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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

JOSE CARLOS RIVAS DIAZ,

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**

INTRODUCTION

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2 1. Petitioner **JOSE CARLOS RIVAS DIAZ** (A# ) brings this petition for a
3 writ of habeas corpus to seek enforcement of the Immigration and Nationality Act's
4 (INA) provisions for bond hearings before an Immigration Judge. Petitioner is currently
5 in the physical custody of Respondents at the Stewart Detention Center in Lumpkin,
6 Georgia. Petitioner has resided in the United States for over twenty-six years, maintaining
7 deep family and community ties in Georgia since 2000. Despite this longstanding
8 residence and an approved Petition for Alien Relative filed by his U.S. citizen wife,
9 Petitioner now faces unlawful detention. This is because the Department of Homeland
10 Security (DHS) and the Executive Office for Immigration Review (EOIR) have
11 continued to deny him a bond hearing under INA § 236, instead erroneously subjecting
12 him to the mandatory detention scheme of INA § 235 reserved for "arriving aliens,"
13 despite his decades of presence in the interior.
- 14 2. Immigration Judges at the Stewart Immigration Court continue to decline jurisdiction
15 over Petitioner's custody, despite the fact that numerous courts have found DHS's policy
16 of detaining unlawful entrants with longstanding ties without bond hearings to be
17 unlawful. The Executive Office for Immigration Review and the Department of
18 Homeland Security have created a de facto procedural detour: what should be a
19 straightforward, discretionary procedure where a detained individual like Mr. Rivas
20 Diaz—a father of three U.S. citizen daughters and his family's sole provider—could
21 vindicate his rights expeditiously by requesting a bond hearing, now effectively requires
22 this Honorable Court to intervene. Petitioner asks this Court to order the agency to hold
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1 the bond hearing which the statute requires and which the facts of his decadds-long
2 history in Georgia clearly warrant.

3 JURISDICTION

- 4 3. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
5 STEWART DETENTION CENTER in LUMPKIN, GEORGIA. Exhibit 1, Detainee
6 Locator.
- 7 4. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. §
8 1331 (federal question), and Article I, section 9, clause 2 of the United States
9 Constitution (the Suspension Clause).
- 10 5. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,
11 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

12 VENUE

- 13 6. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500
14 (1973), venue lies in the United States District Court for the MIDDLE DISTRICT OF
15 GEORGIA, the judicial district in which Petitioner currently is detained.
- 16 7. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
17 Respondents are employees, officers, and agencies of the United States, and because a
18 substantial part of the events or omissions giving rise to the claims occurred in the
19 MIDDLE DISTRICT OF GEORGIA.

20 REQUIREMENTS OF 28 U.S.C. § 2243

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

- 3 9. Habeas corpus is “perhaps the most important writ known to the constitutional law . . .
4 affording as it does a swift and imperative remedy in all cases of illegal restraint or
5 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application
6 for the writ usurps the attention and displaces the calendar of the judge or justice who
7 entertains it and receives prompt action from him within the four corners of the
8 application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).
- 9 10. The Court should grant the petition for writ of habeas corpus “forthwith,” as the legal
10 issues have already been resolved for class members in *Maldonado Bautista*.

11 **PARTIES**

- 12 11. Petitioner JOSE CARLOS RIVAS DIAZ is alleged to be a citizen of EL SALVADOR
13 who is in immigration detention at Stewart Immigration Detention Center under the
14 auspices of the Stewart Immigration Court in Lumpkin, Georgia, where Respondents
15 continue to require a Federal District Court Order before they will grant a bond hearing.
- 16 12. Respondent JOHN TSOUKARIS is the Director of the Atlanta Field Office of ICE’s
17 Enforcement and Removal Operations division; however, on information and belief, the
18 DHS is rotating their Field Office Director without publishing a schedule of rotation. As
19 such, JOHN TSOUKARIS or his unknown, unannounced provisional replacement is
20 Petitioner’s immediate custodian and is responsible for Petitioner’s detention and
21 removal. He or his acting counterpart is named in his or her official capacity.
- 22 13. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is
23 responsible for the implementation and enforcement of the Immigration and Nationality
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1 Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem
2 has ultimate custodial authority over Petitioner and is sued in her official capacity.

3 14. Respondent Department of Homeland Security (DHS) is the federal agency responsible
4 for implementing and enforcing the INA, including the detention and removal of
5 noncitizens.

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

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

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

17 **CLAIMS FOR RELIEF**

18 **COUNT I**

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

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

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

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

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

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

12 **COUNT II**
13 **Violation of Due Process**

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

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

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

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

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

4 27. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
5 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are
6 generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§
7 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or
8 convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

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

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

3 33. Thus, in the decades that followed, most people who entered without inspection and were
4 placed in standard removal proceedings received bond hearings, unless their criminal
5 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was
6 consistent with many more decades of prior practice, in which noncitizens who were not
7 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer.
8 *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996)
9 (noting that § 1226(a) simply “restates” the detention authority previously found at §
10 1252(a)).

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

9 35. The equitable doctrine of judicial estoppel "prevents a party from asserting a claim in a
10 legal proceeding that is inconsistent with a claim taken by that party in a previous
11 proceeding." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). The Eleventh Circuit
12 applies a two-part test to determine if judicial estoppel is appropriate: (1) whether the
13 party took a position under oath in a prior proceeding that is "clearly inconsistent" with
14 its current position; and (2) whether these inconsistent positions were "calculated to make
15 a mockery of the judicial system." *Slater v. U.S. Steel Corp.*, 871 F.3d 1174, 1180 (11th
16 Cir. 2017) (en banc). Here, Respondents' current attempt to apply the mandatory
17 detention scheme of § 1225(b) to Petitioner—a person of longstanding residence in the
18 interior—is diametrically opposed to the Solicitor General's concessions in *Jennings*.
19 Having successfully persuaded the Supreme Court to adopt a statutory framework based
20 on the assurance that interior-detained individuals receive § 1226(a) hearings, the
21 Government cannot now "play fast and loose with the courts" by reversing that position
22 to avoid providing Petitioner the very due process it previously used as a shield against
23 constitutional challenges. *See id.* at 1181.

1 36. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected
2 well-established understanding of the statutory framework and reversed decades of
3 practice.

4 37. The new policy, entitled “Interim Guidance Regarding Detention Authority for
5 Applicants for Admission,”¹ claims that all persons who entered the United States
6 without inspection shall now be subject to mandatory detention provision under §
7 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and
8 affects those who have resided in the United States for months, years, and even decades.

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

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

16 40. A growing number of federal courts have rejected ICE and EOIR’s expanded
17 interpretation of the Immigration and Nationality Act’s detention provisions. These
18 courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention
19 authority applicable in these cases. For example, courts in Massachusetts, Arizona, New
20 York, Minnesota, California, and Nebraska have reached this conclusion. See: *Gomes v.*
21 *Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV
22 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25

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

1 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-
2 SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass.
3 Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21,
4 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025).

5 41. As of December 18th, 2025, the DHS policy was VACATED. *Maldonado Bautista v.*
6 *Santacruz*, No. 5:25-cv-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3549826, at *8–
7 9 (C.D. Cal. Dec. 18, 2025) (vacating DHS’s July 8, 2025 “Interim Guidance Regarding
8 Detention Authority for Applicants for Admission” under the Administrative Procedure
9 Act); *id.*, 2025 WL 3549854, at *2 (entering final judgment as to Counts I–III).

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

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

16 44. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently
17 entered the United States and were not free to mingle with the general population after
18 being free from official restraint. The statute’s entire framework is premised on
19 inspections at the border of people who are “seeking admission” to the United States. 8
20 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory
21 detention scheme applies “at the Nation’s borders and ports of entry, where the
22 Government must determine whether a[] [noncitizen] seeking to enter the country is
23 admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

1 45. Because arriving aliens are processed under 8 U.S.C. § 1225(b) and remain under official
2 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
7 inspection fall under § 1226. Consequently, DHS must select a single, legally coherent
8 classification and may not pursue allegations premised on contradictory theories of entry
9 status.

10
11 **FACTS**

12 46. Petitioner JOSE CARLOS RIVAS DIAZ is a citizen of EL SALVADOR who has resided
13 in the United States for decades. He has no criminal history. He is currently detained at
14 Stewart Immigration Detention Center in Lumpkin, Georgia. ICE did not set bond.

15 47. Petitioner is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. DHS has
16 charged Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and placed him in
17 removal proceedings pursuant to 8 U.S.C. § 1229a.

18 48. Despite the intervention of hundreds of Federal District Courts holding that class
19 members are detained under 8 U.S.C. § 1226(a) and entitled to consideration for release
20 on bond—Respondents continue to apply § 1225(b)(2) and deny bond hearings to class
21 members, including Petitioner. Immigration Judges at Stewart Detention Center have
22 refused jurisdiction, citing agency directives to disregard the Court’s earlier rulings, and
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1 insisting on awaiting guidance from the 11th Circuit or EOIR to assume jurisdiction.

2 Respondents' continued detention of Petitioner violates the INA.

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4 **PRAYER FOR RELIEF**

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

- 6 a. Assume jurisdiction over this matter;
- 7 b. Issue a writ of habeas corpus requiring that within one day, Respondents release
- 8 Petitioner;
- 9 c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner
- 10 unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;
- 11
- 12 d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA),
- 13 as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- 14 e. Grant any other and further relief that this Court deems just and proper.

15 DATED this 13th day of March, 2026.

16
17 **/s/ Joshua McCall, Esq.**

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