

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

HERIBERTO LUNA SALAS,

A 

Petitioner,

v.

JASON STREEVAL, Warden, Stewart
Detention Center

Respondent.

Case No. 4:26-cv-660

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

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2 1. Petitioner Heriberto Luna Salas is in the custody of Respondent at the
3 Stewart Detention Center. Petitioner faces unlawful detention because the
4 Department of Homeland Security and the Executive Office of Immigration Review
5 have concluded Petitioner is subject to mandatory detention.
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7 2. Petitioner is charged with, inter alia, having entered the United States
8 without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

9 3. Based on this allegation in Petitioner's removal proceedings, DHS
10 denied Petitioner release from immigration custody, consistent with a new DHS
11 policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement
12 (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e.,
13 those who entered the United States without admission or inspection—to be subject
14 to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for bond.
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16 4. Similarly, on September 5, 2025, the Board of Immigration Appeals
17 (BIA or Board) issued a precedent decision, binding on all immigration judges,
18 holding that an immigration judge has no authority to consider bond requests for any
19 person who entered the United States without admission. *See Matter of Yajure*
20 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In *Yajure Hurtado*, the BIA determined
21 that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and
22 therefore ineligible to be released on bond.
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5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.

6. Respondent's new legal interpretation is plainly contrary to the statutory framework, contrary to decades of agency practice applying § 1226(a), and contrary to recent federal decisions—including decisions of this Court—holding that § 1225(b)(2) applies only to individuals who are “seeking admission” in the context of an arrival inspection by an examining immigration officer.

7. Despite this Court's recent decisions, the Stewart Immigration Court continues to refuse to find jurisdiction to conduct bond hearings for individuals like Petitioner—leaving habeas corpus as the only available mechanism for judicial review of Petitioner's detention.

8. Thus, Petitioner seeks habeas corpus requiring that he be released unless Respondent provides a bond hearing under § 1226(a) within seven days.

JURISDICTION

9. Petitioner is in the custody of Respondent. Petitioner is detained at the Stewart Detention Center located in Lumpkin, Georgia.

15. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

16. Petitioner Mr. Heriberto Luna Salas is native and citizen of Mexico. After arresting Petitioner, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board's decision *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

17. Respondent Jason Streeval is employed by Core Civic Group 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.

LEGAL FRAMEWORK

18. The Immigration and Nationality Act (“INA”) establishes several detention schemes for noncitizens in removal proceedings.

19. First, 8 U.S.C. § 1226 governs the detention of individuals placed in standard removal proceedings under § 1229a. Noncitizens detained under § 1226(a)

1 are generally entitled to a custody redetermination before an Immigration Judge
2 unless they fall into the narrow mandatory-detention categories of § 1226(c).

3 20. Second, 8 U.S.C. § 1225(b)(1)–(2) provides for mandatory detention of
4 certain individuals seeking admission who are inspected at the border and
5 determined not “clearly and beyond a doubt entitled to be admitted.” This detention
6 framework is tied to the process of arrival inspection performed by an examining
7 immigration officer.

9 21. Third, 8 U.S.C. § 1231 governs detention of individuals who are subject
10 to final orders of removal.

11 22. This case turns on the proper application of § 1226(a) versus §
12 1225(b)(2) for a noncitizen like Petitioner—an individual who entered the United
13 States years ago, resided here, and was apprehended within the interior, *not* at a port
14 of entry.

16 23. Historically, individuals who entered without inspection and were later
17 placed in § 1229a removal proceedings were treated as detained under § 1226, not §
18 1225. EOIR regulations following IIRIRA confirm that such individuals were not
19 considered “arriving” and therefore were eligible for bond hearings. *See* 62 Fed.
20 Reg. 10312, 10323 (Mar. 6, 1997).

22 24. For decades, consistent with this framework and prior immigration law,
23 noncitizens who entered without inspection and were apprehended inside the United
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1 States received custody redeterminations unless subject to § 1226(c). *See* former 8
2 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

3 **The Government’s Recent Policy Shift**

4 25. On July 8, 2025, ICE—“in coordination with” DOJ—issued guidance
5 declaring that all individuals who entered without inspection must now be detained
6 under § 1225(b)(2)(A), regardless of when they entered the United States or whether
7 they were ever inspected by an immigration officer.
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9 26. On September 5, 2025, the BIA adopted this new position in *Matter of*
10 *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that any noncitizen who
11 entered without admission is subject to § 1225(b)(2)(A) and categorically barred
12 from a bond hearing.
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14 **This Court Has Rejected Respondents’ Interpretation**

15 27. This Court has already rejected the government’s reading of §
16 1225(b)(2). In *J.A.M. v. Streeval*, Case No. 4:25-cv-342 (CDL), 2025 WL 3050094
17 (M.D. Ga. Nov. 1, 2025) and *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL
18 3269947 (M.D. Ga. Nov. 24, 2025), the Court held that § 1225(b)(2) applies only to
19 noncitizens who are “seeking admission” in the context of an arrival inspection by
20 an examining immigration officer.
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22 28. *J.E.M.* and *P.R.S.* explained that “seeking admission” requires an
23 affirmative act at or near the time of arrival to obtain legal entry, coupled with
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1 contemporaneous inspection. This Court rejected DHS's argument that individuals
2 apprehended years after entering the United States may be treated as if they were
3 seeking admission. *Id.* at 3.

4 29. Applying that interpretation, *J.E.M.* and P.R.S. held that § 1225(b)(2)
5 does not apply to individuals like Petitioner, whose alleged inadmissibility is based
6 on conduct occurring long after entry and *not* in connection with an arrival
7 inspection.
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9 **Courts Nationwide Have Rejected the Government's Theory**

10 30. Federal courts across the country have agreed that § 1226(a)—not §
11 1225(b)—governs detention of individuals apprehended inside the United States,
12 even when they originally entered without inspection. *See, e.g., Rodriguez Vazquez*
13 *v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, 2025 WL
14 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, 2025 WL 2084238 (D.
15 Mass. July 24, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11,
16 2025); *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025);
17 *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Pizarro*
18 *Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025).
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21 31. These courts uniformly conclude that Respondent's interpretation
22 contradicts the statutory text, structure, and decades of agency practice.
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1 **Stewart Immigration Court's Continued Refusal to Exercise Jurisdiction**

2 32. Despite this Court's recent decisions, the Stewart Immigration Court
3 continues to decline jurisdiction over custody redeterminations for noncitizens like
4 Petitioner, based on the BIA's erroneous decision in *Matter of Yajure Hurtado*.
5

6 33. Because Petitioner has no administrative avenue to challenge her
7 custody, habeas corpus is the only remedy capable of addressing the ongoing
8 violation of federal law.

9 **FACTUAL BACKGROUND**

10 34. Petitioner entered the United States in 2006 without inspection or
11 admission. Since that time, he has established a life and family in the United States.
12

13 35. Petitioner has three United States citizen children in the United States.
14 The United States children ages 15, 10, and 8 years old.

15 36. Petitioner's young children are all attending school.

16 37. Petitioner is married to his United States Citizen wife.

17 38. Petitioner has no disqualifying criminal convictions that would make
18 him mandatory detention.

19 39. Petitioner's ongoing detention imposes severe financial and emotional
20 hardship on his U.S. citizen family.
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1 40. Prior to his detention, Petitioner worked full-time and has a history of
2 steady employment. He is known as a hard-working individual who supports his
3 family and contributes to his community.

4 41. Petitioner poses no danger to the community and is not a flight risk. His
5 family ties, employment history, lack of criminal record, and consistent community
6 involvement demonstrate that he is an appropriate candidate for release under §
7 1226(a).

8 42. Petitioner's continued detention also violates due process because it is
9 based on an unlawful statutory interpretation already rejected by this Court and by a
10 certified nationwide class action. In *J.A.M. and P.R.S.* this Court held that 8 U.S.C.
11 § 1225(b)(2) applies only when a noncitizen is "seeking admission" in the context
12 of an arrival inspection by an examining immigration officer. Petitioner, however,
13 was apprehended inside the United States years after his entry and falls squarely
14 within the detention framework of § 1226(a), which entitles her to a bond hearing.

15 43. Nevertheless, ICE continues to detain Petitioner under § 1225(b)(2),
16 and the Stewart Immigration Court refuses to exercise jurisdiction to conduct a bond
17 hearing. Because Petitioner is a long-term resident with deep family ties, no criminal
18 history, including two young U.S. citizen children who depend on him, his prolonged
19 imprisonment without any opportunity for individualized custody review violates
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1 the fundamental requirements of due process and reinforces the necessity of habeas
2 relief.

3 **CLAIMS FOR RELIEF**

4 **COUNT I**

5 **Violation of the INA**

6 44. Petitioner incorporates by reference the allegations of fact set forth in
7 the preceding paragraphs.

8 45. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not
9 apply to all noncitizens residing in the United States who are subject to the grounds
10 of inadmissibility. As relevant here, it does not apply to those who previously
11 entered the country and have been residing in the United States prior to being
12 apprehended and placed in removal proceedings by Respondents. Such noncitizens
13 are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or
14 § 1231.
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16 46. The application of § 1225(b)(2) to Petitioner unlawfully mandates her
17 continued detention and violates the INA.
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19 **COUNT II**

20 **Violation of the Bond Regulations**

21 47. Petitioner incorporates by reference the allegations of fact set forth in
22 preceding paragraphs.
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1 48. In 1997, after Congress amended the INA through IIRIRA, EOIR and
2 the then-Immigration and Naturalization Service issued an interim rule to interpret
3 and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and
4 Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants
5 for admission, [noncitizens] who are present without having been admitted or
6 paroled (formerly referred to as [noncitizens] who entered without inspection) will
7 be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis
8 added). The agencies thus made clear that individuals who had entered without
9 inspection were eligible for consideration for bond and bond hearings before IJs
10 under 8 U.S.C. § 1226 and its implementing regulations.
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12 49. Nonetheless, pursuant to *Yajure Hurtado*, EOIR has a policy and
13 practice of applying § 1225(b)(2) to individual like Petitioner.
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15 50. The application of § 1225(b)(2) to Petitioner unlawfully mandates her
16 continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.
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18 **COUNT III**
19 **Violation of Due Process**

20 51. Petitioner repeats, re-alleges, and incorporates by reference each and
21 every allegation in the preceding paragraphs as if fully set forth herein.
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23 52. The government may not deprive a person of life, liberty, or property
24 without due process of law. U.S. CONST. AMEND. V. “Freedom from
imprisonment—from government custody, detention, or other forms of physical

1 restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*,
2 533 U.S. 678, 690 (2001).

3 53. Petitioner has a fundamental interest in liberty and being free from
4 official restraint.

5 54. The government’s detention of Petitioner without a bond
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7 redetermination hearing to determine whether she is a flight risk or danger to others
8 violates her right to due process.

9 **(Continued on the next page with signatures)**

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the Southern District of Georgia while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- e. Declare that Petitioner's detention is unlawful;
- f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 21st day of April, 2026.

/s/ Matthew K. Winchester

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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I represent Petitioner, Mr. Heriberto Luna Salas, 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 21st day of April, 2026.

/s/ Matthew K. Winchester

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