

UNITED STATES DISTRICT COURT
for the
Middle District of Florida

JORGE LEMUS ALVARENGA
Petitioner

vs

Case No. 3:26-cv-1037

WARDEN, in his official capacity of
BAKER COUNTY CORRECTIONAL
INSTITUTION UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY; UNITED STATES
IMMIGRATION AND CUSTOMS
ENFORCEMENT; and TODD
BLANCHE, in his official capacity as,
ACTING ATTORNEY GENERAL OF
THE UNITED STATES
Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Jorge Lemus Alvarenga, petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to compel his release from custody, as his current civil immigration detention violates the Due Process Clause of the United States Constitution and the Administrative Procedure Act.

JURISDICTION AND VENUE

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*
2. This court has subject matter jurisdiction under 28 U.S.C. §§ 2241 and 1331, and Article I, section 9, clause 2 of the United States Constitution.
3. This Court may grant relief under the habeas corpus statutes, 28

U.S.C. § 2241 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, and the INA, 8 U.S.C. § 1252(e)(2). This Court also has remedial authority under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

4. Venue is proper because Petitioner is in Respondents' custody in Sanderson, Florida at the Baker Correctional Institution pursuant to an intergovernmental service agreement between Respondent United States Immigration and Customs Enforcement ("ICE") and the State of Florida. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. *See* 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

5. 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).

6. 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

7. Petitioner Jorge Lemus Alvarenga is a non-citizen. Petitioner is currently detained at Baker Correctional Institution, 20706 FL-10, Sanderson, Florida 32087. He is in the custody, under the direct control, of Respondents and their agents. Petitioner's Alien number is 

8. **Respondent is the Warden** of the Baker Correctional Institution and has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent is a legal custodian of Petitioner.

9. **Respondent U.S. Immigration and Customs Enforcement (ICE)** is the federal agency responsible for custody decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. Respondent is a legal custodian of Petitioner.

10. **Respondent U.S. Department of Homeland Security** is the federal agency that has authority over the actions of ICE.

11. **Respondent Todd Blanche** is the **Acting Attorney General of the United States** and the senior official of the U.S. Department of Justice. He is sued in his official capacity. In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals (BIA). Respondent Blanche is responsible for decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. Therefore, he is also Petitioner's legal custodian.

STATEMENT OF FACTS

12. Petitioner is a 55-year-old native of El Salvador, who entered the United States without inspection at the southern border in January 1999. Subsequent to Petitioner's entry into the United States, he moved to Jacksonville, Florida, where he has resided in the same apartment complex for more than 27 years.

13. Petitioner is unmarried and does not have any children. Petitioner's brother lives in the United States and Petitioner has a very close circle of friends in his community in Jacksonville.

15. Petitioner is employed by  and is a drywall finisher.

16. Petitioner has never been arrested for a criminal offense. His criminal history is limited to two (2) citations issued in Florida for driving with an expired driver's license.

17. Petitioner's immigration history is as follows. At some time after Petitioner entered, he applied for and was granted Temporary Protected Status (TPS) and was granted work authorization. He obtained a Florida driver's license. TPS requires re-registration and at some point, Petitioner did not timely submit his application for re-registration and was subsequently denied TPS. In 2018, a vehicle that Petitioner and others were riding in was stopped by ICE officers. Petitioner was thereafter detained and placed into removal proceedings. Petitioner applied for asylum and was released on bond. In 2024, the government filed a joint motion to dismiss proceedings and the IJ terminated proceedings. In April 2026, Petitioner applied for affirmative asylum with USCIS and that application is pending. Shortly thereafter,

Petitioner was a passenger in a vehicle pulled over by Custom's and Border Patrol (CBP) and was detained and turned over to ICE.

LEGAL FRAMEWORK

18. District courts have the power to grant writs of habeas corpus. 28 U.S.C. § 2241(a). The Constitution guarantees that the writ of habeas corpus is available to every individual detained within the United States. *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const. Art. I, § 9, cl. 2); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody.”).

19. A district court's power includes jurisdiction to hear habeas challenges to immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Furthermore, noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

A. Petitioner Should Not Be Detained Under 8 U.S.C § 1225(b)(2)

20. It is the position and opinion of the Respondents that Petitioner must be mandatorily detained under the INA as set forth in *Matter of Yajure Hurtado*, in which the BIA concluded ICE could treat undocumented immigrants already present in the United States as arriving aliens subject to mandatory detention under 8 U.S.C. §1225. In *Matter of Yajure Hurtado*, the BIA concluded that noncitizens “who have been residing in the United States for years without lawful status” are considered “applicants for admission” and are thus subject to the mandatory detention

provision in INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) “for the duration of the immigration proceedings[.]” *Hurtado*, 29 I&N Dec. at 220.

15. Here, section 1225(b)(2) does not apply to Petitioner as he is not a recent arrival nor is he seeking admission. His continued detention under section 1225(b)(2) is therefore unlawful. Instead, as a noncitizen who previously entered the United States without inspection in 1999 and has lived in the United States for over 27 years before his arrest and detention by ICE, section 1226(a) governs his detention.

16. Under section 1225(b)(2), “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.” 8 U.S.C. § 1225(b)(2) (emphasis added). By contrast, a noncitizen arrested on a warrant issued by the Attorney General “*may*” be detained but is also eligible for release on bond. 8 U.S.C. § 1226(a) (emphasis supplied). “Courts have repeatedly held that § 1225 applies to arriving aliens, while § 1226 governs detention of ‘aliens already in the country.’” *Palma v. Trump*, 4:25-cv-3176-JFB, at *2 (D. Neb. Sept. 11, 2025) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018)). As the Court in *Palma* noted, “[t]he BIA’s decision in *Hurtado* represents a stark departure from that approach.” *Palma*, 2025 WL 2624385, at *2.

17. Moreover, as many other courts have concluded since *Hurtado*, “[t]he text of Sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions [...] confirm that [the petitioner] is subject to

Section 1226(a)'s discretionary detention scheme." *Sampiao v. Hyde*, 1:25-cv-11981-JEK, at *8 (D. Mass. Sept. 9, 2025) (granting habeas relief to a noncitizen who was arbitrarily detained following three years of release on an order of recognizance). Noncitizens already in the country are treated differently than those seeking entry. As the Supreme Court observed, "our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality. In the latter instance, the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953)); see also *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

18. Here, Petitioner has resided in the United States since 1999, has established substantial community ties in the over 27 years of residing in this country. To determine that he is *seeking admission* after living in the United States for over 27 years is nonsensical, contrary to the plain meaning of the statutes, and the Court should disregard the *Hurtado* decision as contrary to the INA and federal law.

19. As such, under section 1226(a), this Court has the authority to review Petitioner's request for habeas relief and release from immigration

detention, or in the alternative to mandate a bond redetermination under section 236(a)/1226(a) as opposed to section 235/1225.

B. Petitioner Should Not Await Further Determination by the Immigration Court and the BIA

20. Because Petitioner is detained subject to section 1226(a), not section 1225(b)(2), the Court should, in the event it is raised by Respondents, find that exhaustion is not required here. Because the BIA has adopted a policy that deprives Petitioner of jurisdiction to seek a bond from immigration detention, further review by an IJ invoking *Hurtado* will be futile. The IJ must follow BIA precedent decisions. In *Patel v. Hardin*, No. 2:25-cv-870-JES-NPM (M.D. Fla. Dec. 1, 2025), Respondents argued that the Court lacks jurisdiction to consider this petition and that the petitioner has not properly exhausted his administrative remedies. The Court rejected those arguments in *Patel* and in scores of other recent cases presenting the same issues. See, e.g., *Cetino v. Hardin*, No. 2:25-cv-1037-JES-DNF (M.D. Fla. Dec. 12, 2025); *Reyes Rodriguez v. Florida Southside Facility*, No. 2:25-cv-1012-JES-DNF (M.D. Fla. Dec. 15, 2025). In those cases, the Court was satisfied of its jurisdiction and determined that exhaustion was excused because it would be futile. The Court's reasoning on these issues also applies here.

21. Further, while the petitioner could request a bond hearing, get denied and then seek an appeal to the BIA on those issues before filing a Habeas action, however, this would take several months and would be futile, as the BIA's decision in *Hurtado* forecloses any challenge to any discretionary bases to deny bond or

detain. The immigration court would find that it lacked jurisdiction in Petitioner's case to consider discretionary bases for bond or release, given the BIA's own precedent decision in *Hurtado*. Furthermore, the IJ that conducts bond hearings from the Baker Correctional Institution routinely announces before starting his detained docket that *Hurtado* divests him of jurisdiction to grant bond hearings for individuals such as the Petitioner.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

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

23. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. While certain constitutional protections do not extend outside the "geographic borders" of the United States, "legal circumstances change" as soon as a noncitizen "enters the country." *Id.*; see also *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) ("[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.") (quoting *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam)).

24. To determine whether civil detention violates a detainee's due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts consider (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of

additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See id.* at 335.

25. Here, all three factors favor Petitioner. He has a significant private interest at stake. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (freedom from physical detention is "the most elemental of liberty interests"); *see also Zadvydas*, 533 U.S. at 690 ("Freedom 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."). The petitioner is experiencing all the deprivations that come with physical detention, including separation from his family and the inability to work to support his family. Next, there is a large risk of the erroneous deprivation of Petitioner's liberty interest through the procedures used in the immigration court proceedings. There are also alternative procedures, such as a cash bond, surrender of his passport, GPS monitoring devices and other measures that could mitigate against the risk of flight. Finally, to the extent there is any government interest in detention, it is minimal when compared with Petitioner's liberty interest.

26. Respondents have chosen to detain Petitioner under the wrong statute and in an arbitrary manner not based on a rational and individualized determination of whether he is a safety or flight risk, in violation of due process. Because section 1225 does not apply, Respondents' detention of him violates the Fifth Amendment.

COUNT TWO

Violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A)

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

28. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

29. Congress has made it clear that mandatory detention under 8 U.S.C. § 1225(b) applies to "applicant[s] for admission" who are determined to be "seeking admission." By contrast, Congress permits other noncitizens who are arrested on a warrant issued by the Attorney General to be detained (using the language "may") but those noncitizens are also eligible for release on bond. 8 U.S.C. § 1226(a).

30. An overwhelming number of District Courts across the country have interpreted section 1225 to apply to arriving noncitizens, while section 1226 applies to noncitizens already in the United States.

32. Petitioner entered the United States in 1999 without inspection at the United States southern border. He has lived in the same apartment complex in Jacksonville, Florida since January of 1999. In April 2026, Petitioner was stopped by CBP for an alleged civil traffic violation. He was thereafter turned over to ICE custody. The government contends, after more than 27 years living in the United States, that Petitioner is an applicant for admission and that section 1225 applies.

33. Respondents' determination that Petitioner is "seeking admission" under section 1225(b)(2) is arbitrary, capricious, an abuse of discretion, and not otherwise in accordance with law. 5 U.S.C. § 706(2)(A). "ICE, like any agency, 'has the duty to follow its own federal regulations.'" *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (quoting *Haoud v. Ashcroft*, 350 F.3d 201, 205 (1st Cir. 2003)).

34. Because Petitioner is not subject to mandatory detention, Respondents' determination was unlawful. As a noncitizen detained under 1226(a), Petitioner has a right to a bond hearing.

PRAYER FOR RELIEF

- A. Retain jurisdiction over this action;
- B. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days pursuant to 28 U.S.C. § 2243;
- C. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
- D. Declare that Petitioner's detention violates the Administrative Procedure Act;
- E. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody, or in the alternative provide a bond hearing under section 236(a);

- F. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the Court's approval, or until the Court issues a final Order and Judgement;
- G. Award Petitioner attorneys' fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- H. Grant all other relief that the Court deems just and proper.

Date: 04/28/2026

/s/ Clifford Stripling

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

I represent Petitioner, Jorge Lemus Alvarenga, and submit this verification on his behalf. I hereby verify that the factual statement made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 28th day of April, 2026

s/ Clifford Stripling

Clifford Stripling, Esquire