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

Rodibel Osveli Bartolon-Perez, Petitioner v. JASON STREEVAL, Warden, Stewart Detention Center; MARKWAYNE MULLIN, Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY (DHS); TODD BLANCHE, Attorney General of the United States; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; TODD LYONS, Director, Immigration and Customs Enforcement; and GEORGE STERLING, Field Office Director of Enforcement and Removal Operations, Atlanta Field Office. Respondents.	PETITION FOR WRIT OF HABEAS CORPUS Civil Action Number:

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

Petitioner Rodibel Osveli Bartolon-Perez (the "Petitioner" or "Mr. Bartolon") is a native and citizen of Guatemala who Respondents have detained at the Stewart Detention Center ("Stewart"). He has been in ICE custody for nearly four (4) months, since December 8, 2025. His removal proceedings are ongoing; the petitioner had a pending case before the United States immigration court since 2012. Most importantly, he cannot apply for bond as required by the statute because of the Respondents' failure to properly interpret and apply the Immigration and Nationality Act ("INA") under the misguided interpretation of bond provisions in the Yajure-

Hurtado decision of the Board of Immigration Appeals of the Executive Office of Immigration Review of the U.S. Department of Justice. Because he is likely to face many additional months in detention, he seeks relief from this Court that would allow him to challenge his continuing, lengthy and unconstitutional detention. The Petitioner has absolutely no idea how long it will take for an individual hearing to be set in this matter, and Petitioner will be substantially prejudiced due to diminished access to counsel in light of his detention in a remote location.

Therefore, Petitioner respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and seeks declaratory and injunctive relief challenging his ongoing civil immigration detention by Respondents. Petitioner is an individual who entered the United States without inspection but who, under the Immigration and Nationality Act ("INA"), should be detained pursuant to 8 U.S.C. § 1226(a) and afforded a discretionary bond hearing before an Immigration Judge. Instead, Respondents are unlawfully treating Petitioner as subject to mandatory, no-bond detention under 8 U.S.C. § 1225(b), thereby denying Petitioner any opportunity to seek release on bond or conditions of supervision despite strong equities and minimal flight or danger risk.

JURISDICTION

1. Petitioner is in the physical custody of Respondents at the Stewart Detention Center in Lumpkin, Georgia.
2. This Court has jurisdiction under 28 U.S.C. §2241(c)(3) (habeas corpus), because the Petitioner is in custody under color of authority of the United States and is detained in violation of the Constitution and laws of the United States.
3. The Court also has jurisdiction under 28 U.S.C. §1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause). Specifically,

this action arises under the Constitution and laws of the United States, including the Immigration and Nationality Act, 8 U.S.C. §1101 *et seq.,* and the Administrative Procedures Act ("APA"), 5 U.S.C. §§701-706.

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

VENUE

5. Pursuant to Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Middle District of Georgia, the judicial district in which Petitioner is currently detained.

6. Venue is also proper in this District under 28 U.S.C. §1391(e) and §2241 because Petitioner is currently detained within this District at Stewart Detention Center, 146 CCA Road, Lumpkin, Georgia 31815, and the immediate custodian (the Warden) resides in this District.

REQUIRMENTS OF 28 U.S.C. §2243

7. 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.*

8. 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). "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

9. Petitioner Rodibel Osveli Bartolon-Perez is a native and citizen of Guatemala who has been in immigration detention for approximately four (4) months. After arresting Petitioner, ICE did not set bond. Petitioner has been unable to request a bond hearing, as it seems that the Department of Justice is requiring the immigration judge ("IJ") to state that there is no jurisdiction pursuant to the Board's decision in Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025). If the bond motion had been allowed to proceed, and the bond were denied in light of Yajure-Hurtado, a second bond motion would only be allowed in the event that the IJ deems "changed circumstances" existed.
10. Respondent George Sterling is the Director of the Atlanta Field Office of Enforcement and Removal Operations of Immigration and Customs Enforcement. Therefore, Mr. Sterling is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.
11. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for the detention of this Petitioner. Mr. Mullin has final custodial authority and is sued in his official capacity.
12. Respondent Department of Homeland Security ("DHS") is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

13. Respondent Todd Blanche is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office of Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

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

15. Respondent Jason Streeval is employed by CoreCivic as Warden of the Stewart Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

16. Respondent Todd Lyons is the current director of Immigration and Customs Enforcement, which oversees all of the field offices of Enforcement and Removal Operations. Therefore, he has ultimate responsibility over Petitioner's detention and removal. He is being sued in his official capacity.

STATUTORY AND REGULATORY FRAMEWORK

17. The INA essentially allows for three (3) forms of detention for the broad majority of noncitizens in removal proceedings.

18. First, 8 U.S.C. §1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. See 8 U.S.C. §1229a. Individuals in §1226(a) detention are generally entitled to a bond 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 under 8 U.S.C. §1226(c).

19. Secondly, 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).

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

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

22. The detention provisions §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).

23. 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).

24. Thus, in the decades that followed, most people who entered without inspection and were placed in standard 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 IJ or other hearing officer. See 8 U.S.C. §1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that §1226(a) simply "restates" the detention authority previously found at §1252(a)).

25. On July 8, 2025, ICE announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

26. That new policy, also known as "Interim Guidance Regarding Detention Authority for Applicants for Admission," 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 multiple decades.

27. On September 5, 2025, the BIA adopted this same position in Matter of Yajure-Hurtado. 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 bond hearings.

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

29. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that §1226(a), not §1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. Rodriguez Vazquez v. Bostock, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

30. Subsequently, numerous courts have adopted what could only be described as a litany of decisions adopting the same reading of the INA's detention authorities, thereby completely rejecting the new interpretation given by ICE and EOIR. While Petitioner could list this litany of decisions, the most on point decision comes from this district court on November 1, 2025. See J.A.M. v. Streeval, 4:25-CV-342, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025). In J.A.M., the petitioner in that case filed a petition for writ of habeas corpus, asserting that he is entitled to a discretionary bond hearing under 8 U.S.C. §1226(a). To no surprise, the Government in that case asserted that the EWI petitioner was subject to mandatory detention under §1225(b)(2) and thus was not eligible for a bond hearing. The court in J.A.M. granted the petition for habeas corpus, noting that "…under no reasonable interpretation is 'alien seeking admission' synonymous with 'any alien present in the United States who has not been admitted.'" Id at 14. In no uncertain terms was this court in agreement with the Government's interpretation of bond eligibility, and in continuation stated:

> **Counsel and Yajure Hurtado's expansive understanding of *synonym* would make an experienced grammarian, or even a rookie 7th grade English teacher, wince.**

In sum, this court in J.A.M. ordered the Government to provide that petitioner with a bond hearing to determine if he may be released on bond under §1226(a)(2) and applicable regulations. Id at 15.

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

32. 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]."

33. 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., 5549 U.S. 393, 400 (2010)); see also Gomes, 2025 WL 1869299, at *7.

34. 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.

35. 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).

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

DUE PROCESS

37. 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).

38. To guarantee against such 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).

39. 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 v. Kim, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.

40. As a result, where the government detains a noncitizen for a prolonged period or where the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. Demore, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of

flight and dangerousness may be warranted "if the continued detention became unreasonable or unjustified"); cf. Jackson v. Indiana, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards); McNeil v. Dir., Patuxent Inst., 407 U.S. 245, 249-50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement"); Hutto v. Finney, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

41. Courts that apply a reasonableness test have considered three main factors in determining whether prolonged detention is reasonable. First, courts have evaluated whether the noncitizen has raised a "good faith" challenge to removal – that is, the challenge is "legitimately raised" and presents "real issues." Chavez-Alvarez v. Warden York Cty. Prison, 783 F.3d 469, 476 (3rd Cir. 2015). Second, reasonableness is a "function of the length of the detention," with detention presumptively unreasonable if it lasts six months to a year. Id. At 477-78. Third, courts consider the likelihood that detention will continue pending future proceedings. Id at 478 (finding detention unreasonable after nine months of detention, when the parties could "have reasonably predicted that Chavez-Alvarez's appeal would take a substantial amount of time, making his already lengthy detention considerably longer").

42. Here, based on both decisions in this court as well as the detention factors, there has been a clear violation of due process in the Petitioner's case. Petitioner intends to file relief before the immigration court, but the preparation and filing of that relief is far more complicated in light of his detention hours away from where his attorney is located. If the INA were being properly applied as it was prior to Yajure-Hurtado, detention would almost

certainly not continue pending future proceedings, given that the Petitioner is neither a flight risk nor a danger to the community.

FACTS

43. Petitioner has resided in the United States since on or around August 6, 2012.

44. Petitioner is now detained at the Stewart Detention Center, and has been in the custody of ICE since December 8, 2025.

45. DHS placed Petitioner in removal proceedings on or around August 13, 2012, and on that date charged the Petitioner with being inadmissible under 8 U.S.C. §1182(a)(6)(A)(i) as someone who entered the United States without inspection.

46. Following Petitioner's current ICE arrest and transfer to the Stewart Detention Center, Petitioner retained the undersigned, and it is the Petitioner's intent for his counsel to file a motion for bond hearing with the Stewart Immigration Court. However, in light of Yajure-Hurtado, that will be impossible without first filing a habeas corpus motion with this Court.

47. Petitioner remains in detention, and without relief from this court, he faces the prospect of months, in immigration custody, separated from his family and community, as there is an indefinite date as to when an individual hearing may be set, and furthermore, his continued detention will impede his ability to prepare for his individual hearing because he will have reduced access to his counsel.

48. Petitioner's bond case, if allowed to proceed, would show that he is not a danger to the community or flight risk if released under the appropriate conditions.

49. As a result of Respondents' misclassification of Petitioner's detention as mandatory under §1225(b), Petitioner has been and continues to be detained without any opportunity to seek release on bond or other conditions before a neutral decisionmaker due to Yajure-Hurtado.

CLAIMS FOR RELIEF

COUNT 1 – VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT – UNLAWFUL CLASSIFICATION UNDER 8 U.S.C. §1225(B)

50. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

51. 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.

52. The application of §1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II – VIOLATION OF BOND REGULATIONS

53. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

54. 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.

55. Nonetheless, pursuant to Matter of Yajure Hurtado, EOIR has a policy and practice of applying §1225(b)(2) to individuals like the Petitioner.

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

COUNT III – VIOLATION OF THE FIFTH AMENDMENT DUE PROCESS CLAUSE – MANDATORY AND PROLONGED DETENTION WITHOUT AN INDIVIDUALIZED HEARING

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

58. 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).

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

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

COUNT IV – ADMINISTRATIVE PROCEDURE ACT – AGENCY ACTION NOT IN ACCORDANCE WITH LAW AND CONTRARY TO CONSTITUTIONAL RIGHT

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

62. Respondents' decision to classify and detain Petitioner under 8 U.S.C. § 1225(b) rather than § 1226(a), and to deny any opportunity for an individualized bond hearing, constitutes final agency action reviewable under the APA, 5 U.S.C. § 704.

63. This agency action is "not in accordance with law" and "contrary to constitutional right" within the meaning of 5 U.S.C. § 706(2)(A) and (B) because it contravenes the INA's detention framework and violates the Due Process Clause of the Fifth Amendment.

64. Petitioner is entitled to declaratory and injunctive relief setting aside this unlawful agency action and ordering Respondents to provide Petitioner with a bond hearing or to release Petitioner from custody.

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 Middle 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 (3) days;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §1226(a) within seven (7) 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.

(SIGNATURES ON THE FOLLOWING PAGE)

Respectfully submitted, this the 5th day of April, 2026.

/s/ Daniel Joseph Ortiz, II, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2026, I electronically filed the foregoing Petition for Writ of Habeas Corpus with the Clerk of Court using the CM/ECF system, which will automatically send notice of such filing to all counsel of record. I further certify that a copy of this Petition has been served by e-mail and U.S. mail upon the following individuals or entities:

/s/ Daniel Joseph Ortiz, II, Esq.
Daniel Joseph Ortiz, II, Esq.
Attorney for the Petitioner
Georgia Bar Number 562540