

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

MARCELINO DIAZ HERNANDEZ,

Petitioner,

v.

JASON STREEVAL, in his official
capacity as Warden of Stewart Detention
Center; LADEON FRANCIS, in his
official capacity as Field Office Director
of Enforcement and Removal
Operations, Atlanta Field Office,
Immigration and Customs Enforcement;
MARKWAYNE MULLIN, in his
official capacity as Secretary, U.S.
Department of Homeland Security;
TODD BLANCHE, in his official
capacity as acting U.S. Attorney General,

Respondents.

Case No. 4:26-cv-00666

**PETITION FOR WRIT OF
HABEAS CORPUS**

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Marcelino Diaz Hernandez is in the physical custody of Respondents at the Stewart Detention Center located in Lumpkin, Georgia. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on Petitioner's manner of entry, DHS has denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act ("INA"). 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),

1 that allows for release on conditional parole or bond. That statute expressly applies
2 to people who, like Petitioner, are inadmissible for having entered the United
3 States without inspection.

4 5. Respondents' new legal interpretation is plainly contrary to the
5 statutory framework and contrary to decades of agency practice applying § 1226(a)
6 to people like Petitioner.

7 6. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he
8 be released immediately. In the alternative, Petitioner requests that Respondents
9 provide a new custody redetermination hearing under § 1226(a) within seven days
10 whereby the Immigration Judge does have jurisdiction over Petitioner's custody
11 redetermination request, or else release Petitioner after 7 days have passed.
12

13 JURISDICTION

14 7. Petitioner is in the physical custody of Respondents. Petitioner is
15 detained at the Stewart Detention Center in Lumpkin, Georgia.

16 8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas
17 corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of
18 the United States Constitution (the Suspension Clause).
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20 9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the
21 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28
22 U.S.C. § 1651.
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VENUE

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies with the district court having jurisdiction over the custodian of the detainee. In the case at hand, venue is proper with the United States District Court for the Middle District of Georgia, the judicial district encompassing the Stewart Detention Center in Lumpkin, Georgia in Stewart County, Georgia.

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

REQUIREMENTS OF 28 U.S.C. § 2243

12. 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.*

13. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all

1 cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963)
2 (emphasis added).

3 **PARTIES**

4 14. Petitioner Marcelino Diaz Hernandez is a citizen of Mexico who
5 entered the United States in or around 1996. Petitioner attempted to help pick
6 someone up who was being released from jail, at which time officers asked him for
7 his identity documents and then arrested him. Petitioner’s Notice to Appear was
8 filed with the immigration court on or about April 10, 2026. Petitioner is currently
9 detained at the Stewart Detention Center in the custody, and under the direct
10 control, of Respondents and their agents. After arresting Petitioner, ICE did not set
11 bond.
12

13 15. Respondent Jason Streeval is employed by CoreCivic as Warden of
14 the Stewart Detention Center where Petitioner is detained. He has immediate
15 physical custody of Petitioner. He is sued in his official capacity.
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17 16. Respondent LaDeon Francis is the Director of the Atlanta Field
18 Office of ICE’s Enforcement and Removal Operations division. As such, LaDeon
19 Francis is Petitioner’s immediate custodian and is responsible for Petitioner’s
20 detention and removal. He is named in his official capacity.
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22 17. Respondent Markwayne Mullin is the Secretary of the Department of
23 Homeland Security. He is responsible for the implementation and enforcement of
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1 the Immigration and Nationality Act (INA), and oversees ICE, which is
2 responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority
3 over Petitioner and is sued in his official capacity.

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

9 **LEGAL FRAMEWORK**

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

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13 20. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in
14 standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a.
15 Individuals detained pursuant to § 1226(a) are generally entitled to a bond hearing
16 at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while
17 noncitizens who have been arrested, charged with, or convicted of certain crimes
18 are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

19
20 21. Second, the INA provides for mandatory detention of noncitizens
21 subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent
22 arrivals seeking admission referred to under § 1225(b)(2).

1 22. Last, the INA also provides for detention of noncitizens who have
2 been ordered removed, including individuals in withholding-only proceedings, *see*
3 8 U.S.C. § 1231(a)–(b).

4 23. This case concerns the detention provisions at §§ 1226(a) and
5 1225(b)(2).
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7 24. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted
8 as part of the Illegal Immigration Reform and Immigrant Responsibility Act
9 (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546,
10 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended
11 earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
12

13 25. Following the enactment of the IIRIRA, EOIR drafted new
14 regulations explaining that, in general, people who entered the country without
15 inspection were not considered detained under § 1225 and that they were instead
16 detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens;
17 Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
18 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
19

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

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

9 28. The new policy, entitled “Interim Guidance Regarding Detention
10 Authority for Applicants for Admission,”¹ claims that all persons who entered the
11 United States without inspection shall now be subject to a mandatory detention
12 provision under § 1225(b)(2)(A). This interpretation of the statute applies
13 regardless of when a person is apprehended and affects those who have resided in
14 the United States for months, years, and even decades.
15

16 29. On September 5, 2025, the BIA adopted this same position in a
17 published decision, *Matter of Yajure Hurtado*. There, the Board held that all
18 noncitizens who entered the United States without admission or parole are subject
19 to mandatory detention under § 1225(b)(2)(A) and are therefore ineligible for bond
20 hearings.
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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 30. Since Respondents adopted their new policies, dozens of federal
2 courts have rejected their new interpretation of the INA's detention authorities.
3 Indeed, this Court has followed suit in numerous recent decisions, ultimately
4 issuing a standing order authorizing the Magistrate Judges to issue orders granting
5 petitions for writs of habeas corpus so long as they fall within the parameters of
6 *J.A.M. v. Streeval*, No. 4:25-CV-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1,
7 2025) and *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga.
8 Nov. 24, 2025).

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

19 32. Subsequently, several courts have adopted the same reading of the
20 INA's detention authorities and rejected ICE and EOIR's new interpretation.
21 Notably, the Central District of California declared that indefinite detention of
22 individuals such as Plaintiff is unlawful; and vacated the underlying DHS Policy
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1 that the Government relied on to continue detaining individuals like Plaintiff. *See*
2 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d -
3 ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). On February 18, 2026, District
4 Court Judge Sunshine Suzanne Sykes of the Central District of California granted a
5 motion to enforce the court's previous decision and further issued an order
6 vacating the Board of Immigration Appeal's decision in *Matter of Yajure Hurtado*.
7 *See Maldonado Bautista v. Santacruz*, No. 25-cv-01873-SSS-BFM, 2026 WL
8 468284 (C.D. Cal. Feb. 18, 2026). Unfortunately, the Ninth Circuit Court of
9 Appeals temporarily stayed the district court's 12/18/25 declaratory judgment
10 and 02/18/26 order pending a ruling on the government's emergency motion for a
11 stay pending appeal.
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14 33. Courts have uniformly rejected DHS's and EOIR's new interpretation
15 because it defies the INA. As the *Maldonado Bautista* court and others have
16 explained, the plain text of the statutory provisions demonstrates that § 1226(a),
17 not § 1225(b), applies to people like Petitioner.
18

19 34. Section 1226(a) applies by default to all persons "pending a decision
20 on whether the [noncitizen] is to be removed from the United States." These
21 removal hearings are held under § 1229a, to "decid[e] the inadmissibility or
22 deportability of a[] [noncitizen]."
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1 35. The text of § 1226 also explicitly applies to people charged with being
2 inadmissible. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such
3 people makes clear that, by default, such people are afforded a bond hearing under
4 subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress
5 creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent
6 those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp.
7 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559
8 U.S. 393, 400 (2010)); *see also* *Gomes*, 2025 WL 1869299, at *7.

10 36. Section 1226 therefore leaves no doubt that it applies to people who
11 face charges of being inadmissible to the United States.

13 37. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry
14 or who recently entered the United States. The statute’s entire framework is
15 premised on inspections at the border of people who are “seeking admission” to the
16 United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained
17 that this mandatory detention scheme applies “at the Nation’s borders and ports of
18 entry, where the Government must determine whether a[] [noncitizen] seeking to
19 enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

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

FACTS

39. Petitioner has resided in the United States since approximately 1996 and has maintained residence in the same apartment complex in Atlanta, Georgia for over twenty years.

40. Petitioner has been married to his wife for over thirty years. They share four children, of whom three are U.S. citizens, ranging in ages 17 through 30. His 18-year-old child suffers from depression.

41. Petitioner is prima facie eligible for relief from removal and may file Form EOIR-42B Cancellation of Removal for Certain Nonpermanent Residents.

42. According to Petitioner, on or about March 16, 2026, he was detained by ICE after being asked to present identity documents while picking up someone else who was being released. Petitioner is now detained by DHS at the Stewart Detention Center in Lumpkin, Georgia. A Notice to Appear was then created placing Petitioner into removal proceedings pursuant to 8 U.S.C. § 1229a.

43. The Petitioner maintains a fixed address as he lives with his wife and children in Atlanta, Georgia. Petitioner has significant ties to the community and is not a flight risk.

44. To the knowledge of undersigned counsel, Petitioner has not been convicted of any dangerous or violent criminal violations. As such, Petitioner is not a danger to the community.

1 45. Following Petitioner's arrest and transfer to the Stewart Detention
2 Center, ICE issued a custody determination to continue Petitioner's detention
3 without an opportunity to post bond or be released on other conditions.

4 46. Presently in practice, following grants of habeas relief, custody
5 redetermination proceedings frequently fail to provide the individualized analysis
6 contemplated by the Court's order, instead resulting in summary denials based on
7 generalized findings of flight risk. Without relief from this court, specifically in the
8 form of immediate release as requested, Petitioner faces the prospect of months, or
9 even years, in immigration custody, separated from his family and community.
10

11 **CLAIMS FOR RELIEF**

12 **COUNT I**

13 **Violation of the Immigration and Nationality Act**

14 47. Petitioner incorporates by reference the allegations of fact set forth in
15 the preceding paragraphs.
16

17 48. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not
18 apply to all noncitizens residing in the United States who are subject to the grounds
19 of inadmissibility. As relevant here, it does not apply to those who previously
20 entered the country and have been residing in the United States for years prior to
21 being apprehended and placed in removal proceedings by Respondents. Such
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1 noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), §
2 1226(c), or § 1231.

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

5 **COUNT II**

6 **Violation of the Bond Regulations**

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

10 51. In 1997, after Congress amended the INA through IIRIRA, EOIR and
11 the then-Immigration and Naturalization Service issued an interim rule to interpret
12 and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and
13 Detention of [Noncitizens],” the agencies explained that “[d]espite being
14 applicants for admission, [noncitizens] who are present without having been
15 admitted or paroled (formerly referred to as [noncitizens] who entered without
16 inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at
17 10323 (emphasis added). The agencies thus made clear that individuals who had
18 entered without inspection were eligible for consideration for bond and bond
19 hearings before Immigration Judges under 8 U.S.C. § 1226 and its implementing
20 regulations.
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1 52. Nonetheless, EOIR has a policy and practice of applying § 1225(b)(2)
2 to individuals like Petitioner.

3 53. The application of § 1225(b)(2) to Petitioner unlawfully mandates his
4 continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.
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7 **COUNT III**

8 **Violation of Fifth Amendment Right to Due Process**

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

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

17 56. Petitioner has a fundamental interest in liberty and being free from
18 official restraint.
19

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

23 58. Petitioner has a right to a fair and impartial bond hearing.
24

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 Court 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 immediately release Petitioner; or, in the alternative, release Petitioner if they do not provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days of the order;
- 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.

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2 It is RESPECTFULLY SUBMITTED this 22nd day of April, 2026.

3 The Kennedy Immigration Firm, LLC

4 /s/Nikita B. Modi

5 Nikita B. Modi, Esq.

6 *Attorney for Petitioner*

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