therefore, she is also Petitioner's legal custodian.

LEGAL FRAMEWORK

14. District courts have the power to grant writs of habeas corpus. 28 U.S.C. § 2241(a). The Constitution guarantees that the writ of habeas corpus is available to every individual detained within the United States. *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const. Art. I, § 9, cl. 2); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody.”).

15. A district court's power includes jurisdiction to hear habeas challenges to immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Indeed, noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

A. Petitioner is Not Being Detained Under 8 U.S.C § 1225(b)(2)

16. The immigration court concluded, based on the government's arguments at the bond hearing, that Petitioner must be mandatorily detained under the INA as set forth in *Matter of Yajure Hurtado*, in which the BIA concluded ICE could treat undocumented immigrants already present in the United States as arriving aliens subject to mandatory detention under 8 U.S.C. § 1225.

17. While Petitioner's deportation has been terminated and a new NTA issued, it would be futile to argue to the same IJ that he now maintains jurisdiction given his recent findings that Petitioner was not entitled to a bond under *Hurtado*.

18. The IJ's reliance on *Hurtado* would make Petitioner ineligible for bond based on his arrival without inspection in 2022. In *Hurtado*, the BIA concluded that noncitizens "who have been residing in the United States for years without lawful status" are considered "applicants for admission" and are thus subject to the mandatory detention provision in INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) "for the duration of the immigration proceedings[.]" *Hurtado*, 29 I&N Dec. at 220.

19. But section 1225(b)(2) does not apply to Petitioner as he is not a recent arrival nor is she seeking admission. His continued detention under section 1225(b)(2) is therefore unlawful. Instead, as a noncitizen who previously entered the United States, section 1226(a) governs his detention.

20. Under section 1225(b)(2), "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." 8 U.S.C. § 1225(b)(2) (emphasis added). By contrast, a noncitizen arrested on a warrant issued by the Attorney General "*may*" be detained but is also eligible for release on bond. 8 U.S.C § 1226(a) (emphasis supplied). "Courts have repeatedly held that § 1225 applies to arriving aliens, while § 1226 governs detention of 'aliens already in the country.'" *Palma v. Trump*, 2025 WL 2624385, at *2 (D. Neb. Sept. 11, 2025) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018)). As the Court in *Palma* noted,

“[t]he BIA’s decision in *Hurtado* represents a stark departure from that approach.”

Palma, 2025 WL 2624385, at *2.

21. Indeed, courts in this Division have reached the same conclusion. *J.A.M. v. Streeval*, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025).

22. Moreover, Respondents admit that Petitioner is subject to section 1226, because the initial NTA charged him as someone “admitted to the United States.” *See Ex. 4*. The second NTA was issued according to EOIR, but has not been made available to Petitioner’s attorneys. Clearly, the Court should be guided by Respondents’ position in the NTA and not accept their representations to the IJ to the contrary. *See also Ardon-Quiroz v. Assistant Field Dir.*, 2025 WL 3451645, at *6 (S.D. Fla. Dec. 1, 2025); *Perez v. Berg*, 2025 WL 2531566, at *2 (D. Neb. July 24, 2025) (“The Court notes that the government itself charged Petitioner as an alien present in the United States who has not been admitted or paroled rather than an arriving alien.”) (quotations omitted). While Petitioner was “paroled” into the United States after his entry without inspection (“EWI”), that parole lapsed in 2023, reverting Petitioner to his initial EWI noncitizen status. *Jennings*, 583 U.S. at 288–89.

23. Furthermore, while Petitioner believes that he is a member of the “Bond Eligible Class” certified in *Maldonado Bautista v. Santacruz*, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025), as argued at the bond hearing, Petitioner is cognizant of the Court’s conclusions in *C.C.M. v. Warden, Stewart Det. Ctr.*, regarding the effect of that decision on Petitioner’s specific circumstances here. 2026 WL 67145, at *1 n.1 (M.D. Ga. Jan. 8,

2026). Notwithstanding, Petitioner raises the argument that he is entitled to relief as a “Bond Eligible” class member under *Maldonado Bautista* for purposes of preserving the issue. And regardless of its effect, the overwhelming weight of authority concludes that Petitioner is entitled to statutory process under section 1226(a).

24. Finally, the BIA’s controlling authority on the IJ is not dispositive. *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 179 (S.D.N.Y. 2009) (“While the Immigration and Nationality Act ... precludes review of the ‘Attorney General’s discretionary judgment’ with regard to ‘detention or release of any alien or the grant, revocation, or denial of bond or parole,’ 8 U.S.C. § 1226(e), the United States Supreme Court rejected the contention that § 1226(e) deprives courts of jurisdiction to consider challenges to the interpretation of the mandatory detention statute.”) (citing *Demore v. Kim*, 538 U.S. 510, 517, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003)). Courts have independent judgment in determining whether an agency has acted within its statutory authority. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024).

25. As other courts have concluded since *Hurtado*, “[t]he text of Sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions [...] confirm that [the petitioner] is subject to Section 1226(a)’s discretionary detention scheme.” *Sampiao v. Hyde*, 2025 WL 2607924, at *8 (D. Mass. Sept. 9, 2025) (granting habeas relief to a noncitizen who was arbitrarily detained following three years of release on an order of recognizance).

26. Here, Petitioner was paroled into the United States in 2022, has obtained work authorization, has a pending asylum application, and is a taxpayer and beneficial

member of the community. To determine that he is *seeking admission* after living in the United States and working here with authorization from the federal government is nonsensical, contrary to the plain meaning of the statutes, and the Court should disregard the *Hurtado* decision as contrary to the INA and federal law.

27. As such, under section 1226(a), this Court has the authority to review Petitioner's request for habeas relief and release from immigration detention

B. Petitioner Should Not Await Further Determination by the BIA

28. Because Petitioner is detained subject to section 1226(a), not section 1225(b)(2), the Court should, in the event it is raised by Respondents, find that exhaustion is not required here. Because BIA has adopted a policy that deprives Petitioner of jurisdiction to seek a bond from immigration detention, further review of the IJ's decision invoking *Hurtado* will be futile. *Vazquez v. Feeley*, 2025 WL 2676082, at *10 (D. Nev. Sept. 17, 2025) ("Because, as discussed below, this Court finds the BIA has adopted a policy [in *Hurtado*] that likely violates federal law, awaiting the BIA's decision regarding Petitioner is futile.").

29. Additionally, the fact that proceedings were terminated based on a defective NTA, which has now been remedied, does not change the outcome for Petitioner before the IJ. He has already ruled that he lacked jurisdiction to issue a bond to Petitioner. This Court should intervene and correct the fundamental misapplication of the law.

COUNT I
Violation of Fifth Amendment Right to Due Process
(against all Respondents)

30. Petitioner re-incorporates and re-alleges paragraphs 1-29 above as if fully set forth herein.

31. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. While certain constitutional protections do not extend outside the “geographic borders” of the United States, “legal circumstances change” as soon as a noncitizen “enters the country.” *Id.*; see also *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (“[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”) (quoting *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam)).

32. To determine whether civil detention violates a detainee’s due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts consider (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See id.* at 335.

33. Here, all three factors favor Petitioner. He has a significant private interest at stake. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (freedom from physical

detention is “the most elemental of liberty interests”); *see also Zadvydas*, 533 U.S. at 690 (“Freedom 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.”). Petitioner is experiencing all the deprivations that come with physical detention, including separation from his wife and community. Next, there is a large risk of the erroneous deprivation of Petitioner’s liberty interest through the procedures used in the immigration court proceedings. There are also alternative procedures, such as a cash bond, and other measures that might mitigate against the risk of flight. Finally, to the extent there is any government interest in detention, it is minimal compared with Petitioner’s liberty interest.

34. Here, Respondents have chosen to detain Petitioner under the wrong statute and in an arbitrary manner, not based on a rational and individualized determination of whether he is a safety or flight risk, in violation of due process. Because section 1225 does not apply, Respondents’ detention of Petitioner violates the Fifth Amendment.

COUNT II

Violation of the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2)(A) (against all Respondents)

35. Petitioner re-incorporates and re-alleges paragraphs 1-29 above as if fully set forth herein.

36. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by

law.” 5 U.S.C. § 706(2)(A)-(D).

37. Congress has made it clear that mandatory detention under 8 U.S.C. § 1225(b) applies to “applicant[s] for admission” who are determined to be “seeking admission.” By contrast, Congress permits other noncitizens who are arrested on a warrant issued by the Attorney General to be detained (using the language “may”) but those noncitizens are also eligible for release on bond. 8 U.S.C § 1226(a).

38. Courts have interpreted section 1225 to apply to arriving noncitizens, while section 1226 applies to noncitizens already in the United States.

39. Petitioner entered the United States without inspection in 2022. He was arrested and paroled into the United States. Thereafter he sought asylum protections here and received work authorization. He was detained by ICE this winter at a routine check-in. The government contends Petitioner is an applicant for admission to which section 1225 applies. The IJ at the immigration hearing determined the court lacked jurisdiction to determine whether Petitioner was eligible for bond because of the section 1225 bar.

40. Respondents’ determination that Petitioner is “seeking admission” under section 1225(b)(2) was arbitrary, capricious, an abuse of discretion, and not otherwise in accordance with law. 5 U.S.C. § 706(2)(A). Indeed, “ICE, like any agency, ‘has the duty to follow its own federal regulations.’” *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (quoting *Haoud v. Ashcroft*, 350 F.3d 201, 205 (1st Cir. 2003)).

41. Because Petitioner is not subject to mandatory detention, Respondents’ determination was unlawful.

PRAYER FOR RELIEF

Petitioner Jose Raul Hernandez-Reyes respectfully requests that the Court:

- A. Retain jurisdiction over this action;
- B. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days pursuant to 28 U.S.C. § 2243;
- C. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
- D. Declare that Petitioner's detention violates the Administrative Procedure Act;
- E. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody or in the alternative provide a bond hearing under 8 U.S.C. § 1226(a);
- F. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the Court's approval;
- G. Award Petitioner attorneys' fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- H. Grant all other relief that the Court deems just and proper.

Dated: January 28, 2026

Respectfully submitted,

/s/ James M. Slater

James M. Slater (Ga. Bar No. 169869)
Slater Legal PLLC
2296 Henderson Mill Rd NE #116
Atlanta, Georgia 30345
james@slater.legal
Tel. (404) 458-7283

Lucy Lu (*pro hac vice* forthcoming)
aiLegal Law
3400 Peachtree Road N.E., Suite 1100
Atlanta, Georgia 30326
info@ailegallaw.com
Tel. (404) 343-7166

Attorneys for Petitioner Hernandez-Reyes