

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

NELSON JIMENEZ RIOS

Petitioner,

Case No. 4:26-cv-506

VERIFIED PETITION  
FOR WRIT OF  
HABEAS CORPUS

v.

WARDEN of Stewart Detention Center;  
KRISTIN SULLIVAN, Acting Director,  
Immigration and Customs Enforcement  
and Removal Operations ("ICE/ERO")  
Field Office, Atlanta;  
MARKWAYNE MULLINS, Secretary of the  
Department of Homeland Security ("DHS");  
and PAMELA BONDI, Attorney General  
of the United States,  
in their official capacities,

Respondents.

**INTRODUCTION**

1. Petitioner Nelson Jimenez Rios, a citizen of Mexico, respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge the legality of his detention by Immigration and Customs Enforcement ("ICE"), a

component of the U.S. Department of Homeland Security (“DHS”). He was arrested by Greenville Police on February 18, 2026, while driving home from work and transferred into ICE Custody on February 21, 2026. See Ex. 1, Notice to Appear (“NTA”). Petitioner is currently detained at the Stewart Detention Center in Lumpkin, Georgia, where he has been held unlawfully since that date.

2. This Court has recently considered whether a noncitizen who is already present in the United States, not at its port of entry seeking admission, is deemed an “applicant for admission” subjecting him to mandatory detention under Section 1225(b)(2) or, if not, subjecting him to discretionary detention with a right to a bond hearing under Section 1226(a). *See, e.g., J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) (finding petitioners’ detention governed by 8 U.S.C. § 1226(a)); *P.R.S. v. Streeval*, No. 4:25-cv-343-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025) (same).

3. Despite this Court’s recent rulings rejecting the Respondents’ position that § 1225(b)(2)(A) applies to individuals such as Petitioner, Respondents continue to maintain that noncitizens who entered the United States without inspection are not eligible for bond redetermination hearings, because they are applicants for admission within the meaning of 8 U.S.C. § 1225(b)(2)(A).

4. An order from this Court requiring immediate release, or in the alternative a bond hearing with extra safeguards, is required here because ordering

a bond hearing alone will not reliably remedy Petitioner's unlawful detention. Experience in recent cases demonstrates that, absent clear guidance or safeguards, bond determinations may fail to meaningfully engage with individualized assessments of flight risk or danger.<sup>1</sup>

5. As such, Petitioner seeks a writ of habeas corpus requiring that he be released immediately, or in the alternative, ensuring Respondents conduct a *constitutionally sufficient* bond hearing within seven (7) business days and subsequently file with this Court a status report.

6. To the extent this Court orders a bond hearing rather than release, Petitioner seeks that this Court's order include the following safeguards:

(1) Make explicit that Respondents bear the burden to show flight risk or danger to society. *See, e.g., J.G. v. Warden, Irwin County Detention Center*, 501 F. Supp. 3d 1331, 1335 (M.D. Ga. 2020) (finding that the Government "must bear the burden of proof to justify a noncitizen's detention pending removal proceedings"); and

(2) Order Respondents to give a status report to this Court within three (3) days of any ordered bond hearing, stating whether Petitioner has been granted bond, and, if his request for bond was denied, the reasons for that denial, to certify compliance with this Opinion.

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<sup>1</sup> Counsel is aware, based on recent litigation experience and communications with other immigration practitioners, that many similarly situated noncitizens have faced bond denials following habeas relief on grounds that do not meaningfully address individualized risk, showing that an order requiring a bond hearing without also ordering safeguards does not reliably remedy unlawful detention. *See e.g., Ex. 2, Romero-Nolasco v. McDonald*, No. 25-cv-12492-MJJ, ECF No. 22 at 5n.2 (D. Mass. Jan. 14, 2025) ("[I]t is clear that the IJ simply did not apply the factors relevant to assessing whether a person is a flight risk to the evidence.").

### JURISDICTION AND VENUE

7. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq.*

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

10. “A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may, . . . be brought in any judicial district in which a defendant in the action resides . . . See 28 U.S.C. § 1391(e).

11. The Supreme Court articulated in *Rumsfeld v. Padilla* the standard for determining if a court has jurisdiction to consider a habeas corpus petition, which breaks down into two subquestions— (1) who is the proper respondent to the petition, and (2) does the Court have jurisdiction over that respondent. *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004).

12. Under *Padilla*, the “immediate custodian” of the detained petitioner is the proper respondent in such habeas actions, which is typically the warden of the facility in which the petitioner is being housed. *See id.* at 443 (“The plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.”)

13. Here, under *Padilla*, the immediate custodian of the Petitioner, and thus the proper Respondent, is the Warden of the Stewart Detention Center in Lumpkin, Georgia. *See id.* Because this Court has jurisdiction over actions arising in Stewart County, the venue is proper in this case.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14. Petitioner has exhausted his administrative remedies to the extent required by law. There is no statutory exhaustion requirement in 28 U.S.C. § 2241. However, “that does not mean that courts may disregard a failure to exhaust and grant relief on the merits if the respondent properly asserts the defense.” *Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015). “To properly exhaust administrative remedies, a petitioner must comply with an agency’s deadlines and procedural rules.” *Straughter v. Warden, FCC Coleman - Low*, 699 F. Supp. 3d 1304, 1306 (M.D. Fla. 2023) (citing *Woodford v. Ngo*, 548 U.S. 81, 90–91 (2006))

(discussing the Prison Litigation Reform Act's (PLRA) exhaustion requirement)). It is the Respondent's burden to prove that the Petitioner has "failed to exhaust all available administrative remedies." *Id.* at 1307.

15. Any request for bond through EOIR would be futile at this stage while the Ninth Circuit's stay of the final ruling in *Maldonado Bautista* remains in effect, as *Matter of Hurtado* still applies. See Ex. 3, *Maldonado Bautista v. U.S. Dep't of Homeland Sec.*, No. 26-1044 (9th Cir. Mar. 6, 2026) (order granting temporary administrative stay); see also *McCarthy v. Madigan*, 503 U.S. 140, 146-49 (1992) *superseded by statute on other grounds as stated in Booth v. Churner*, 532 U.S. 731 (2001) (noting that traditional exceptions include where exhaustion would cause "undue prejudice to subsequent assertion of a court action" or "irreparable harm" to the petitioner, where there is "some doubt as to whether the agency was empowered to grant effective relief," or where it would be futile because "the administrative body is shown to be biased or has otherwise predetermined the issue before it") (internal quotation marks omitted).

16. Accordingly, this Court should find that Petitioner has sufficiently exhausted all administrative remedies.

**REQUIREMENTS OF 28 U.S.C. § 2243**

17. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

18. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, 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).

**PARTIES**

19. Petitioner is a noncitizen who is currently detained at the Stewart Detention Center. He is in the custody, and under the direct control, of Respondents and their agents.

20. Respondent Warden of the Stewart Detention Center is sued in their official capacity. Respondent Warden is the immediate custodian of the Petitioner.

21. Respondent Kristin Sullivan is sued in her official capacity as the Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Atlanta Field Office. Respondent Sullivan is a legal custodian of Petitioner and has authority to release her.

22. Respondent Markwayne Mullins is sued in his official capacity as the Secretary of the DHS. In this capacity, Respondent Mullins is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Mullins is a legal custodian of Petitioner.

23. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

### **STATEMENT OF FACTS**

24. Petitioner, Nelson Jimenez Rios, a noncitizen, faces unlawful detention because of the current DHS and Executive Office of Immigration

Review's policy to deny bond in accordance with the Interim Guidance Regarding Detention Authority for Applicants for Admission" dated July 8, 2025 (hereinafter "ICE Memo"). See Ex.4, ICE Memo. The ICE Memo states that DHS "has revisited its legal position on detention and release authorities" and has issued the policy "in coordination with the Department of Justice (DOJ)".

25. Petitioner alleges that he left Mexico and last entered the United States through Arizona in 2010. He did not enter through a border crossing or port of entry nor was he arrested or otherwise detained at that time.

26. On February 18, 2026, after approximately sixteen (16) years of living in the United States, Petitioner alleges that he was pulled over by Greenville police while he was driving home from work. He alleges that the police arrested Petitioner for driving without insurance despite the fact that he provided them with his proof of insurance and they were able to verify that he had active insurance with the insurance company.

27. Petitioner was held at a detention facility in Anderson, South Carolina for approximately one (1) week, without a hearing, before being transferred to ICE custody. Once in ICE custody, Petitioner was moved to the Stewart detention center in Lumpkin, Georgia, where he currently resides.

28. On February 21, 2026, ICE issued an Notice to Appear ("NTA") charging Petitioner with being removable under § 212(a)(6)(A)(i) of the

Immigration and Nationality Act (“INA”), which states: “[Y]ou are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.” INA § 212(a)(6)(A)(i); 8 U.S.C. § 1182(a)(6)(A)(i). See Ex. 1, Notice to Appear (“NTA”). It also charged him as removable under INA § 212(a)(7)(A)(i)(I) as someone who “at the time of application for admission, is not in possession of a valid unexpired immigrant visa... or other valid entry document required by the Act...” *See Id.*

29. The ICE Memo created a new DHS policy instructing all ICE employees to consider anyone inadmissible under § 1182(a)(6)(A)(I) - i.e., those who entered the U.S. without inspection - to be an “applicant for admission” under 8 § 1225(b)(2)(A) and therefore subject to mandatory detention. See Ex. 4, ICE Memo.

30. Under 8 U.S.C. § 1225(b)(2)(A), an applicant for admission seeking admission shall be detained for a removal proceeding. It is now the position of the EOIR, which houses both the Board of Immigration Appeals (“BIA”) and immigration judges, that 8 U.S.C. § 1225(b)(2)(A) applies to *all* individuals who arrived in the United States without documents, regardless of how long they have lived in the United States and regardless of how far they were apprehended from the border.

31. However, § 1225(b)(2)(A) does not apply to individuals like Petitioner, who were already present in the United States when apprehended. Individuals like Petitioner are subject to detention under a different statute, § 1226(a), and are eligible for release on bond.

32. Nevertheless, the ICE Memo instructs its attorneys to coordinate with the Department of Justice to reject bond redetermination hearings for applicants who previously arrived in the United States without documents. The BIA adopted the same position as the July 8, 2025 ICE policy by issuing a decision holding that an immigration judge has no authority to consider bond requests for any person who entered the U.S. without admission. *See Matter of Yajure Hurtado*, 29 I&N dec. 216, 228-29 (BIA 2025).

33. As such, it is futile for Petitioner to request bond from the immigration court without relief from this Court because the adopted policy requires the immigration court to automatically deny any such request without any consideration or determination of his individual flight risk or danger to society.

34. Petitioner asserts his detention is illegal and in violation of his Fifth Amendment right to due process of law as well as the Immigration and Nationality Act (“INA”) and Administrative procedure Act (“APA”).

35. Petitioner’s detention on the above 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, § 1226(a), that allows for release on conditional parole or bond.

36. Under § 1226(a), Petitioner is eligible for a bond redetermination hearing and release on conditional parole or bond. Petitioner has no other criminal record; is not a danger to the safety of others; and has strong ties to the community. He owns his own home in Greenville, SC where he lives with his wife and four (4) United States citizen children. Petitioner has been continually employed with the same company for over five years.

37. Additionally, three (3) of Petitioner's children are minors and his wife suffers from hypertension. See Ex. 5, Medical Note for Aracely Trejo. Worrying about the health of his wife, who is medically fragile and having to navigate the stress of single-parenthood while he is in detention, significantly affects Petitioner's mental well-being. This burden adds to the existing stress of his current living situation in the Stewart Detention Facility exacerbating the negative psychological effects of his detention.

38. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner. As such, Petitioner seeks a writ of habeas corpus requiring that he be released immediately, or in the alternative, requiring

Respondents to conduct a constitutionally sufficient bond hearing within seven (7) business days and subsequently file with this Court a status report.

### **LEGAL FRAMEWORK**

40. U.S.C. § 2241(c)(3) authorizes federal courts to grant habeas relief to prisoners or detainees who are “in custody in violation of the Constitution or laws or treaties of the United States.” Federal courts retain jurisdiction under § 2241 to review purely legal statutory and constitutional claims regarding the government's detention authority, but jurisdiction does not extend to “discretionary judgment,” “action,” or “decision” by the Attorney General with respect to either detention or removal. *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (citing, *inter alia*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003)).

41. In May 2025, the Board of Immigration Appeals (“BIA”) decided *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). The BIA held that a noncitizen who entered the United States without inspection and was arrested without a warrant while “arriving” is an “applicant for admission” under INA § 235(b) and therefore is subject to mandatory detention under § 235(b) and ineligible for a bond hearing under INA § 236(a). The case involved a Chinese national who crossed the southern border without inspection, was arrested shortly thereafter, and then released on parole under INA § 212(d)(5)(A). After her parole was later

terminated, she was detained again and sought a bond hearing. The BIA affirmed the immigration judge's denial, holding that because her detention was under § 235(b), immigration judges lack authority to grant bond under § 236(a).

42. The BIA's reasoning turned on the statutory definition of "applicant for admission," which the BIA interpreted to cover someone who has not been formally admitted and was arrested upon arrival or shortly thereafter, regardless of whether the arrest occurred at a formal port of entry.

43. On July 8, 2025, ICE issued the ICE Memo that expanded the logic of *Q. Li*. Under the Memo, ICE directed officers to treat virtually all noncitizens in the United States who have not been formally admitted, including those present for years, as "applicants for admission" subject to mandatory detention under INA § 235(b), and thus to refrain from issuing custody-determination forms under § 236(a). *See Ex. 4, ICE Memo.*

44. The ICE Memo expanded the reasoning in *Q. Li* beyond individuals who were arrested immediately after entry and applied it broadly, including to people detained long after arrival, by classifying them as "applicants for admission" simply because they had not been formally admitted or paroled.

45. The ICE Memo states as follows:

Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms

only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

46. In September 2025, the BIA again expanded this interpretation in *Matter of Yajure Hurtado* to cover all individuals who entered without inspection and admission at any point in the past, even if they had been present in the U.S. for years. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

47. As a result of these decisions, Petitioner is currently detained at the Stewart Detention Center, 146 CCA Road, Lumpkin, Georgia 31815, and is the subject of a pending removal proceeding.

48. The Central District of California in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Dec. 18, 2025 C.D. Cal.), recently declared that the ICE Memo violated the Administrative Procedure Act (“APA”) and vacated *Matter of Yajure Hurtado*.<sup>2</sup> However, the Ninth Circuit temporarily stayed the

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<sup>2</sup> On December 18, 2025, the U.S. District Court for Central District of California issued a final judgment declaring that Bond Eligible Class Members are detained under 8 U.S.C. § 1226(a), and are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Dec. 18, 2025 C.D. Cal.). On February 18, 2026, District Court Judge Sunshine Suzanne Sykes of the Central District of California granted

district court's order pending a ruling on the government's emergency motion for a stay pending appeal. See Ex. 3, *Maldonado Bautista v. U.S. Dep't of Homeland Sec.*, No. 26-1044 (9th Cir. Mar. 6, 2026) (order granting temporary administrative stay). Thus, although that judgment will remain fully in effect in the Central District of California, *Matter of Hurtado* is otherwise still in effect and being relied on widely by immigration judges nationwide.

49. Notably, however, the vast majority of federal courts to consider this issue, including this Court, have agreed with Petitioner's stance. *See, e.g., J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) (finding petitioners' detention governed by 8 U.S.C. § 1226(a)); *P.R.S. v. Streeval*, No. 4:25-cv-343-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025) (same).

50. Petitioner accordingly asserts that (1) his Fifth Amendment right to due process of law is being violated by the Respondents while he remains detained without an individualized bond hearing; (2) the Respondents' actions violated the INA when they detained him under 8 U.S.C. § 1225(b)(2)(A), rather than 8 U.S.C. § 1226(a); and (3) the Respondents' actions violated the APA when they detained him under 8 U.S.C. § 1225(b)(2)(A), rather than 8 U.S.C. § 1226(a).

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Plaintiffs' motion to enforce and issued an order vacating the Board's decision in *Matter of Yajure Hurtado*.

*1. Due Process*

51. The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding his detention. As the Supreme Court has explained, “[f]reedom 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. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

52. The INA envisions three basic forms of detention for noncitizens in removal proceedings. First is detention for noncitizens in regular, non-expedited removal proceedings. *See* 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. *See id.* § 1226(c).

53. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, *id.* § 1231(a)(6). *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111-13 (W.D. Wash. 2019) (providing overview of INA’s detention authorities).

54. To guarantee against arbitrary detention and to guarantee the right to liberty, due process requires “adequate procedural protections” that ensure the government’s asserted justification for a noncitizen’s physical confinement

“outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

55. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.

56. To justify immigration detention, this Court has held that the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See J.G. v. Warden, Irwin County Detention Center*, 501 F. Supp. 3d 1331, 1335 (M.D. Ga. 2020) (holding that the Government “must bear the burden of proof to justify a noncitizen’s detention pending removal proceedings”).

57. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), “the Supreme Court held that [section] 1226(a) does not mandate that a clear and convincing evidence burden be placed on the government in bond hearings, [but] it left open the question of whether the Due Process Clause does.” *Darko v. Sessions*, 342 F. Supp. 3d 429, 434–35 (S.D.N.Y. 2018). In considering the question left open by *Jennings*, both the First and Second Circuits, along with several district courts (in addition to this Court), have found that due process requires that the government bear the burden of justifying a noncitizen’s § 1226(a) detention. *See*

*Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021) (concluding “that the government must bear the burden of proving dangerousness or flight risk in order to continue detaining a noncitizen under section 1226(a)”); *Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020) (holding that the government must bear the burden of proving danger and flight risk by clear and convincing evidence if an individual faces prolonged detention); *see, e.g. Molina Ochoa v. Noem*, No. 1:25-cv-00881-JB-LF, 2025 WL 3125846, at \*13 (D.N.M. Nov. 7, 2025) (holding that the government must “bear the burden at a § 1226(a) bond hearing of proving by clear and convincing evidence that Petitioner is a flight risk or a danger to the community”); *Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at \*8 (N.D. Ill. Oct. 16, 2025) (same).

58. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

59. First, incarceration deprives noncitizens of a “profound” liberty interest—one that always requires some form of procedural protections. *Diouf*, 634 F.3d at 1091- 92; *see also Foucha*, 504 U.S. at 80 (“It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” (citation omitted)).

60. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at parental termination proceedings because “numerous factors combine to magnify the risk of erroneous factfinding” including that “parents subject to termination proceedings are often poor, uneducated, or members of minority groups” and “[t]he State’s attorney usually will be expert on the issues contested”). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing.

61. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen’s immigration records and other information that it can use to make its case for continued detention.

62. In light of these considerations, “[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process.” *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at \*5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).

63. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). It follows that alternatives to detention must be considered in determining whether further incarceration is warranted.

64. Immigration detainees face severe hardships while incarcerated. Immigration detainees are held in lock-down facilities, with limited freedom of movement and access to their families: “the circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez-Alvarez v. U.S. Att’y Gen.*, 783 F.3d 478 (3d Cir. 2015); *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir. 2016). “And in some cases[,] the conditions of their confinement are inappropriately poor.” *Jennings*, 138 S. Ct.

at 861 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities (2017) (reporting instances of invasive procedures, substandard care, and mistreatment, e.g., indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee)).

65. These conditions and obstacles only further underscore the serious due process concerns that immigration detention poses for noncitizens like the Petitioner, and reflect the need for a decision before a *neutral* decisionmaker regarding further detention.

66. Where detention has been found unlawful, habeas relief must be effective, not merely formal. A bare order for a bond hearing does not necessarily cure a constitutional violation where the adjudicator retains unbounded authority to deny release without meaningful engagement with individualized flight risk or danger.

67. In such circumstances, District Courts have the authority to order release or in the alternative, a bond hearing with appropriate safeguards in place. *See, e.g., Ex. 6, Soto-Medina v. Lynch et al.*, No. 1:25-cv-01704-JMB-MV, ECF No. 8 at 22 (W.D. Mich. Jan. 21, 2026) (ordering respondents “to provide Petitioner with an individualized bond hearing before an immigration judge, at

which time the government will have the burden to demonstrate dangerousness or flight risk by clear and convincing evidence, or, in the alternative, immediately release Petitioner from custody” as well as “to file a status report within six business days of the date of this Court’s Opinion and Judgment to certify compliance with this Opinion and the corresponding Judgment.”).

2. *INA*

68. The Petitioner is not properly detained under 8 U.S.C. § 1225(b)(2)(A) but under 8 U.S.C. § 1226(a). Under 8 U.S.C. § 1225(b)(2)(A):

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 for a proceeding under section 1229a of this title [i.e., removal proceedings].

69. Petitioner maintains that he is detained under 8 U.S.C. § 1226(a), which provides that:

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) [mandating the detention of certain criminal aliens] and pending such decision, the Attorney General -

(1) may continue to detain the arrested alien; and

(2) may release the alien on -

(A) bond of at least \$1,500 with security approved by, and containing conditions described by, the Attorney General;

or (B) conditional parole; but

(3) may not provide the alien with work authorization ... unless the alien is lawfully admitted for permanent residence or otherwise would ... be provided such authorization.

70. “Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.” *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985). Thus, the Court's “first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Id.* (citing, *inter alia*, *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 477 (1992)).

71. Thus, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), was wrongly decided and should not be given weight. In that case, the Board held that “[b]ased 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), Immigration judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.” *Id.*

72. This Court has previously rejected the reasoning and holding of *Yajure Hurtado*. As this Court noted in the recent case *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025), “under no reasonable interpretation is ‘alien seeking admission’ synonymous with ‘any alien present in the United States who has not been admitted.’” *See J.A.M.*, No. 4:25-cv-342-CDL at \*5; *see also J.A.M. v. Streeval*, No. 4:25-CV-342 (CDL), 2025 WL 3050094, at \*1 (M.D. Ga. Nov. 1, 2025) (“The Court has previously rejected Respondents’ broad interpretation of § 1225(b)(2) that detention is mandatory for any alien who has not been lawfully admitted.”).

### 3. APA

73. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

74. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

**CLAIMS FOR RELIEF**

**COUNT ONE**

**Respondents Violated Petitioner's Fifth Amendment Right to Due Process**

***Procedural Due Process***

75. The allegations in the above paragraphs are realleged and incorporated herein.

76. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

77. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

78. Here, Petitioner is entitled to due process protections under the Fifth Amendment of the U.S. Constitution which requires an individualized bond hearing.

79. Under the three-part test of *Mathews*, 424 U.S., the balance overwhelmingly favors Petitioner. His interest in liberty, family unity, and health is paramount; the Government's blanket detention policy under *Yajure Hurtado*

creates an extreme risk of erroneous deprivation by denying him any opportunity to demonstrate eligibility for release; and the Respondent's interest in ensuring appearance can be served by far less restrictive means. Accordingly, due process requires an individualized bond hearing under § 1226(a).

80. The Respondents have shown neither that the continued detention of petitioner following his initial detention is reasonably related to the original purpose nor that the *Mathews* tests are satisfied. And importantly, no procedural safeguards have been provided to the Petitioner.

81. Petitioner is a long-term resident of the United States arrested in the interior, yet DHS asserts mandatory detention under INA § 235 without initiating expedited removal or processing him as an actual applicant for admission. Civil detention without an individualized determination of danger or flight risk is unconstitutional. *See Zadvydas*, 533 U.S. 678; *Demore*, 538 U.S. 510 (as limited by subsequent authority); U.S. Const. amend. V.

82. As the Supreme Court noted in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), civil immigration detention is constitutionally permissible only so long as it bears a reasonable relationship to its underlying purpose. Therefore, where detention persists without an effective mechanism for individualized justification, it loses its legal foundation.

83. Should this Court find that Petitioner is owed a bond hearing, there is a real and grave risk that Petitioner will not receive a *constitutionally sufficient* bond hearing absent further action from this Court to ensure it. And a remedy that exists in name only is no remedy at all.

84. Accordingly, this Court should order Petitioner's immediate release or impose additional safeguards to any ordered bond hearing.

## COUNT TWO

### **Statutory Violation: Petitioner is Detained Under INA § 236, Not § 235**

85. The allegations in the above paragraphs are realleged and incorporated herein.

86. Here, the Petitioner is clearly not an "applicant for admission." He entered the United States in 2010 and was not arrested until sixteen (16) years later and miles away from the border. Accordingly, his detention is governed exclusively by INA § 236(a).

87. Further, contrary to the language of § 1225(b), § 1226(a) does not specify a class or classes of aliens who should be detained under the provision, but governs more generally the "apprehension and detention of aliens." As opposed to the inspection regime for aliens entering the United States set forth in § 1225, the Supreme Court has characterized § 1226(a) as "authoriz[ing] the government to

detain certain aliens already in the country pending the outcome of removal proceedings[.]” *Jennings*, 583 U.S. at 289 (emphasis added).

88. The EOIR’s and immigration judges’ refusal to exercise bond jurisdiction contradicts the plain text of §§ 1225 and 1226, longstanding agency practice, and federal case law holding that DHS’s charging decision determines the statutory detention authority. By treating Petitioner as subject to § 1225(b) detention without statutory authorization, Respondents acted *ultra vires* and contrary to law.

89. Further, the EOIR policy that *Hurtado* removes all bond jurisdiction whenever DHS claims § 235 authority grants the agency unfettered power to eliminate bond hearings for any noncitizen arrested in the interior, simply by labeling them as an “applicant for admission” without following statutory procedures for expedited removal. Such a reading raises grave Due Process concerns and cannot reflect congressional intent. Because Petitioner is detained under § 236(a), he is entitled to an individualized custody hearing.

90. Thus, Petitioner is entitled to a bond hearing “at the outset of detention” as established by existing federal regulations. *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

91. This Court came to the same conclusion in recent habeas decisions regarding the applicability of INA § 236 and § 235 to detained immigrants who

had lived in the interior of the country for years before being arrested. *See J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, No. 4:25-cv-343-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025).

92. Petitioner is therefore entitled immediate release or in the alternative, a constitutionally sufficient bond hearing.

### COUNT THREE

#### **Respondents Violated of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)**

##### *Not in Accordance with Law and in Excess of Statutory Authority Unlawful Detention*

93. Petitioner restates and realleges all paragraphs as if fully set forth here.

94. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

95. Respondents have made no finding that Petitioner is a danger to the community.

96. Respondents have made no finding that Petitioner is a flight risk.

97. EOIR's position that Immigration Judges lack authority to conduct bond hearings based on *Matter of Yajure-Hurtado* constitutes final agency action that is contrary to statutory text, unsupported by facts, and irrational. Petitioner is a long-term U.S. resident apprehended in the interior, with no prior removal order. Applying *Hurtado* to Petitioner's facts is arbitrary, capricious, and legally erroneous. The resulting deprivation of bond eligibility is therefore unlawful under the APA.

### **PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
3. Declare that the Petitioner's detention violates the INA;
4. Declare that the Petitioner's detention violates the APA;
5. Issue a Writ of Habeas Corpus ordering Petitioner immediately released, or in the alternative, ordering Respondents to conduct a constitutionally sufficient bond hearing within three (3) days, with the following safeguards in place:
  - a. Declare that Respondents bear the burden to show flight risk or danger to society; and
  - b. Order Respondents to give a status report to this Court within three (3) days showing compliance with this Court's Opinion.

PETITION FOR WRIT OF HABEAS CORPUS

6. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
7. Grant any further relief this Court deems just and proper.

Respectfully submitted,

**/s/ Brittany S. Pierce**

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*Counsel for Petitioner*

Dated: 30 March, 2026

**EXHIBITS**

- EX. 1 -** Notice to Appear
- EX. 2 -** *Romero-Nolasco v. McDonald*, No. 25-cv-12492-MJJ, ECF No. 22  
at 5n.2 (D. Mass. Jan. 14, 2025)
- EX. 3-** *Maldonado Bautista v. U.S. Dep't of Homeland Sec.*, No. 26-1044  
(9th Cir. Mar. 6, 2026)
- EX. 4-** ICE Memo “Interim Guidance Regarding Detention Authority  
for Applicants for Admission”
- EX. 5 -** Medical Note for 
- EX. 6 -** *Soto-Medina v. Lynch et al.*, No. 1:25-cv-01704-JMB-MV, ECF No.  
8 at 22 (W.D. Mich. Jan. 21, 2026)

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

I represent Nelson Jimenez Rios and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 30th day of March, 2026.

**s/Brittany S. Pierce**

Brittany S. Pierce