

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Gustavo Enrique Madueno Fernandez

Petitioner,

v.

U.S. Immigration and Customs
Enforcement ("ICE");
Attorney General of the United States;
WARDEN, Warden of Glades County
Detention Center.

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

EXPEDITED HEARING REQUESTED

A-Number



1 INTRODUCTION

2 1. Petitioner, Gustavo Enrique Madueno Fernandez, is in the physical custody of
3 Respondents at the Glades County Detention Center in Moore Haven, Florida. He now faces
4 unlawful detention because the Department of Homeland Security (DHS) and the Executive Office
5 of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

6 2. Petitioner is charged with, inter alia, having entered the United States without
7 admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

8 3. Based on this allegation in Petitioner's removal proceedings, DHS denied
9 Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8,
10 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone
11 inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without
12 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore
13 ineligible to be released on bond.

14 4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board)
15 issued a precedent decision, binding on all immigration judges, holding that an immigration judge
16 has no authority to consider bond requests for any person who entered the United States without
17 admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined
18 that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore
19 ineligible to be released on bond.

20 5. Petitioner's detention on this basis violates the plain language of the Immigration
21 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
22 previously entered and are now residing in the United States. Instead, such individuals are subject
23 to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute
24

1 expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the
2 United States without inspection.

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

5 7. Accordingly, Petitioner seeks a Writ of Habeas Corpus requiring that he be released
6 unless Respondents provide a bond hearing under § 1226(a) within seven (7) days.

7 JURISDICTION

8 8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
9 Glades County Detention Center, in Moore Haven, Florida.

10 9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28
11 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States
12 Constitution (the Suspension Clause).

13 10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment
14 Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

15 VENUE

16 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
17 500 (1973), venue lies in the United States District Court for the Middle District of Florida, the
18 judicial district in which Petitioner is currently detained.

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

REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the Petition for Writ of Habeas Corpus or order Respondents to show cause "forthwith" as to why the Petition should not be granted (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.*

14. 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

15. Petitioner Gustavo Enrique Madueno Fernandez is a citizen of Venezuela who has been in immigration detention since on or about May 6, 2026. After arresting Petitioner in Miramar, Florida, ICE did not set a bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

16. Respondent U.S. Immigration and Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of no citizens. Respondent is sued in his official capacity.

1 17. Respondent is the Attorney General of the United States, and as such has authority
2 over the Department of Justice and is charged with faithfully administering the immigration laws
3 of the United State. She is sued in her official capacity.

4 18. Respondent Warden is the Warden of the Glades County Detention Center, where
5 Petitioner is currently detained. He has immediate physical custody of Petitioner. He is sued in his
6 official capacity.

7 8 9 10 11 **LEGAL FRAMEWORK**

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

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

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

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

1 23. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

2 24. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
3 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-
4 -208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226(a)
5 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat.
6 3 (2025).

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

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

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

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

6 29. On September 5, 2025, the BIA adopted this same position in a published decision,
7 *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States
8 without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for
9 IJ bond hearings.

10 30. Since Respondents adopted their new policies, dozens of federal courts have
11 rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected
12 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

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

19 32. Subsequently, court after court has adopted the same reading of the INA’s detention
20 authorities and rejected ICE and EOIR’s new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-
21 CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-
22 11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*,

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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 No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and*
 2 *recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug.
 3 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug.
 4 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug.
 5 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285
 6 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass.
 7 Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19,
 8 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21,
 9 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24,
 10 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27,
 11 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ---, 2025 WL 2466670
 12 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL
 13 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025
 14 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS
 15 (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546,
 16 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025
 17 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025
 18 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a)
 19 and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025
 20 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-
 21 RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).
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1 33. Courts have uniformly rejected DHS's and EOIR's new interpretation because it
2 defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the
3 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

4 34. Section 1226(a) applies by default to all persons "pending a decision on whether
5 the [noncitizen] is to be removed from the United States." These removal hearings are held under
6 § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

7 35. The text of § 1226 also explicitly applies to people charged as being inadmissible,
8 including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s
9 reference to such people makes clear that, by default, such people are afforded a bond hearing
10 under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates
11 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute
12 generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic*
13 *Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); see also *Gomes*, 2025 WL 1869299,
14 at *7.

15 36. Section 1226 therefore leaves no doubt that it applies to people who face charges
16 of being inadmissible to the United States, including those who are present without admission or
17 parole.

18 37. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
19 recently entered the United States. The statute's entire framework is premised on inspections at
20 the border of people who are "seeking admission" to the United States. 8 U.S.C.
21 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
22 applies "at the Nation's borders and ports of entry, where the Government must determine whether
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1 a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281,
2 287 (2018).

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

6 **FACTS**

7 39. Petitioner is a forty (40) year old citizen of Venezuela.

8 40. Petitioner entered the United States sometime in 2017.

9 41. Since then, Petitioner has resided in the United States in liberty for around nine (9)
10 years and lives in Miramar, Florida, with his family.

11 42. On or about May 6, 2026, Petitioner was detained by ICE after being pulled over
12 in a vehicle. Petitioner is now detained at the Glades County Detention Center in Moore Haven,
13 Florida.

14 43. Petitioner is currently in removal proceedings before immigration court pursuant to
15 8 U.S.C. § 1229a.

16 44. Petitioner has a pending asylum application and a valid work permit. Petitioner
17 maintains stable employment. Petitioner is neither a flight risk nor a danger to the community.

18 45. Following Petitioner’s arrest and transfer to Glades County Detention Center, ICE
19 issued a custody determination to continue Petitioner’s detention without an opportunity to post
20 bond or be released on other conditions.

21 46. Petitioner lives with his family in Miramar, Florida.

22 47. Petitioner has no criminal history.
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1 48. On or about May 18 2026, Immigration judge denied Petitioner's bond request based
2 on the determination that Petitioner is an arriving alien. .

3 49. Currently, Immigration Judges all over the United States continue to deny bond
4 requests by ruling that they lack jurisdiction over individuals who entered the United States
5 without inspection based on an incorrect interpretation of current applicable statutes.

6 50. Pursuant to *Matter of Yajure Hurtado*, the Immigration Judge is unable to consider
7 Petitioner's bond request.

8 51. Additionally, pursuant to *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the
9 Immigration Judge is unable to consider the Petitioner's bond request.

10 52. As a result, Petitioner remains in detention. Without relief from this court, he faces
11 the prospect of months, or even years, in immigration custody, separated from his family and
12 community.

13 **CLAIMS FOR RELIEF**

14 **COUNT I**

15 **Violation of the INA**

16 53. Petitioner incorporates by reference the allegations of fact set forth in the preceding
17 paragraphs.

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

24 55. The application of § 1225(b)(2) to Petitioner unlawfully mandates his

1 continued detention and violates the INA.

2
3 **COUNT II**
4 **Violation of the Bond Regulations**

5 56. Petitioner incorporates by reference the allegations of fact set forth in preceding
6 paragraphs.

7 57. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-
8 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.
9 Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the
10 agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present
11 without having been admitted or paroled (formerly referred to as [noncitizens] who entered without
12 inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis
13 added). The agencies thus made clear that individuals who had entered without inspection were
14 eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its
15 implementing regulations.

16 58. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice
17 of applying § 1225(b)(2) to individual like Petitioner.

18 59. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued
19 detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.
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21 **COUNT III**
22 **Violation of Due Process**

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

- 1 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
2 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
3 1226(a) within seven (7) days;
- 4 e. Declare that Petitioner's detention is unlawful;
- 5 f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
6 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
7 law; and
- 8 g. Grant any other and further relief that this Court deems just and proper.

9 DATED May 19, 2026.

10 Respectfully Submitted,

11 /s/ Allison Rub, Esq.

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