

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

YHOAN CARLOS SALAZAR PENA,)
)
Petitioner,)
)
v.)
)
KRISTI NOEM, Secretary, U.S. Department)
of Homeland Security;)
TODD M. LYONS, Acting Director, U.S.)
Immigration and Customs)
Enforcement;)
GEORGE STERLING, Atlanta Field)
Office Director, U.S. Immigration)
and Customs Enforcement; and)
MICHAEL BRECKON, Warden,)
Folkston ICE Processing Center)
)
Respondents. _____)

CV 526-134

C.A.F.N.
Agency #



PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Yhoan C. Salazar Pena, through undersigned counsel, files this Petition for Writ of Habeas Corpus to remedy his unlawful detention by enjoining Respondents from continuing to detain him and to release him from custody. As good cause, Petitioner states the following:

1. Petitioner Yhoan C. Salazar Pena is in the physical custody of Respondents at the Folkston ICE Processing Center. **Exhibit D – ICE Online Detainee Locator System Search Results for Petitioner.** He now faces unlawful detention because the Department of Homeland Security (“DHS”) and 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 and not possessing a valid entry document. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

Exhibit A – Notice to Appear.

3. Based on this charge, DHS denied Petitioner release from immigration custody. This decision is consistent with a new DHS policy issued 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 mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
4. Further, on September 5, 2025, the Board of Immigration Appeals (“BIA”) affirmed DHS policy in a precedent decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA held that an immigration judge (“IJ”) does not have jurisdiction to consider bond requests for any person who entered the United States without admission, as such a person is subject to mandatory detention.
5. Thus any request by Petitioner for bond redetermination before EOIR would be futile.
6. Petitioner’s detention under 8 U.S.C. § 1225(b)(2)(A) violates the plain language of the Immigration and Nationality Act (“INA”). This section does not apply to individuals like Petitioner, who had already entered and lived in the United States for years before being apprehended. Instead, such individuals are subject to 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond.
7. Respondents’ new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying 8 U.S.C. § 1226(a) to those like

Petitioner. Thus Petitioner challenges his detention as a violation of the INA and the Due Process Clause of the Fifth Amendment.

8. Accordingly, Petitioner respectfully requests that this Court grant him a Writ of Habeas Corpus and order Respondents to release him from custody unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

JURISDICTION

9. Petitioner is in Respondents' physical custody. Petitioner is detained at Folkston ICE Processing Center in Folkston, Georgia. **Exhibit D – ICE Online Detainee Locator System Search Results for Petitioner.**
10. This court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas corpus), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
11. This court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
12. Congress has preserved judicial review of challenges to detention. *See Jennings v. Rodriguez*, 138 U.S. 830, 841 (2018).

VENUE

13. Venue in the Southern District of Georgia is appropriate under 28 U.S.C. § 1391(e) because at least one Respondent is in this District, Petitioner is detained in this District, Petitioner's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (“[T]he proper respondent to a

habeas petition is ‘the person who has custody over the petitioner’”) (citing 28 U.S.C. § 2242) (citation modified).

REQUIREMENTS OF 28 U.S.C. § 2243

14. The court must “forthwith” grant the petition for writ of habeas corpus or order Respondents to show cause unless Petitioner is ineligible for relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
15. 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 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

16. Petitioner Yhoan C. Salazar Pena is a citizen of Venezuela who is currently detained by Respondents at Folkston ICE Processing Center. Upon information and belief, he has been in ICE custody since November 2025. ICE did not set bond after detaining Petitioner in Georgia, and Petitioner is unable to obtain review of his custody by an IJ based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
17. Respondent Kristi Noem is the Secretary of DHS. This suit is brought against Respondent Noem in her official capacity, as she is charged with implementing and enforcing the INA, including the detention and removal of noncitizens, and overseeing ICE. Respondent Noem has ultimate custodial authority over Petitioner.

18. Respondent Todd M. Lyons is the Acting Director of ICE. This suit is brought against Respondent Lyons in his official capacity as he is charged with the administration of ICE and the implementation and enforcement of the INA. He is Petitioner's legal custodian.
19. Respondent George Sterling is the Field Office Director of the Atlanta Field Office of ICE which holds administrative jurisdiction over Petitioner's detention and removal. He is Petitioner's legal custodian and is named in his official capacity.
20. Respondent Michael Breckon is the Warden of Folkston ICE Processing Center, where Petitioner is currently detained. He is Petitioner's legal custodian and is named in his official capacity.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

21. Neither the INA nor the applicable federal habeas corpus statute requires administrative exhaustion for immigration detention-based claims. *Compare* 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only prior to challenging a removal order in circuit court), *with* 28 U.S.C. § 2241 (including no requirement for administrative exhaustion); *see also* *Santiago-Lugo v. Warden*, 785 F.3d 467, 474-75 (11th Cir. 2015) ("It is no longer the law of this circuit that exhaustion of administrative remedies is a jurisdictional requirement in a § 2241 proceeding.").

LEGAL FRAMEWORK

22. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings.
23. First, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under 8 U.S.C. § 1225(b)(2).

24. Second, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond redetermination hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).
25. Last, the INA also provides for the detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. 8 U.S.C. § 1231(a), (b).
26. This case concerns the detention provisions at §§ 1225(b)(2) and 1226(a).
27. Congress enacted 8 U.S.C. §§ 1225(b)(2) and 1226(a) as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. 8 U.S.C. § 1226(c) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).
28. Following the enactment of the IIRIRA, EOIR drafted new regulations stating that those entering the country without inspection were considered detained under 8 U.S.C. § 1226(a) and not under 8 U.S.C. § 1225. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
29. Thus in the decades that followed, most who entered without inspection and were placed in standard removal proceedings received bond hearings unless their criminal history rendered them ineligible for release under 8 U.S.C. § 1226(c). This practice was consistent with many more decades of prior practice in which noncitizens who were not

deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that 8 U.S.C. § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

30. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected the well-established interpretation of the statutory framework and reversed decades of practice. The new policy, “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ states that all individuals who entered the United States without inspection and admission shall now be deemed “applicants for admission” under 8 U.S.C. § 1225(a)(1). They are, therefore, now subject to the mandatory detention provision under 8 U.S.C. § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.
31. On September 5, 2025, the BIA issued a published decision adopting this same position. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA held that all noncitizens who entered the United States without admission or parole are considered applicants for admission, subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and ineligible for a bond redetermination hearing before an immigration judge. *Id.*
32. ICE and the BIA have adopted this position even though numerous federal courts, including this one, have rejected this conclusion. This Court has previously ruled that 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), applies to noncitizens who entered the United States and were detained years after their entry. *Aguirre Villa v. Normand*, 2025 WL

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

3095969 (S.D. Ga. Nov. 4, 2025) (R&R), *report and recommendation adopted*, 2025 WL 3188406 (Nov. 14, 2025) (Consolidating and granting habeas petition based on same conclusion for the following cases: CV525-090, CV525-091, CV525-97, CV525-100, CV525-103, CV525-104, CV525-105, CV525-114, CV525-115, CV525-117, CV525-121, CV525-126, CV525-130, CV525-131, CV525-132, CV525-133).²

33. District courts around the country have also rejected the recently adopted alternative reading of the INA since ICE implemented its July 8, 2025, memo. Courts have held that 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), governs the detention of noncitizens who entered without admission and were later apprehended inside the country rather than at the border. *See Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez*

² Case appealed to the 11th Circuit Court of Appeals on 01/21/2026 and remains pending. *Antonio Villa v. Warden, Folkston Detention Center, et al.*, No. 26-10179 (11th Cir. filed Jan 21, 2026).

Garcia v. Noem, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Santos v. Noem*, No. 3:25-CV-01193 SEC P, 2025 WL 2642278 (W.D. La. Sep. 11, 2025); *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 LX 465474 (D.N.M. Sep. 17, 2025); *Chafla v. Scott*, No. 2:25-cv-00437-SDN, 2025 LX 422663 (D. Me. Sep. 21, 2025).

34. Further, the text of 8 U.S.C. § 1226 expressly includes noncitizens present in the United States without being admitted or paroled. 8 U.S.C. § 1226(c)(1)(E)(i), (ii): such a noncitizen, (“inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title”), is subject to mandatory detention **only if** he or she “is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.” *Id.*
35. 8 U.S.C. § 1226(c)(1)(E)(i), (ii) thus carves out a specific category of noncitizens present without admission or parole who are subject to mandatory detention. As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). A plain reading of the statute, therefore, demonstrates that § 1226(a) governs the detention of noncitizens present

without admission or parole who are in removal proceedings under § 1229a, unless §1226(c)(1)(E) is triggered.

36. Accordingly, 8 U.S.C. § 1226(a) applies to noncitizens who are present without admission or parole, “pending a decision on whether the [noncitizen] is to be removed from the United States.” Removal proceedings for such noncitizens are conducted under 8 U.S.C. § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”
37. By contrast, 8 U.S.C. § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspection at the border of those “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).
38. Accordingly, DHS may not use 8 U.S.C. § 1225(b)(2)(A)’s mandatory detention provision to detain individuals like Petitioner, who entered and lived in the United States for almost three years, before DHS detained him.

FACTS

39. Petitioner entered the United States in or about December 2022 without inspection or admission. He has resided in the United States since then and, prior to being placed in detention, lived in Orlando, Florida with his partner of 10 years.
40. About three years after his entry, in or around November 2025, ICE detained Petitioner at a roadblock in Georgia. Upon information and belief, ICE detained Petitioner even though Petitioner had a valid driver’s license and committed no traffic or criminal

violation. **Exhibit B – Petitioner’s Driver’s License.** Petitioner is now detained at Folkston ICE Processing Center. **Exhibit D – ICE Online Detainee Locator System Search Results for Petitioner.**

41. DHS initiated removal proceedings against Petitioner before the Atlanta Immigration Court pursuant to 8 U.S.C. § 1229a. DHS charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as a person who entered the United States without admission or parole. **Exhibit A – Notice to Appear.**
42. Prior to being placed in detention, Petitioner was employed at Southeastern Electric for approximately six months. Prior to that, the Respondent was self-employed as a mechanic since 2022. Upon information and belief, Petitioner does not have a criminal record. Petitioner is neither a flight risk nor a danger to the community.
43. Upon information and belief, ICE issued a custody determination to continue Petitioner’s detention without an opportunity to post bond or be released on other conditions.
44. Any request for bond redetermination before EOIR is futile, as the BIA’s recent published decision, *Matter of Yajure Hurtado*, held that IJs lack jurisdiction to consider Petitioner’s bond request because individuals like Petitioner are subject to mandatory detention as applicants for admission under 8 U.S.C. § 1225(b)(2)(A).
45. As a result, Petitioner remains in mandatory detention. Absent relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

46. Petitioner realleges and incorporates by reference each and every allegation contained above.
47. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility. Nor does it apply to those who previously entered the country without admission and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under 8 U.S.C. § 1226(a), unless they are subject to 8 U.S.C. § 1225(b)(1), 1226(c), or 1231.
48. The application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT TWO

**VIOLATION OF THE DUE PROCESS CLAUSE
OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION**

49. Petitioner realleges and incorporates by reference each and every allegation contained above.
50. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
51. Petitioner has a fundamental interest in liberty and being free from official restraint.

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

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Order that Petitioner shall not be transferred outside the Southern District of Georgia while this habeas petition is pending;
3. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
4. Declare that Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) is unlawful, and that his custody is properly governed by 8 U.S.C. § 1226(a);
5. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
6. Retain jurisdiction over this case to ensure compliance with all of this Court's orders;
7. Award attorney's fees and costs as permitted under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
8. Grant any and all further relief that is necessary or appropriate.

Respectfully submitted this 30th day of January 2026.

/s/ Marshall Lewis Cohen

Marshall Lewis Cohen

Georgia Bar No. 174580

Attorney for Petitioner

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Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I, Marshall L. Cohen, hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/ Marshall L. Cohen
Attorney for Petitioner

Date: January 30, 2026

Attachment to JS 44 Civil Cover Sheet

Yhoan Carlos Salazar Pena v. Noem, et al.

Additional Respondents

Lyons, Todd M. — Acting Director, U.S. Immigration and Customs Enforcement;

Sterling, George — Atlanta Field Office Director, U.S. Immigration and

Customs Enforcement; and

Michael Breckon-Warden, Folkston ICE Processing Center.