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

Antonio HERNANDEZ GOMEZ,

Petitioner,

v.

Jason STREEVAL, Warden of Stewart ICE
Detention Center in their official capacity;
George STERLING, Deputy Field Office
Director of the Atlanta Field Office, U.S.
Immigration and Customs Enforcement; Todd
LYONS, in his official capacity as acting
Director of U.S. Immigration and Customs
Enforcement, Kristi NOEM, in her official
capacity as Secretary of the U.S. Department
of Homeland Security, and Pamela BONDI,
in her official capacity as U.S. Attorney
General; Sirce OWEN, Acting Director for
Executive Office for Immigration Review;

Respondents.

HEARING REQUESTED

Case No.:

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Antonio Hernandez Gomez () is a native and citizen of Mexico who was detained by U.S. Immigration and Customs Enforcement (“ICE”) in September

2025. Mr. Hernandez Gomez has lived in the United States since around 2004 after entering the country without inspection. He was detained by ICE following an arrest for driving in Georgia without a Georgia issued driver's license. Mr. Hernandez Gomez is the father of six children in total – two biological children, one of which is a U.S. citizen, and four stepchildren through his marriage to his wife, Blanca Campos Hernandez. Ms. Campos is currently in valid U nonimmigrant status, and Mr. Hernandez Gomez is the beneficiary of a pending Form I-918A for dependent status. He has limited criminal history including a conviction for simple batter from 2015, as well as other traffic related charges and convictions. Despite the positive equities and his eligibility for relief from removal while not detained, Mr. Hernandez Gomez is being held without the possibility of bond at the Stewart Detention Center in Lumpkin, Georgia based on a draconian and nonsensical re-interpretation of the statutes and regulations regarding bond eligibility.

2. Recently, the Board of Immigration Appeals (“BIA”) rendered a sweeping decision holding that “[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission”. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Thus, Mr. Hernandez Gomez is not eligible to be considered for bond despite years of precedent and interpretation suggesting otherwise. Yajure Hurtado instructs all ICE employees to argue that anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for entering the country without inspection is ineligible for bond and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). This means that if Petitioner were to file a bond request, the immigration judge would automatically find that Mr. Hernandez Gomez is an “applicant for admission” who is “seeking admission” to the United States and therefore subject to mandatory detention under Immigration and Nationality Act (“INA”) § 1225(b)(2)(A). This

new precedent will apply to Mr. Hernandez Gomez even though entered the United States over two decades ago and was not apprehended until less than a month ago and thousands of miles from the southern border of the United States.

3. Mr. Hernandez Gomez's detention violates the plain language of the INA and its implementing regulations.

4. Under 8 U.S.C. § 1225(b)(2)(A), an individual who is apprehended on arrival to the United States is an "applicant for admission" who is "seeking admission" and is therefore subject to mandatory detention. Historically, this has not applied to individuals such as Mr. Hernandez Gomez who were never apprehended at the border and lived for years in the United States. Such individuals are typically eligible for bond under 8 U.S.C. § 1226(a), which allows for conditional release on bond and specifically applies to those, like Mr. Hernandez Gomez, who were charged as inadmissible for having entered the United States without inspection.

5. The Respondent's new precedent is wholly contrary to the statutory framework and implementing regulations, as immigration judges and DHS have found that § 1226(a) applies to people like Mr. Hernandez Gomez for decades. This new interpretation is nonsensical, contrary to law, arbitrary and capricious, and in violation of the Administrative Procedure Act ("APA"). In addition, the policy was not adopted and implemented under the APA's procedural requirements. Mr. Hernandez Gomez's prolonged detention violates his rights under the Fifth Amendment Due Process Clause of the U.S. Constitution.

6. Mr. Hernandez Gomez respectfully requests that this Court grant him a Writ of Habeas Corpus, ordering his release from custody on bond. Mr. Hernandez Gomez also seeks declaratory relief that establishes that he is subject to detention under § 1226(a) and therefore eligible for bond and release from detention.

JURISDICTION AND VENUE

7. Mr. Hernandez Gomez is currently in the physical custody of Respondents in the Stewart Detention Center.

8. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), 5 U.S.C. § 702 of the APA; and art. I sec. 9, cl. 2 of the United States Constitution (Suspension Clause), as Mr. Hernandez Gomez is presently in custody under or by color of the authority of the United States and challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

9. The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). The United States Supreme Court has upheld the federal courts' jurisdiction to review such claims in *Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018).

10. Venue is proper in the Middle District of Georgia pursuant to 28 U.S.C. §§ 1391 and 2241(d) because Petitioner is detained within this District at the Stewart Detention Center in Lumpkin, Georgia.

PARTIES

11. Petitioner Antonio Hernandez Gomez is a native and citizen of Mexico unlawfully detained at the Stewart Detention Center in Lumpkin, Georgia. ICE has held him in custody since September 10, 2025. He is not subject to a final order of removal.

12. The Warden of the Stewart Detention Center controls the detention center where Petitioner is currently detained under the authority of ICE. As such, they have direct control over

Petitioner and are his immediate physical custodian. They are sued in their official capacity.

13. Respondent George Sterling is the acting Director of ICE's Atlanta Field Office, which has jurisdiction over ICE detention facilities in Georgia, including the Stewart Detention Center, and thus is Petitioner's immediate custodian. He is sued in his official capacity.

14. Respondent Todd Lyons is the acting Director of ICE. He is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including immigrant detention. As such, Mr. Lyons is a legal custodian of Petitioner. He is sued in his official capacity.

15. Respondent Kristi Noem is the Secretary of DHS, which is responsible for the administration of ICE, a subunit of DHS, and the implementation and enforcement of the immigration laws. As such, Ms. Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity.

16. Respondent Pamela Bondi is the Attorney General of the United States and head of the Department of Justice, which encompasses the BIA and the Immigration Courts. Ms. Bondi shares responsibility for implementation and enforcement of the immigration laws with Respondents Lyons and Noem. Ms. Bondi is a legal custodian of Petitioner. She is sued in her official capacity.

17. Respondent Sirce Owen is the Acting Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including bond hearings. She is sued in her official capacity.

FACTS

18. Mr. Hernandez Gomez has resided in the United States since 2004, after entering without inspection and never having been apprehended by immigration officials. He is married,

and his wife is in valid U nonimmigrant status and willing to sponsor her spouse should a bond amount be required at some point in the future. They share one biological child together. He has one other child from a previous relationship, and he is the stepfather to his wife's four U.S. citizen children. Mr. Hernandez Gomez is the financial supporter of his family. Mr. Hernandez Gomez is also the beneficiary of a pending I-918A petition for derivative U status. The petition was filed in April 2024, and he just recently responded to a second request for evidence and is awaiting final adjudication.

19. Additionally, Mr. Hernandez Gomez's stepson, Eric Flores, is on the precipice of becoming a United States Marine as he initiated the enlistment process in 2024.

20. Mr. Hernandez Gomez has no previous interactions with immigration officials. His only criminal interaction with law enforcement before his detention was a simple battery conviction in 2015, for which he was sentenced to 11 months and 27 days, three months of which was served in confinement. Mr. Hernandez Gomez's spouse and children are devastated after being forcibly and illegally separated from their father and are willing to do whatever it takes to help him return home.

EXHAUSTION OF REMEDIES

21. There are no other remedies Petitioner can seek before an immigration court to seek his release from custody. The *Yajure Hurtado* decision dictates that an immigration judge does not have authority to consider bond for an individual who entered the U.S. without inspection.

22. 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.

LEGAL FRAMEWORK

23. 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).

24. Under 8 U.S.C. § 1225(b)(1), certain noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) are subject to mandatory detention, as are recent arrivals “seeking admission” under INA § 1225(b)(2).

25. Following enactment of these statutes, EOIR drafted new regulations stating that people who entered the country without inspection were not considered detained under § 1225 but were instead detained under § 1226(a). *See* Inspection and Expedite Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 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.”). Thus, from 1997 until a few weeks ago, noncitizens like Mr. Hernandez Gomez were eligible for bond upon detention.

26. Pursuant to *Yajure Hurtado*, immigration judges no longer have any authority to consider bond for a detainee who entered the U.S. without inspection; the BIA found that all of these individuals are subject to mandatory detention under § 1225(b)(2)(A), (INA § 235(b)(2)(A)).

27. Mr. Hernandez Gomez is not the first to challenge this cruel and illegal reading of the statutes governing his detention. In fact, research suggests that every district court to have addressed this issue has agreed with his position, finding 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. *Jose J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Ermeo Sicha v. Bernal*, 2025 WL 2494530 (D. Me. Aug. 29, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025).

28. The very recent decision in *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025), where the court found that the petitioner was not subject to detention under Section 1225(b)(2) simply because he was an applicant for admission, reiterates the clear and plain interpretation of Sections 1225(b)(2)(A) and 1226(a). Circling back to the Laken Riley Act, *Sampiao* reasoned that individuals charged with entry without inspection under Section 1182(a)(6)(A) are not subject to mandatory detention, and if they are, then there would have been no need for Congress to specify in Section 1226(c)(1)(E) that such citizens are subject to mandatory detention when they are present in the United States without being admitted or paroled and when they satisfy the separate criminal conduct criterion. *Id.* The court firmly concluded that, “the plain text of Sections 1225 and 1226, together with the structure of the larger statutory scheme, indicates that Section 1225(b)(2) does not apply to noncitizens who are arrested on a warrant issued by the Attorney General while residing in the United States. *Id.*”

29. Finally, *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) is also in agreement with the clear interpretation of Section 1226 (a) versus that of 1225(b)(2)(A).

This facts of this decision are even more on point with that of Petitioner in the instant case because Pizarro also entered the U.S. approximately two decades ago without inspection or admission. He was not stopped at the border, and therefore, he is not an applicant for admission as found by the court. *Id. at* *6 (finding incorrect that any noncitizen who entered unlawfully should be considered as perpetually seeking admission). The court in Pizarro also analyzed the decision in *Matter of Yajure Hurtado* and concluded that they “find[s] it difficult to square a noncitizen’s continued presence with the term ‘seeking admission,’ ...[and] is not persuaded by the statutory interpretation advanced by the BIA”. *Id.*

30. DHS’s and DOJ’s interpretation defies the INA, as these courts have found, as a plain reading of the text of the statute supports Mr. Hernandez Gomez’s position that he is detained under § 1226(a) and therefore eligible for bond. The text of § 1226(a) explicitly applies to those charged with inadmissibility after entering without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Congress recently enacted this subsection in the Laken Riley Act to exclude from bond eligibility, noncitizens who entered without inspection who commit certain offenses, so if Congress wanted all nonimmigrants to be ineligible for bond, it could have done so. This is consistent with the canon against surplusage, which states that a statute should be construed “so that no part will be inoperative or superfluous, void or insignificant.” *Corley v. United States*, 556 U.S. 303 (2009). There would be no need for Congress to specify that noncitizens who entered without inspection who also committed certain crimes are ineligible for bond under § 1226(c)(1)(E) if they are inherently ineligible under § 1225(b)(2)(A) for entering without inspection. The government’s position thus renders this provision “mere surplusage.”

31. Section 1225(b), on the other hand, applies to those people arriving at U.S. ports of entry or those who recently entered the United States. In *Matter of Q. Li*, the BIA recently clarified

which non-citizens are “arriving alien[s]” and ineligible for bond. 29 I&N Dec. 66 (BIA 2025). There, the Respondent was apprehended without a warrant near the southern border of the United States after entering the country without being admitted or paroled. *Id.* at 67. The BIA noted there that the respondent was “apprehended just inside the southern border, and not at a point of entry, on the same day they crossed into the United States.” *Id.* at 68 (internal quotation marks and brackets omitted). Thus, the BIA held, the respondent there was an “arriving alien” and subject to mandatory detention under INA § 235(a)(1). The BIA held that “an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) . . . is ineligible for any subsequent release on bond under section 236(a).” *Id.* at 69. The BIA distinguished those detained under 236(a), finding that such respondents are “aliens already present in the United States” and detained by a warrant. *Id.* at 70. Section 235(b), on the other hand, “applies primarily to aliens seeking entry into the United States and authorizes DHS to detain an alien without a warrant at the border.” *Id.* at 70 (quotation marks omitted). While this Court need not defer to this analysis after the Supreme Court’s overturn of *Chevron*, it shows simply another way that Respondents are not following the law.

32. Mr. Hernandez Gomez’s approach is consistent with binding precedent in the Eleventh Circuit in *Ortiz-Bouchet v. U.S. Att’y Gen.*, 714 F.3d 1353 (11th Cir. 2013). There, the Eleventh Circuit found the noncitizens were not “applicants for admission” because they were seeking to adjust status while inside the United States, as opposed to someone who was applying for entry at the border. This is also consistent with Supreme Court precedent, which has held that mandatory detention applies “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is inadmissible.” *Jennings v.*

Rodriguez, 583 U.S. 281, 287 (2018).

33. Therefore, the mandatory detention provisions in § 1225(b)(2) do not apply to Petitioners like Mr. Hernandez Gomez, who entered the country and resided within the United States for over two decades who were apprehended hundreds of miles from the U.S. border at the time of apprehension.

CLAIMS FOR RELIEF

COUNT 1

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

34. Mr. Hernandez Gomez incorporates by reference the allegations of fact set forth in the preceding paragraphs.

35. The mandatory detention provision of § 1225(b)(2) does not apply to all noncitizens like Mr. Hernandez Gomez who have been residing in the United States for decades, who were never apprehended at the southern border, and who are not subject to other grounds of inadmissibility. Noncitizens, like Mr. Hernandez Gomez, detained under § 1226(a), are eligible for consideration of release on bond.

36. Despite this plain reading of the statute that has been the predominant interpretation for over 25 years, Respondents have adopted this new illogical reading under *Matter of Yajure Hurtado* and applied it to Mr. Hernandez Gomez in violation of the INA.

COUNT II

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

37. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

38. 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.

39. Despite this, Respondents have continued their policy unlawfully detaining Mr. Hernandez Gomez by misapplying § 1225(b)(2) in violation of the bond regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

40. 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 III

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

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 through, mandatory detention under § 1225(b)(2) does not apply to all noncitizens residing in the United States for decades who were not apprehended at the border. Such noncitizens are detained under § 1226(a) and are therefore eligible for release on bond as long as they are not subject to other grounds.

43. Despite this, Respondents have been implementing their new precedent applying mandatory detention to all noncitizens like Mr. Hernandez Gomez in contradiction of the INA.

Such application is arbitrary, capricious, and not in accordance with law, in violation of the APA. 5 U.S.C. § 706(2).

COUNT IV

Violation of the Administrative Procedure Act Failure to Observe Required Procedures

44. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

45. Under the APA, a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law.” 5 U.S.C. § 706(2)(D). The APA requires agencies to follow public notice-and-comment rulemaking before promulgating new regulations or amending existing regulations. 5 U.S.C. § 553(b), (c).

46. Respondents failed to comply with the APA by adopting its policy and departing from its regulations without any rulemaking, notice, or opportunity to comment. Respondents failed to publish any new rule, as required by 5 U.S.C. § 553(d).

COUNT IV

Violation of the Administrative Procedure Act Failure to Observe Required Procedures

47. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

48. Under the Fifth Amendment of the Constitution, “[n]o person” shall be “deprived of life, liberty, or property, without due process of law.”

49. “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.” *Id.* at 693.

50. Respondents’ mandatory detention of Mr. Hernandez Gomez without the possibility of release on bond violates his due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Antonio Hernandez Gomez prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted within **three days**, pursuant to 28 U.S.C. § 2243;
3. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from their custody;
4. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;
5. In the event that this Court determines that a genuine dispute of material fact exists regarding Petitioner’s entitlement to habeas relief, schedule an evidentiary hearing pursuant to 28 U.S.C. § 2243. *See Singh v. U.S. Att’y Gen.*, 945 F.3d 1310, 1315–16 (11th Cir. 2019);
6. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;
7. Declare that Petitioner’s detention violates the INA;
8. Declare that Petitioner’s detention violates the Due Process Clause;

9. Declare that Petitioner's detention is arbitrary and capricious and in violation of the Administrative Procedures Act;
10. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
11. Grant such further relief as this Court deems just and proper.

Dated: September 19, 2025

Respectfully submitted,

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