

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLOMBUS DIVISION

FERNANDO MARCELINO GARCIA
MORALES,

Petitioner,

v.

LADEON FRANCIS, Field Office
Director of Enforcement and Removal
Operations, ATLANTA Field Office,
TODD LYONS, in his official capacity
as Acting director of Immigration and
Customs Enforcement;
Immigration and Customs Enforcement;
MARKWAYNE MULLIN, Secretary,
U.S. Department of Homeland Security;
U.S. DEPARTMENT OF HOMELAND
SECURITY;
TODD BLANCHE, U.S. Attorney
General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW;
JASON STREEVAL, Warden of
STEWART DETENTION CENTER,

Respondents.

Case No. 4:26 cv 861

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Fernando Marcelino Garcia Morales A [REDACTED], is in the physical custody of Respondents at the STEWART DETENTION CENTER. He now faces unlawful detention because the Department of Homeland Security (DHS), in direct collaboration with the adjudicative body with jurisdiction over immigrants (the Executive Office of Immigration Review) (EOIR) have concluded Petitioner is subject to mandatory detention.

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

3. Based on this allegation in Petitioner's removal proceedings, DHS has prevented Petitioner's 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. On September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like

1 Petitioner who previously entered and are now residing in the United States. Instead, such
2 individuals are subject to a different statute, § 1226(a), that allows for release on
3 conditional parole or bond. That statute expressly applies to people who, like Petitioner,
4 are charged as inadmissible for having entered the United States without inspection.

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

8 7. More importantly, the Government itself has made an abrupt about-face on
9 this issue. Respondents should be judicially estopped from asserting their current
10 interpretation of 8 U.S.C. § 1225(b)(2)(A), because they previously prevailed in litigation
11 after asserting the opposite interpretation. As explained in *New Hampshire v. Maine*, 532
12 U.S. 742 (2001), judicial estoppel applies when a party assumes a position in a legal
13 proceeding, succeeds in maintaining that position, and then adopts a contrary position in a
14 subsequent proceeding to gain an unfair advantage. Here, Respondents previously, and
15 successfully, argued that individuals who entered the United States without inspection were
16 subject to detention under § 1226(a), and not § 1225(b)(2)(A), and courts accepted that
17 position. Respondents now reverse course and assert that such individuals are subject to
18 mandatory detention under § 1225(b)(2)(A), thereby denying them bond hearings. This
19 shift in legal position undermines the integrity of the judicial process and imposes an unfair
20 detriment on Petitioners who relied on the prior interpretation. Accordingly, Respondents
21 should be estopped from asserting this inconsistent position.

22 8. Furthermore, The Government's own issuance of an I-220A placing
23 Petitioner in custody under 8 U.S.C. § 1226(a) reflects a discretionary, fact-based

determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). *See Exhibit 1*, Petitioner's Order of Release on Recognizance. This quasi-judicial decision was made by DIIS at the outset of proceedings, based on the facts available to both parties and Petitioner's own admissions. Any reversal of such principles undermines the integrity of the adjudicative process and triggers the principle of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

9. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

JURISDICTION

10. Petitioner is in the physical custody of Respondents. Petitioner is detained at the STEWART DETENTION CENTER in LUMPKIN, GEORGIA.

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

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

VENUE

13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the MIDDLE DISTRICT OF GEORGIA, the judicial district in which Petitioner currently is detained.

1 14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents
2 are employees, officers, and agencies of the United States, and because a substantial part
3 of the events or omissions giving rise to the claims occurred in the MIDDLE DISTRICT
4 OF GEORGIA.

5 **REQUIREMENTS OF 28 U.S.C. § 2243**

6 15. The Court must grant the petition for writ of habeas corpus or order Respondents to show
7 cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an
8 order to show cause is issued, Respondents must file a return “within three days unless for
9 good cause additional time, not exceeding twenty days, is allowed.” *Id.*

10 16. Habeas corpus is “perhaps the most important writ known to the constitutional law . . .
11 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
12 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application
13 for the writ usurps the attention and displaces the calendar of the judge or justice who
14 entertains it and receives prompt action from him within the four corners of the
15 application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

16 **PARTIES**

17 17. Petitioner Fernando Marcelino GARCIA MORALES (“Mr. Garcia”) is a citizen of
18 Guatemala who has been in immigration detention since April 15, 2026. After arresting
19 Petitioner, he was detained and transferred to the Stewart Detention Center, ICE did not
20 set bond and Petitioner is unable to obtain review of his custody determination by an IJ,
21 pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA
22 2025). Due to this erroneous decision, it would be futile for Petitioner to apply to EOIR
23 without the intervention of this honorable Court.

1 18. Respondent Todd Lyons is named in his official capacity as the Acting Director of the
2 Immigration and Customs Enforcement (“ICE”). As the senior Official Performing the
3 duties of the Director of ICE, he is responsible for the administration and enforcement of
4 the immigration laws of the United States; routinely transacts business in the Southern
5 District of Georgia; is legally responsible for any effort to detain Petitioner; and as such is
6 a custodian of the Petitioner. His address is ICE, Office of the Principal Legal Advisor, 500
7 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

8 19. Respondent Ladeon Francis is the Director of the Atlanta Field Office of ICE’s
9 Enforcement and Removal Operations division; however, on information and belief, the
10 DHS is rotating their Field Office Director without publishing a schedule of rotation. As
11 such, Ladeon Francis or his unknown, unannounced provisional replacement is Petitioner’s
12 immediate custodian and is responsible for Petitioner’s detention and removal. He or his
13 acting counterpart is named in his or her official capacity. Respondent Francis’s address is
14 180 Ted Turner Dr Se, Ste 522. Atlanta GA 30303.

15 20. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security.
16 He is responsible for the implementation and enforcement of the Immigration and
17 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention.
18 Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official
19 capacity. Respondent Mullin’s address is 2707 Martin Luther King Jr Ave Se Washington
20 DC 20528-0525.

21 21. Respondent Department of Homeland Security (DHS) is the federal agency responsible for
22 implementing and enforcing the INA, including the detention and removal of noncitizens.

1 22. Respondent Todd Blanche is the Attorney General of the United States. He is responsible
2 for the Department of Justice, of which the Executive Office for Immigration Review and
3 the immigration court system it operates is a component agency. He is sued in his official
4 capacity. Respondent Blanche's address is U.S. Department of Homeland Security, Office
5 of the General Counsel, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

6 23. Respondent Executive Office for Immigration Review (EOIR) is the federal agency
7 responsible for implementing and enforcing the INA in removal proceedings, including for
8 custody redeterminations in bond hearings.

9 24. Respondent, Warden Jason Streeval is, is employed by the private, for-profit detention
10 corporation contracted by the Government as an agent to confine immigrants at Stewart
11 Detention Center, where Petitioner is detained. He has immediate physical custody of
12 Petitioner. He is sued in his official capacity. Respondent Warden's address is Warden,
13 Stewart Detention Center, 1116 S Washington Ave, Lumpkin, GA 39862.

14 **LEGAL FRAMEWORK**

15 25. The INA prescribes three basic forms of detention for the vast majority of noncitizens in
16 removal proceedings.

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

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

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

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

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

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

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

33. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to

1 discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b).
2 During oral argument on November 30, 2016, then–Solicitor General Ian Gershengorn
3 stated: “If they are not detained within 100 miles of the border or within 14 days... then
4 they are under 1226(a) and not 1226(c)” and further clarified, in response to a question
5 concerning “an alien who has come into the United States illegally without being admitted
6 [and] who takes up residence 50 miles from the border,” the Government responded, “The
7 answer is they are held under 1226(a) and that they get a bond hearing...” Transcript of
8 Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. (2018) (No. 15-1204). DHS
9 reiterated that such individuals “would be held under 1226(a)” and cited the administrative
10 record to support that position. *Id.* These statements reflect DHS’s prior litigation stance
11 that § 1226(a) governs detention for noncitizens who have entered and are residing in the
12 United States, a position directly contrary to the agency’s current interpretation applying §
13 1225(b)(2)(A) to such individuals. Having prevailed in *Jennings* after taking this position,
14 they should be estopped from taking the contrary position now simply because their
15 political or litigation interests have changed. Estoppel in this case is necessary to preserve
16 the predictability inherent in the rule of law and due process under the Fifth Amendment,
17 as well as to protect the integrity of the judicial system.

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

21 35. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants
22 for Admission,”¹ claims that all persons who entered the United States without inspection

¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy
2 applies regardless of when a person is apprehended, and affects those who have resided in
3 the United States for months, years, and even decades.

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

8 37. Since Respondents adopted their new policies, several federal courts have rejected their
9 new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter*
10 *of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

11 38. This Court has held in similar cases that petitioners present in the United States at the time
12 of their detention, who have not been lawfully admitted and are not attempting to be
13 lawfully admitted, like the Petitioner, are subject to detention under 8 U.S.C. § 1226(a).
14 *J.A.M. v. Streeval*, No. 4:25-CV342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025)
15 *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025).

16 39. Moreover, on May 6, 2026, the Eleventh Circuit issued a published decision in *Alvarez v.*
17 *Warden, Federal Detention Center Miami, et al.*, No. 25-14065 (11th Cir. 2026) and *Perez*
18 *v. Assistant Field Office Director, Krome North Service Processing Center, et al.*, (No. 25-
19 14075 (11th Cir. 2026), holding that INA § 1226 applies to unadmitted noncitizens
20 apprehended within the interior of the United States, thereby entitling such individuals to
21 bond hearings. The court further held that unadmitted noncitizens encountered in the
22 interior—rather than at the border—and not actively seeking lawful admission are subject
23 to detention under § 1226. However, this decision has not resulted in actual release nor

1 actual bond hearings for detainees in similar circumstances to the Petitioner whom where
2 released on their own recognizance and issued form I-220A placing them in § 236
3 proceedings. *See Exhibit 1.* This demonstrates that judicial intervention is necessary to
4 remedy Petitioner's ongoing unlawful detention.

5 **FACTS**

6 40. Mr. Garcia entered the United States in or around May 2019, and currently resides
7 physically in Lumpkin, Georgia, where he is detained.

8 41. Upon his entry into the United States, the DIIS released Petitioner into the country on an
9 I-220A form *Order of Release on Recognizance*, or "OREC" and placed into removal
10 proceedings. *See Exhibit 1.*

11 42. On May 4, 2026, Mr. Garcia was detained and transferred to Immigration custody.

12 43. Mr. Garcia was then transferred to the Stewart Detention Center in Lumpkin Georgia
13 where he remains detained.

14 44. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider Mr.
15 Garcia's bond request, and his unlawful detention cannot be litigated before that body,
16 who collaborated with the DHS – who is a party to these contested proceedings – to adopt
17 the DHS position wholesale, because such efforts would be futile.

18 45. As a result, Mr. Garcia remains in detention. Without relief from this court, he faces the
19 prospect of months, or even years, in immigration custody, separated from his family and
20 community while his relief remains pending.
21

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

46. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

47. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who received an I-220A and who were subsequently accused by DHS of having “entered” the United States. Those actions by DHS, followed by the Petitioner’s concession to those charges before EOIR, represent a quasi-judicial determination by an agency which precludes further litigation of the issue unless new, material, and previously unavailable facts emerge. Such noncitizens continue to be detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

48. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates the INA.

COUNT II
Violation of the Bond Regulations

49. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

50. In 1997, after Congress amended the INA through IIRIRA, FOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission,

[noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

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

52. The application of § 1225(b)(2) to Petitioner unlawfully mandates is continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Violation of Due Process

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

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

55. Petitioner has a fundamental interest in liberty and being free from official restraint.

56. The government’s detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates [his/her/their] right to due process.

Judicial Estoppel

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

58. The Government is judicially estopped from asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation, including *Jennings v. Rodriguez*, the Government successfully argued that individuals who entered without inspection and were not apprehended near the border or within 14 days were subject to discretionary detention under § 1226(a), not mandatory detention under § 1225(b)(2)(A). *See Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg. at 7–8 (Nov. 30, 2016). Courts accepted that position. Now, the Government reverses course and asserts the opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then adopts a contrary position to gain an unfair advantage. The Government’s reversal undermines the integrity of the judicial process and prejudices Petitioners who relied on the prior interpretation.

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 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 release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- 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.

DATED this 22nd day of May, 2026.

/s/ Peter Tadeo, Esq.
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the
Petitioner's attorney. I have discussed with Petitioner's family members and have reviewed various
documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed
the foregoing Petition and that the facts and statements made in this Petition and Complaint are
true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

DATED this 22nd day of May, 2026.

/s/ Peter Tadeo, Esq.
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