

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

CARLOS GUILLERMO OSEGUEDA
MENJIVAR,

Petitioner,

v.

JASON STREEVAL, Warden, Stewart
Detention Center;

GEORGE STERLING, Deputy
Managing Director, Atlanta Field Office,
Immigration and Customs Enforcement,
Removal Operations (ICE/ERO);

TODD M. LYONS, Acting Director of
U.S. Immigration and Customs
Enforcement;

MARKWAYNE MULLIN, Secretary of
U.S. Department of Homeland Security;

TODD BLANCHE, Acting Attorney
General of the U.S.,
in their official capacities,

Respondents.

Case No: 4:26-cv-766

Petitioner Alien Number:

A 

PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Carlos Guillermo Osegueda Menjivar (“Petitioner”) has lived in the United States since he arrived in 2017.
 2. Petitioner is presently detained and kept at Stewart Detention Center located in Stewart County, Georgia. (Exhibit A).
-

3. Petitioner has remained in custody since his arrest. Petitioner is presently in the custody and control of the Respondents.
4. In the absence of judicial intervention, it is not reasonably foreseeable that Petitioner will be released; so, he now seeks a writ of habeas corpus to vindicate his regulatory, statutory, and constitutional rights.

II. JURISDICTION

5. Petitioner incorporates and re-alleges all other paragraphs of this Petition as if fully set forth herein, and as if fully set forth under all other parts of this Petition.¹
6. This court has jurisdiction. U.S. Const. art. I, § 9, Cl. 2 (Suspension Clause); 28 U.S.C. § 1331 (Federal subject matter jurisdiction); 28 U.S.C. § 2241 (Habeas corpus). *See also Zadvydas v. Davis*, 533 U.S. 678 (2001) (holding section 2241 habeas proceedings are available as a forum for statutory and constitutional challenges to post-removal-period detention); 5 U.S.C. § 702 (Administrative Procedure Act - “Right of review”); *Rasul v. Bush*, 42 U.S. 466 (2004) (Jurisdiction over petitions for habeas corpus exists where the custodian can be reached by service of process from the court in which the petition has been brought).
7. This court may grant relief under the U.S. Constitution and *habeas corpus* statutes. U.S. Const. art. I, § 9, Cl. 2 (Suspension Clause); 28 U.S.C. § 2241 (habeas);

¹ To avoid duplicity, Petitioner incorporates and re-alleges all paragraphs of this Petition within each other part of this Petition, and will avoid restating a prefatory sentence of incorporation by reference as, pursuant to Rule 10 of the Federal Rules of Civil Procedure, “A statement in a pleading may be adopted by reference elsewhere in the same pleading [...]” Each paragraph is incorporated within each other paragraph.

Zadydas, supra; 28 U.S.C. § 1651 (All Writs Act); 8 U.S.C. § 1252(e)(?)

(Immigration and Nationality Act, “INA”).

8. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court may grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court also has remedial authority under the All Writs Act, 28 U.S.C. § 1651.
9. This court is not deprived of jurisdiction by 28 U.S.C. § 2241(e)(1) (Petitioner has not been determined to be an “enemy alien combatant” and is not “awaiting such determination); or by 8 U.S.C. § 1252(a)(2)(B) (This Petition does not involve the denial of discretionary relief).

III. VENUE

10. Venue is proper in the Middle District of Georgia, because Petitioner is detained at the Stewart Detention Center located in Stewart County, Georgia, in the city of Lumpkin, Georgia, which is in the Middle District.
11. Venue is proper because “a substantial part of the events or omissions giving rise to the claim occurred” in this district. 28 U.S.C. § 1391(b)(2).
12. Venue is also proper because one or more of the Defendants is an officer or employee of the United States or an agency thereof acting in his or her official capacity. 28 U.S.C. § 1391(e)

IV. EXHAUSTION OF REMEDIES

13. There are no other remedies Petitioner can seek before an immigration court to seek his release from custody. *Matter of Yajure Hurtado* holds that an immigration

judge does not have the authority to consider bond for an individual who entered the U.S. without inspection. 29 I&N Dec. 216 (BIA 2025).

14. Further, though a detainee can seek release by ICE through a 212(d)(5) parole, there are no documented or meaningful examples of individuals being released pursuant to this type of request.

V. REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

15. Petitioner is presently held in an immigration detention center under Respondents' control by and through their various agents. The Petitioner is therefore in the "custody" of the Respondents under 28 U.S.C. § 2241. *See also Carafas v. LaVallee*, 391 U.S. 234, 237-38 (1968) ("... the 'in custody' determination is made at the time the habeas petition is filed."); *Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004) ("[O]ur understanding of custody has broadened to include restraints short of physical confinement.").
16. Under 28 U.S.C. § 2243, the court "shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto."
17. In a petition for a writ of habeas corpus, the following timeline applies: first, the applicant files the petition, second, the court "shall forthwith" either award the writ or issue an order to show cause, third, the writ or order to show cause "shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed." 28 U.S.C. § 2243. When the writ is 'returned' by the

respondent, “a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.” *Id.*; *see also Fay v. Noia*, 372 U.S. 391, 400 (1963) (The Writ of Habeas Corpus is “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.”).

VI. PARTIES

18. The Petitioner is Carlos Guillermo Osegueda Menjivar. The Petitioner is not a citizen of the United States and is classified as an “alien” under the INA. 28 U.S.C. § 1101(a)(3).
19. In accordance with 28 U.S.C. § 2242, Petitioner alleges “the name of the person who has actual custody over the petitioner”, for the various Respondent-custodians, are as follows:
 - a. Jason Streeval, the Warden of Stewart Detention Center, with immediate physical custody of the Petitioner based on the contracts of that facility with U.S. Immigration and Customs Enforcement (ICE) to detain noncitizens. Respondent Streeval is a legal custodian of the Petitioner.
 - b. George Sterling, Deputy Managing Director of the Atlanta Field Office of Immigration and Customs Enforcement and Removal Operations (“ICE/ERO”). The Atlanta Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens. Respondent Sterling is a legal custodian of the Petitioner.

- c. Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of ICE in general. Respondent Lyons is a legal custodian of the Petitioner.
 - d. Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security (DHS), and has authority over the actions of all other DIIS Respondents in this case, as well as the operations of DIIS. Respondent Mullin is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.
 - e. Todd Blanche is the Acting Attorney General of the United States of America and a senior official of the U.S. Department of Justice (DOJ), with authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration court and BIA. Respondent Mullin is a legal custodian of the Petitioner.
20. Each Respondent is named in his or her official capacity.
21. The Petitioner is presently detained at Stewart Detention Center and is under the custody and direct control of the Respondents or their agents.

VII. FACTUAL BACKGROUND

22. Petitioner is a 40-year-old native and citizen of El Salvador. (Exhibit B). He entered the United States without inspection on September 15, 2017. He has remained in the United States since then.

23. Petitioner has been married to his wife, Yesica Ajenadra Amaya de Osegueda, since December 22, 2009. They have three children together: J[REDACTED] C[REDACTED] [REDACTED], and C[REDACTED] C[REDACTED] and J[REDACTED] were born in the United States. (Exhibits C, D and E).
24. Petitioner is included in his wife's affirmatively-filed Form I-589 Asylum Application. (Exhibit F).
25. Petitioner has always been the primary income provider for the family as well as the foundation of their emotional strength and support. He is also well-regarded in his community.
26. Petitioner has no criminal history beyond traffic offenses.

VIII. LEGAL FRAMEWORK

27. Under 8 U.S.C. § 1226(a), individuals are generally entitled to discretionary bond determinations when detained. 8 C.F.R. §§ 1003.19(a), 1236.1(d). Certain noncitizens who are arrested, charged with, or convicted of certain crimes are subject to mandatory detention until removal proceedings are concluded. 8 U.S.C. § 1226(c).
28. Under 8 U.S.C. § 1225(b)(1), certain noncitizens subject to expedited removal are also subject to mandatory detention, as are recent arrivals "seeking admission" under § 1225(b)(2).
-
29. In 1997, the Executive Office for Immigration Review (EOIR) issued regulatory guidance, stating that those who entered the country without inspection were not considered to be detained under § 1225(b)(2) but were instead governed by

§ 1226(a). *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.”). From 1997 until earlier this year, with *Matter of Yajure Hurtado*, noncitizens like the Petitioner were eligible for bond upon detention. 29 I&N Dec. 216 (BIA 2025).

30. Under *Matter Yajure Hurtado*, immigration judges no longer have the authority to consider bond for a detainee who entered the U.S. without inspection. Instead, they are subject to mandatory detention under § 1225(b)(2)(A).
31. District courts, including this Court, addressing this issue have found that the Respondents’ 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. *A.A.V. v. Normand*, No. 5:25-cv-00089 (LGW) (S.D. Ga. Nov. 11, 2025); *J.A.M. v. Streeval*, No. 4:25-CV-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025). This has been the holding of almost every United States District Court to consider the question since *Matter of Yajure Hurtado* was issued. The Eleventh Circuit has not yet ruled on the question.
32. Mandatory detention without bond described in § 1225(b)(2) does not apply to those like the Petitioner, who entered without inspection and resided within the United States for over a decade before being apprehended hundreds of miles from the border.

IX. CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. 1226(a) Unlawful Consideration of Bond Redetermination

33. The allegations in the above paragraphs are realleged and incorporated herein.
34. The mandatory detention provision of Sec. 1225(b)(2) does not apply to all noncitizens like Petitioner who have been residing in the United States for years, who entered at the southern border without inspection, and who are not subject to other grounds of inadmissibility. Noncitizens, like the Petitioner, detained under § 1226(a), are eligible for consideration of release on bond.
35. Despite this plain reading of the statute that has been the predominant interpretation for over 25 years, Respondents have adopted a new illogical reading under *Matter of Yajure Hurtado* and have applied it here in violation of the INA.

COUNT TWO

Violation of Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19 Unlawful Denial of Consideration for Release on Bond

36. The allegations in paragraphs 1 through 32 are realleged and incorporated herein.
37. Congress and Respondents have made clear in the past that individuals who have entered without inspection were eligible for bond under § 1226 and its implementing regulations.
38. Despite this, Respondents have continued their policy of unlawfully detaining the Petitioner by misapplying § 1225(b)(2) in violation of the bond regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

39. Because Petitioner's detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires under the Due Process Clause of the Fifth Amendment to the U.S. Constitution, his continued detention without a bond hearing and recognition that an immigration court has jurisdiction is unlawful.

COUNT THREE

Violation of the Administrative Procedure Act with Arbitrary and Capricious Agency Policy Contrary to Law

40. The allegations in paragraphs 1 through 32 are realleged and incorporated herein.
41. Under the APA, a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).
42. As discussed throughout, mandatory detention under § 1226(b)(2) does not apply to all noncitizens residing in the United States for years and not apprehended at the border. Such noncitizens are detained under § 1226(a) and are therefore eligible for release on bond so long as they are not subject to other grounds of detention.
43. Respondents have implemented a new precedent applying mandatory detention to all noncitizens in contradiction of the INA. Such action is arbitrary, capricious, and not in accordance with law, in violation of the APA. 5 U.S.C. § 706(2).

COUNT FOUR

Violation of the Administrative Procedure Act Failure to Observe Required Procedures

44. The allegations in paragraphs 1 through 33 are realleged and incorporated herein.

45. Under the Fifth Amendment of the Constitution, no one shall be “deprived of life, liberty, or property, without due process of law.”
46. “Freedom from imprisonment - from government custody, detention, or other forms of physical restraint - lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). “The Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis* at 693.
47. Respondents’ mandatory detention of the Petitioner without the possibility of release on bond violates his due process rights.

WHEREFORE, Petitioner respectfully requests this Court grant the following:

1. Assume jurisdiction over this matter;
2. Enjoin and prevent the Respondents from relocating the Petitioner to a different detention center during these proceedings.
3. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
4. Declare that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment;
5. Declare that Petitioner’s detention violates the Eighth Amendment;

- 6 Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or in the alternative, order Respondents to schedule a bond hearing under instruction that 8 U.S.C. § 1226 governs and not 8 U.S.C. § 1225(b);
7. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law, and
8. Grant any further relief this court deems just and proper.

Respectfully submitted this 4th day of May, 2026.

/s/ Eli A. Echols

Attorney for Petitioner

Georgia Bar: 141839

Socheat Chea, PC

3500 Duluth Park Lane, Bldg. 300

Duluth, GA 30096

770-623-8880

eli@socheatchea.com

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

CARLOS GUILLERMO OSEGUEDA
MENJIVAR,

Petitioner,

v.

JASON STREEVAL, et al,

Respondents.

Case No: 4:26-cv-766

Petitioner Alien Number:



LIST OF EXHIBITS

- | | |
|-----------|--|
| Exhibit A | Detainee Locator printout; |
| Exhibit B | Petitioner's Birth Certificate; |
| Exhibit C | Petitioner's marriage certificate; |
| Exhibit D | Petitioner's wife's birth certificate; |
| Exhibit E | Petitioner's children's birth certificates; and |
| Exhibit F | Petitioner's wife's Form I-589 (excerpt) on which he is a derivative (with proof of filing). |
-

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

I represent Petitioner, Carlos Guillermo Osegueda Menjivar, 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.

Submitted this 4th day of May, 2026.

/s/ Eli A. Echols

Attorney for Petitioner

Georgia Bar: 141839

Socheat Chea, PC

3500 Duluth Park Lane, Bldg 300

Duluth, GA 30096

770-623-8880

eli@socheatchea.com
