UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

LINMER ADIN RAMIREZ MENDEZ,

Petitioner,

v.

Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security;

Kristen Sullivan, in her official capacity as Acting Director of Atlanta Field Office, IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS;

Todd Lyons in his official capacity as Acting Director of IMMIGRATION AND CUSTOMS ENFORCEMENT.

Michael Loebl, Warden, in his official capacity as Warden of FOLKSTON ICE PROCESSING CENTER,

Pamela BONDI, in her official capacity as U.S. Attorney General;

Daren Margolin, in his official capacity as Director, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.

Respondents.

Case No.: 5:26-cv-018

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Linmer Adin Ramirez Mendez, is in the physical custody of Respondents at the Folkston ICE Processing Center. Petitioner now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have misapplied statute and erroneously concluded that Petitioner is subject to mandatory detention.

2. Petitioner is charged with, *inter alia*, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i), and as an immigrant who, at the time of application for admission, was not in possession of valid unexpired immigrant visa, reentry permit, or border crossing card. See 8 U.S.C. § 1182 (a)(7)(A)(i)(I).

3. Based on these allegations in Petitioner's removal proceedings, DHS denied Petitioner's release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. This policy also instructed that "section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission."

4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225 (b)(2)(A) and therefore

ineligible to be released on bond.

5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. Section 1226(a) expressly applies to people who, like Petitioner, are charged as inadmissible for having entered United States without inspection.

6. 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 people like Petitioner.

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring his release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

JURISDICTION

8. Petitioner is in physical custody of Respondents and is detained at the Folkston ICE Processing Center in Folkston Georgia.

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

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

VENUE

11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), and to *Suri v. Trump*, 785 F. Supp. 3d 128, 144-145 (E.D. Va 2025), venue lies in the United States District Court for the Southern District of Georgia, the judicial district in which

Petitioner is currently detained.

12. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) (1) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in Folkston – housed in the Southern District of Georgia.

REQUIREMENTS OF 28 U.S.C § 2243

13. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to 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.*

14. 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

15. Petitioner Linmer Adin Ramirez Mendez is a citizen of Guatemala who has been in immigration detention since October 11, 2025. **(Ex. A).** After arresting Petitioner, ICE did not set bond, and Petitioner is unable to obtain review of his custody by an Immigration Judge, pursuant to the decision of the Board of Immigration Appeals (BIA) in *Matter of Yajure Hurtado*, 29 I & N. Dec. 216 (BIA 2025).

16. Respondent Kristi Noem is the Secretary of the Department of Homeland Security.

Ms. Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

17. Respondent Kristen Sullivan is the Acting Director of the Atlanta Field Office of ICE's Enforcement and Removal Operations division. As such, Ms. Sullivan is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. Ms. Sullivan is named in her official capacity.

18. Respondent, Todd Lyons is the Acting Director of Immigration and Customs Enforcement. Mr. Lyons is sued in his official capacity.

19. Respondent Michael Loebl is employed by GEO Group, Inc., as Warden of Folkston ICE Processing Center, where Petitioner is detained. Mr. Loebl has immediate physical custody of Petitioner. Mr. Loebl is sued in his official capacity.

20. Respondent, Pamela Bondi, is the Attorney General of the United States. Ms. Bondi is responsible for the Department of Justice, of which the Executive Office for Immigration Review (EOIR), and the immigration court system it operates, is a component agency. Ms. Bondi is sued in her official capacity.

21. Respondent, Daren Margolin, in his official capacity as Director, Executive Office for Immigration Review.

22. Respondent, EOIR, is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

23. Respondent, DHS, is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

LEGAL FRAMEWORK

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

25. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens who are in "standard" Removal Proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a. In these "standard" removal proceedings, individuals are entitled to full due process rights afforded by the Constitution, including the right to have an attorney represent them, the right to present evidence, call witnesses on their behalf, cross examine witnesses, testify on their own behalf, and appeal an adverse decision. Individuals in §1226(a) detention are generally entitled to a bond 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).

26. Second, 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 § 1225(b)(2).

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

28. A petition for writ of habeas corpus under 28 U.S.C. § 2241 is the proper vehicle to challenge the legality of immigration detention and to seek release or a bond hearing where custody violates the Constitution or federal law. *Jennings v. Rodriguez*, 583 U.S. 521 (2018).

29. While the REAL ID Act limits district court jurisdiction to review removal orders, it does not bar review of detention claims or constitutional challenges to custody. *See Zadvydas v. Davis*, 533 U.S. 678 (2001).

30. The district court reviews such claims de novo, exercising independent judgment over statutory interpretation and constitutional questions. *See Loper Bright Enterprises. v. Raimondo*, 603 U.S. 369 (2004).

31. Section 1226(a) sets out the "default rule" for the discretionary detention of citizen noncitizens "already present in the United States." *Jennings*, 583 U.S. at 303.

32. Under § 1226(a) immigration authorities may make an initial determination as to detention, but noncitizens may then request a bond hearing before an Immigration Judge. 8 C.F.R. 1236.1(c)(8), and 8 C.F.R. 1236.1(d)(1).

33. At that hearing, the noncitizen "may secure his release if he can convince the officer or immigration judge that he poses no flight risk and no danger to the community." *Nielsen v. Preap*, 586 U.S. 392, 397-98 (2019) (citing 8 C.F.R §§ 1003.19(a), 8 C.F.R. § 236.1 (c) (8) and (d)(1).

34. By contrast, 8 U.S.C. §1225 governs the detention of those "seeking admission." An applicant for admission is defined as a noncitizen "present in the United States who has not been admitted or who arrives in the United States," § 1255 (a)(1), and "fall[s] into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287.

35. The second category creates a catchall mandatory detention provision: "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 for [full removal proceedings under § 1229]." 8 U.S.C. §1225(b)(2)(A).

36. Unlike noncitizens detained under § 1226(a), those detained under § 1225 may only be released via parole "for urgent humanitarian reasons or significant public benefit." *Jennings*,

583 U.S. at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)).

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

38. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted 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. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

39. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *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).

40. Thus, in the decades that followed, most people who entered without inspection and were placed in § 1229(a) removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That 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 Immigration Judge 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 § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

41. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

42. The new policy, entitled "Interim Guidance Regarding Detention Authority for

Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 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. (**Ex. R**).

43. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for Immigration Judge bond hearings.

44. Since Respondents adopted their new policies, dozens of federal courts rejected the Government's new interpretation of INA's detention authorities and Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

45. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE's new policy memo and EOIR's decision in *Yajure Hurtado*. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d , 2025 WL 2084238 (D. Mass. July 24, 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); *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); *Romero v. Hyde*, No. 25- 11631- BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission

2398831 (S.D.N.Y. Aug. 19, 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); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 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); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB- RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25- cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

46. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

47. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

48. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing

under subsection (a). 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)); *see also Gomes*, 2025 WL 1869299, at *7.

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

50. By contrast, § 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 inspections at the border of people who are "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).

51. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing for many years in the United States at the time they were apprehended.

52. Lastly, prolonged civil detention without an individualized bond hearing violates the Fifth Amendment's Due Process Clause. *See Jennings*, 583 U.S. at 540-41; *Matthews v. Eldridge*, 424 U.S. 319 (1976). The government must justify continued detention as necessary to ensure appearance at hearings or public safety, and less restrictive alternatives must be considered.

FACTS

53. Petitioner is a citizen of Guatemala who entered to the United States without

inspection in 2014 and until his detention, was living at [redacted] Fairview, NJ 07022. **(Exs. A, B and D).**

54. On October 11, 2025, Petitioner was arrested while he was on his way to pick up his six-year-old United States Citizen child. Petitioner is now detained by Respondents at the Folkston ICE Processing Center in Folkston, Georgia. **(Ex. A at 1)**.

55. DHS placed Petitioner in removal proceedings before the Atlanta Immigration Court pursuant to 8 U.S.C. § 1229a. **(Ex. B)**. ICE charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without admission or inspection, and as an immigrant who, at the time of application for admission, is not in possession of valid unexpired immigrant visa, reentry permit, or border crossing card under 8 U.S.C. § 1182 (a)(7)(A)(i)(I). **(Ex. B)**.

56. After more than a decade of continuously living in the United States, Petitioner established roots in his community. Petitioner is the dedicated father of a six-year-old United States citizen child named A[redacted] **(Ex. E)**. Petitioner is providing for his son and for the last five years, prior to his detention, Petitioner worked a full-time manufacturing job at Dermaceutical Laboratories. **(Ex. F)**.

57. Petitioner also has two (2) a United States Citizen sponsors willing to take responsibility for Petitioner upon his release: Engie Valle and Daniela Buitrago Vasquez. (**Exs. H-Q**). Petitioner has no criminal history, and he is neither a flight risk nor a danger to the community. (**Ex. G**).

58. Following Petitioner's arrest and transfer to the Elizabeth, New Jersey Contract Detention Facility on October 11, 2025, Respondents abruptly transferred Petitioner over 800 miles away to the Folkston, Georgia ICE Processing Center on October 23, 2025. ICE issued a

custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

59. On October 27, 2025, Petitioner filed a motion for custody redetermination, and on November 6, 2025, Petitioner's motion for custody redetermination was denied. **(Exs, A and C).** The Immigration Judge gave written notice that he denied bond due to lack of jurisdiction pursuant to *Matter of Yajure Hurtado*. **(Ex. C).**

60. On November 25, 2025, Petitioner filed a second motion for custody redetermination based on the recent decision of the United States District Court for the Central District of California in *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr et al.*, Case: 5:25-cv-01873, and December 5, 2025, Petitioner's second motion for custody redetermination was denied. **(Exs, A and C).** The Immigration Judge gave written notice that he denied bond and reiterated the lack of jurisdiction pursuant to *Matter of Yajure Hurtado*. **(Ex. C).**

61. As a result, Petitioner remains in detention. Without 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 I

Violation of the Immigration and Nationality Act (INA)

62. Petitioner realleges and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

63. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing

in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

64. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA. The mandatory-detention clause at 8 U.S.C. § 1225(b)(2)(A) applies only to *arriving aliens* or to noncitizens *caught in the act of seeking admission* at a port of entry.

65. By its plain terms, it does not extend to individuals who entered the United States years earlier and were apprehended within the interior after establishing residence, family ties, and employment. Such individuals are governed by 8 U.S.C. §1226(a), which authorizes discretionary custody and release on bond, unless they fall within the narrow mandatory-detention categories of § 1225(b)(1) (expedited removal), §1226(c) (certain criminal aliens), or § 1231 (post-order detention).

66. Respondents' reliance on § 1225(b)(2)(A) to mandate Petitioner's detention contradicts the statutory text, structure, and history of the INA. Congress deliberately separated the detention provisions for arriving and present noncitizens; reading §12225(b) to subsume §1226(a) renders that distinction meaningless, violating the canon against surplusage. See *Chogllo Chafla v. Scott*, No. 2:25-cv-0047-SDN (D. Me. Sept. 21, 2025).

COUNT II

Violation of the Bond Regulations

67. Petitioner re-alleges and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

68. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the

agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. §1226 and its implementing regulations.

69. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying the mandatory detention provisions at §1225(b)(2) to individuals like Petitioner.

70. Further, and pursuant to *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr et al,* Case 5:25-cv-01873, "Individuals who are present in the United States and have not been inspected and authorized by an immigration officer are merely part of the broadly defined term "[noncitizen]": any person not a citizen or national of the United States. §1101(a)(4). As the plain language of §1226(a) supports Petitioners' interpretation, and "no insuperable textual barrier" hinders this reading, …., §1226(a) is the appropriate governing authority over Petitioners' detention". *Id.* at 14.

71. The application of § 1225(b)(2) to Petitioner pursuant to *Matter of Yajure Hurtado*, unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Violation of Due Process

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

73. 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).

74. Petitioner has been prejudiced by this misapplication of the law.

75. Petitioner has a fundamental interest in liberty and being free from official restraint. 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 Fifth Amendment right to due process.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Southern District of Georgia while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner and provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

e. Declare that Petitioner's detention is unlawful;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Grant any other and further relief that this Court deems just and proper.

DATED this 7th day of January 2026.

Respectfully submitted,

/s/ Benjamin Osorio
Benjamin Osorio, Esq.
Georgia State Bar no. 194702
Murray Osorio PLLC
4103 Chain Bridge Road, Suite 300
Fairfax, Virginia 22030
Telephone: 703-352-2399
Facsimile: 703-763-2304
benjamin@murrayosorio.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2026, Petitioner's Petition for Writ of Habeas Corpus was uploaded with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants.

/s/ Benjamin Osorio
Benjamin Osorio, Esq.
Georgia State Bar no. 194702
Murray Osorio PLLC
4103 Chain Bridge Road, Suite 300
Fairfax, Virginia 22030
Telephone: 703-352-2399
Facsimile: 703-763-2304
benjamin@murrayosorio.com

Counsel for Petitioner