

FILED 04/27/26
MD-CDL

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA**

ERWIN FERNANDO RIVERA CARRASCO,

Petitioner,

v.

WARDEN, STEWART DETENTION
CENTER;
FIELD OFFICE DIRECTOR, ICE
ATLANTA;
SECRETARY, U.S. DEPARTMENT OF
HOMELAND SECURITY,

Respondents.

Civil Action No.

Immigration No. A



**PETITIONER'S ORIGINAL
VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS PRO SE
UNDER 28 U.S.C. § 2241**

I. INTRODUCTION

1. Petitioner, Erwin Fernando Rivera Carrasco, respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. §2241, challenging his ongoing civil immigration detention as unconstitutional.
2. Petitioner is detained under 8 U.S.C. §1225(b) without access to a bond hearing or meaningful individualized custody review. This prolonged detention, without procedural safeguards, violates the Due Process Clause of the Fifth Amendment.
3. Petitioner is currently detained in ICE custody within the jurisdiction of this Court, as reflected in the detention documentation filed in support of this Petition. See Ex. A.
4. This Petition is presented against the current legal backdrop in which immigration courts have relied on recent Board of Immigration Appeals ("BIA") precedent, particularly Matter of Q. Li and Matter of Yajure Hurtado, to narrow or deny bond consideration in cases like

Petitioner's. However, numerous federal district courts have made clear that continued civil detention without constitutionally adequate procedures violates the Due Process Clause, and that habeas relief under § 2241 is available to remedy unlawful immigration detention. See Ex. G.

5. Despite this posture, continued detention without constitutionally adequate process violates the Fifth Amendment's Due Process Clause, because civil immigration detention cannot be maintained indefinitely without meaningful, individualized procedures sufficient to justify continued confinement.
6. Petitioner therefore petitions this Court for habeas relief under 28 U.S.C. §2241 and seeks injunctive relief directing Respondents to release him, or to provide him with a constitutionally adequate individualized custody hearing without delay, to restore Petitioner's constitutional and statutory rights and to prevent continued unlawful detention.
7. Petitioner seeks immediate release, or in the alternative, a constitutionally adequate bond hearing at which the Government bears the burden of proof consistent with due process.

II. JURISDICTION AND VENUE

8. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.
9. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody and challenges the legality of that custody under the Constitution and laws of the United States. This action also invokes the Court's authority under the All Writs Act, 28 U.S.C. § 1651. See Ex. A.

10. Jurisdiction and venue are proper under *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004), because this Petition names Petitioner’s immediate custodian and is filed in the district of confinement.
11. Venue is proper in this District because Petitioner is detained at Stewart Detention Center in Lumpkin, Georgia, within this Court’s jurisdiction.
12. Where multiple documents are submitted together, they are designated as Group Exhibits and cited collectively.
13. This Court retains jurisdiction to remedy ongoing unlawful detention notwithstanding Respondents’ characterization of custody as discretionary, because Petitioner challenges the statutory and constitutional basis for detention itself.

III. PARTIES

14. Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a (INA § 240), and is a native and citizen of Ecuador currently detained at Stewart Detention Center, as reflected in the record. See Ex. B.
15. Respondent, Facility Administrator, the Warden of Stewart Detention Center (immediate custodian). See Ex. A.
16. Respondent, the ICE Field Office Director, Atlanta.
17. Respondent, the Secretary of the Department of Homeland Security is sued in his official capacity.

IV. FACTUAL BACKGROUND

18. Petitioner entered the United States in or about September 2023 and was apprehended near the border.
19. DHS initially released Petitioner on his own recognizance (Form I-220A).

20. Petitioner lived in the community, complied with all requirements, and developed substantial ties, including family support and a stable residence.
21. In 2026, DHS re-detained Petitioner.
22. Petitioner requested a bond hearing before the Immigration Court.
23. On April 16, 2026, the Immigration Judge denied the request, finding:
 - a. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)
 - b. The Court lacks jurisdiction to conduct a bond hearing.
24. As a result, Petitioner remains detained without any individualized custody determination.
25. Petitioner's economic and community integration is further reflected through tax filing documentation included in the record. See Ex. Q.
26. Multiple individuals who know Petitioner personally have provided support letters describing her character, stability, responsibility, and ties to the community. See Ex. P, Ex. R.
27. The record includes legal authorities and supporting materials regarding custody and bond adjudications, including recent BIA precedent and related bond decisions. See Ex. D, Ex. E. The record further includes a sample immigration judge bond decision and an appendix of recent habeas decisions, submitted to provide context for the custody issues raised and the habeas remedy sought. See Ex. F, Ex. G.
28. The record further includes a compilation of recent immigration judge custody redetermination orders issued in January and February 2026, demonstrating a recurring pattern in which immigration judges deny bond based solely on generalized "flight risk" findings after federal district courts have ordered that custody jurisdiction be exercised through habeas proceedings. These orders reflect situations in which immigration judges acknowledge habeas jurisdiction but nevertheless deny release without individualized evidentiary findings. See Ex. T.

29. Petitioner respectfully submits that, in light of the record evidence and his stated factual circumstances, continued civil detention without constitutionally adequate procedures imposes severe and ongoing hardship and is not justified by due process. At no time has DHS identified any individualized evidence suggesting that Petitioner poses a danger to the community or presents a risk of flight.

V. LEGAL STANDARD

30. Immigration detention is governed primarily by two provisions of the INA: Section 235(b) [8 U.S.C. § 1225(b)] and Section 236(a) [8 U.S.C. § 1226(a)]. Whereas Section 236(a) authorizes discretionary custody and permits release on bond or conditional parole pending removal proceedings, Section 235(b) applies to certain categories of “arriving aliens” and mandates detention during expedited removal or threshold screening processes.
31. Section 236(a) is the default detention framework for noncitizens placed in regular removal proceedings under INA § 240. The statutory text expressly provides for release on bond (or conditional release), subject only to conditions reasonably necessary to ensure appearance and protect the community.
32. The Supreme Court has confirmed the distinction between these statutory schemes. *Jennings v. Rodriguez*, 183 U.S. 281, 294–95 (2018) (explaining the differences between § 1225(b) mandatory detention and § 1226(a) discretionary custody). The Board of Immigration Appeals likewise recognized for decades that individuals in § 240 proceedings are generally eligible for custody redeterminations under § 1226(a). *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). See Ex. E.

33. Notwithstanding this statutory scheme, DHS and immigration courts have invoked recent BIA decisions, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), to restrict or deny immigration judges' bond authority in cases where a detainee has been placed in §240 proceedings and seeks an individualized custody redetermination. See Ex. D. Recent custody redetermination orders further demonstrate that, even where immigration judges acknowledge habeas-based jurisdiction, bond is frequently denied based on conclusory flight-risk determinations without individualized evidentiary analysis. See Ex. T.
34. In 2025, multiple district courts addressed habeas petitions raising the Government's efforts to expand §1225(b)(2)(A) beyond its intended scope and concluded that the clear and unambiguous language of INA §236(a) permits noncitizens in circumstances like Petitioner's—i.e., individuals in removal proceedings who seek individualized custody review—to request bond hearings before the immigration court. See Ex. G. See also *Perez v. Albarran*, No. 1:25-cv-01540-DAD-CSK (E.D. Cal. 2025), recognizing that federal habeas jurisdiction extends to circumstances where custody determinations fail to provide meaningful individualized review and result in continued unlawful detention.
35. For example, in *Santos v. Noem*, 2025 U.S. Dist. LEXIS 183412 (W.D. La. Sept. 15, 2025), the court emphasized that habeas relief is proper to correct statutory misclassification and to preserve due process. In *Kostak v. Trump*, 2025 U.S. Dist. LEXIS 167280 (W.D. La. Aug. 27, 2025), the court ordered bond eligibility under § 1226(a), rejecting the Government's assertion that § 1225(b) applied. Likewise, in *Salazar v. Dedos*, 2025 U.S. Dist. LEXIS 183335 (D.N.M. Sept. 17, 2025), the district court ordered an individualized bond hearing under § 1226(a)

within seven days, holding that prolonged detention without such a hearing violates the Fifth Amendment's Due Process Clause. See Ex. G.

36. Similarly, *Lopez v. Hardin*, 2025 U.S. Dist. LEXIS 188368 (N.D. Tex. 2025), and *Lopez-Arevelo v. Ripa*, 2025 U.S. Dist. LEXIS 188232 (S.D. Tex. 2025), further confirm that courts are rejecting efforts to apply § 1225(b)(2)(A) to individuals who are properly subject to § 1226(a). See Ex. G.
37. These holdings reflect the principle that federal district courts retain jurisdiction to intervene where detention rests on statutory error and results in ongoing constitutional harm. The cumulative weight of these decisions underscores that individuals situated like Petitioner are entitled to individualized custody consideration consistent with § 1226(a) and due process. See Ex. G.
38. Petitioner alleges that her detention is being maintained without constitutionally adequate individualized custody review, and that Respondents' continued detention of Petitioner is unlawful under the INA and the Constitution.
39. Immigration detention is civil, not punitive, and must comply with the Fourth Amendment and the Fifth Amendment Due Process Clause. Habeas relief is appropriate where detention is unlawful at its inception, becomes constitutionally excessive, or lacks adequate procedural safeguards.

VI. CLAIMS FOR RELIEF

Count I – PROLONGED DETENTION WITHOUT A BOND HEARING VIOLATES DUE PROCESS

40. Civil immigration detention must be accompanied by adequate procedural protections.
41. The Supreme Court has recognized constitutional limits on immigration detention:

a. *Zadvydas v. Davis*, 533 U.S. 678 (2001)

b. *Jennings v. Rodriguez*

42. While *Jennings* held that the statute does not require bond hearings, it preserved constitutional challenges.

43. Within the Eleventh Circuit, prolonged detention without meaningful review raises serious due process concerns. *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199 (11th Cir. 2016), vacated as moot, 890 F.3d 952 (11th Cir. 2018). Although vacated as moot, *Sopo* reflects the Eleventh Circuit’s recognition that prolonged civil detention raises serious constitutional concerns.

44. Courts continue to recognize that indefinite or prolonged detention requires constitutional safeguards.

45. Petitioner’s continued detention without any bond hearing violates due process.

46. As courts have repeatedly emphasized, agency adjudication cannot override the plain language of the INA.

47. To the extent Respondents are treating Petitioner as subject to mandatory detention or otherwise denying Immigration Judge custody jurisdiction based on recent BIA precedent, Respondents’ refusal to provide Petitioner with an individualized custody redetermination hearing violates the INA and applicable governing law. See Ex. D; Ex. G.

48. INA §236(a), 8 U.S.C. §1226(a), provides that “[o]n 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,” and that the Attorney General “may continue to detain the arrested alien” or “may release the alien on—(A) bond of at least \$1,500 ...; or (B) conditional parole.”

49. By its plain text, §1226(a) applies to noncitizens arrested and detained pending removal proceedings unless mandatory detention under §1226(c) applies.

50. The record reflects that Petitioner is subject to the immigration process and case tracking reflected in EOIR automated case information. As a matter of law, absent a valid statutory basis for mandatory detention, custody for individuals detained pending §240 proceedings is governed by §1226(a), not §1225(b).
51. By adopting and applying a policy and/or practice that deprives Petitioner of an individualized bond hearing consistent with §1226(a), Respondents have acted contrary to statutory authority requiring individualized custody consideration.
52. Recent BIA decisions—Matter of Q. Li and Matter of Yajure Hurtado—have been invoked to restrict or deny bond jurisdiction for a broad class of detainees, notwithstanding the INA’s text. See Ex. D. Where Respondents attempt to apply §1225(b) to an individual detained pending removal proceedings to avoid custody jurisdiction, such detention rests on statutory error subject to correction through habeas.
53. Even assuming arguendo that Respondents contend §1225(b) applies, prolonged civil detention without individualized review and meaningful procedural safeguards violates the Fifth Amendment.
54. Where detention rests on statutory misapplication—particularly where the Government attempts to treat a noncitizen as subject to §1225(b) despite detention pending removal proceedings—habeas relief is an appropriate vehicle to correct the legal error and to prevent ongoing constitutional harm. See Ex. G.
55. Petitioner therefore seeks habeas relief ordering that he receive an individualized custody redetermination hearing consistent with INA §236(a) without delay, or other appropriate relief consistent with the INA and the Constitution. See Ex. G.

Count II – MISAPPLICATION OF 8 U.S.C. § 1225(b)

56. Petitioner incorporates by reference the foregoing allegations and re-alleges them as if fully set forth herein.

57. Respondents classify Petitioner as subject to §1225(b) based solely on initial apprehension.

58. However: (1) DHS previously released Petitioner into the community and Petitioner established ties and complied with supervision.

59. Rigid application of §1225(b) to deny all custody review raises constitutional concerns and conflicts with due process principles recognized in: *Zadvydas v. Davis*.

Count III – DETENTION WITHOUT INDIVIDUALIZED REVIEW IS UNCONSTITUTIONAL

60. Petitioner incorporates by reference the foregoing allegations and re-alleges them as if fully set forth herein.

61. Petitioner is detained: (1) without bond, (2) without meaningful parole review in practice and (3) without a neutral decision-maker.

62. This constitutes arbitrary civil detention, which the Constitution forbids.

63. Petitioner further alleges an emerging and constitutionally significant pattern in immigration custody proceedings following district court habeas intervention. Once a federal district court orders that a bond hearing be provided, immigration judges increasingly defer wholesale to the Department of Homeland Security's assertion that a detainee is a "flight risk," even where DHS presents no individualized evidence to support that conclusion. In such cases, the immigration judge's analysis becomes a foregone conclusion, rendering the court-ordered hearing a hollow formality, as reflected in multiple recent immigration judge orders issued after habeas intervention. See Ex. T.

64. These orders illustrate that the deprivation of liberty at issue is not hypothetical. Rather, they show a systemic practice in which habeas-ordered custody review is functionally nullified through unsupported flight-risk findings, shifting the burden to detainees and insulating continued detention from meaningful judicial oversight. Such practices substantially increase the risk of erroneous deprivation of liberty and violate the procedural safeguards required by the Fifth Amendment.
65. This practice impermissibly shifts the burden of proof to the detainee, undermines the purpose of the habeas remedy, and violates due process. A bond hearing at which DHS offers no evidence beyond conclusory assertions does not constitute meaningful review. Where the outcome is predetermined and unsupported by evidence, continued detention serves no legitimate civil purpose and becomes arbitrary. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
66. In Petitioner's case, the record reflects substantial evidence rebutting any claim of flight risk, including prior parole and compliance with reporting requirements, a future ICE appointment date, established residence, employment authorization, tax filings, and multiple community support letters. See Exs. M, N, O, P, Q, R, S. The absence of contrary evidence renders DHS's flight-risk assertion legally insufficient, and any detention based on such unsupported conclusions violates the Fifth Amendment.
67. Continued detention under these circumstances is arbitrary, excessive, and unconstitutional.
68. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the balance of interests weighs decisively in Petitioner's favor because her fundamental liberty interest in freedom from physical restraint is substantial, the risk of erroneous deprivation is unacceptably high where custody determinations are made categorically or without meaningful individualized review, and the

government's interest in continued detention is minimal where less restrictive alternatives exist. Due process therefore requires, at a minimum, a prompt individualized bond hearing at which the Government bears the burden of justifying continued detention.

69. The failure to meaningfully consider Petitioner's federally protected lawful presence further underscores the arbitrariness of continued detention and heightens the risk of erroneous deprivation of liberty.
70. Because physical liberty is at stake, due process requires that the Government, not the detainee, bear the burden of justifying continued civil detention by clear and convincing evidence at any bond hearing.
71. Accordingly, the Court should grant habeas relief on constitutional grounds and order Petitioner's immediate release, or in the alternative, order an immediate constitutionally adequate bond hearing. See Ex. G.
72. Respondents' continued detention of Petitioner without affording her an individualized custody redetermination hearing constitutes unlawful agency action under the Administrative Procedure Act, insofar as that agency action directly results in Petitioner's continued physical confinement and deprivation of liberty. See Ex. D; Ex. E; Ex. F.
73. For decades, immigration judges exercised bond jurisdiction over individuals detained under INA §236(a), consistent with statutory text and constitutional principles. See Ex. E; Ex. G.
74. In 2025, the BIA issued decisions that have been invoked to restrict immigration judges' bond authority for a broad class of detainees, including individuals in circumstances like Petitioner's. See Ex. D.

75. The record reflects how immigration judges have relied on the recent BIA framework to deny or refuse bond jurisdiction in substantially similar circumstances, rendering denial of custody redetermination highly likely absent judicial intervention. See Ex. F.
76. Respondents' reliance on Matter of Q. Li and Matter of Yajure Hurtado to deny custody jurisdiction constitutes unlawful agency action not in accordance with law and in excess of statutory authority under the APA, 5 U.S.C. § 706. See Ex. D.
77. Under these circumstances, the denial of meaningful individualized custody review is arbitrary and unlawful.
78. Accordingly, Respondents' refusal to provide Petitioner an individualized custody redetermination hearing constitutes unlawful agency action, and this Court should grant habeas relief to remedy the violation. See Ex. G.

VII. RESPONSE TO GOVERNMENT ARGUMENTS

79. Respondents may argue that Petitioner lacks viable relief due to the one-year asylum filing deadline.
80. That argument fails.
- a. Detention is not based on likelihood of relief
Custody determinations must be based on:
 - o Flight risk
 - o Danger to the community
 - b. Courts have rejected detention based on speculative outcomes.
 - c. Petitioner may still pursue:
Exceptions to the one-year asylum deadline

Withholding of removal

Protection under the Convention Against Torture

81. Thus, the government's anticipated argument is legally irrelevant to detention.

VIII. EXHAUSTION

82. Petitioner has no adequate or effective administrative remedy to address the constitutional and statutory violations described herein in a timely manner. Accordingly, exhaustion should be excused and habeas relief is appropriate. Requiring further exhaustion would be futile because immigration courts lack authority to remedy the statutory and constitutional violations alleged herein.

83. Petitioner suffers ongoing loss of liberty, which constitutes irreparable harm.

84. No remedy at law can compensate for unlawful detention.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Grant the writ of habeas corpus;
2. Order an individualized bond hearing before an Immigration Judge; or
3. Order Petitioner's immediate release under reasonable conditions;
4. Grant any additional relief the Court deems just and proper.

IX. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant relief.

X. VERIFICATION

I, **Erwin Fernando Rivera Carrasco**, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on: April 20, 2026

Signature: Erwin F. Rivera Carrasco

Erwin Fernando Rivera Carrasco

XI. CERTIFICATE OF SERVICE

I certify that a copy of this Petition was served on the United States Attorney's Office for the Middle District of Georgia and the Department of Homeland Security.

Date: April 20, 2026

Signature: Erwin F. Rivera Carrasco

Erwin Fernando Rivera Carrasco

Petitioner, Pro Se

U.S. Attorney's Office – Middle District of Georgia

Civil Process Clerk
U.S. Attorney's Office
Middle District of Georgia
P.O. Box 1702
Macon, GA 31202-1702

ICE Field Office Director (Atlanta)

ICE – Enforcement and Removal Operations
Atlanta Field Office
180 Ted Turner Drive SW
Suite 522
Atlanta, GA 30303

Secretary of Homeland Security
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave SE
Washington, D.C. 20528

Stewart Detention Center

Warden
Stewart Detention Center
146 CCA Road
Lumpkin, GA 31815