

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

BRITO, Victoria
Petitioner,

v.

Jason STREEVAL, *in his*
official capacity as Warden of Stewart
Detention Center, and Todd LYONS,
in his official capacity as Acting
Director of Immigration and Customs
Enforcement, and Ladeon
FRANCIS, *Field Office Director ICE*
Atlanta Field Office, and Kristi NOEM,
Secretary of Homeland Security, Pamela
BONDI, *in her official capacity as Attorney*
General, United States Department of
Justice

Respondents.

Case No. _____

**PETITION FOR
WRIT OF HABEAS CORPUS**

Alien File No. 

I. INTRODUCTION

1. Petitioner, Victoria Brito, is a 36-year old native and citizen of Guatemala who entered the United States without inspection in 2002 and has resided in the country for the past 23 years.
2. Respondent was detained on or about July 1, 2025, by the Department of Homeland Security.
3. Petitioner has been denied the opportunity to have a bond hearing before the Immigration Judge ("IJ"), as the IJ found that Petitioner was detained under 8 U.S.C. 1225(b)(2) and is therefore subject to mandatory detention.

4. *The IJ incorrectly applied 8 U.S.C. 1225(b)(2); the correct provision of the Immigration and Nationality Act governing Petitioner's detention is 8 U.S.C. 1226(a), which provides the opportunity for a discretionary bond hearing before the IJ.*
5. *Petitioner now seeks a writ of habeas corpus directing the Respondents to provide Petition with a bond hearing to determine if she may be released on bond under § 1226(a)(2) and the applicable regulations. See 8 C.F.R. §§ 236.1 & 1236.1.*

II. VENUE AND JURISDICTION

6. *This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the Constitution (Suspension Clause).*
7. *Venue lies in this Division because Petitioner is detained at Stewart Detention Center, within the Columbus Division, and Respondent Dickerson is her immediate custodian. See 28 U.S.C. §§ 2241(d), 1391(e).*

III. PARTIES

8. *Petitioner Brito is a 36-year old Guatemalan national who resides in Atlanta, Georgia. She is currently detained at the Stewart Detention Center in Lumpkin, Georgia.*
9. *Respondent Jason Streeval is the Warden of Stewart Detention Center. As such, Respondent Streeval is responsible for the operation of the Detention Center where Petitioner is detained. Because ICE contracts with private prisons such as Stewart to house immigration detainees such as Ms. Garcia, Respondent Streeval has immediate physical custody of the Petitioner.*

10. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (hereinafter "ICE"). As such, Respondent Lyons is being sued in his official capacity.
11. Respondent Ladeon Francis is the Atlanta Field Office Director for Immigration and Customs Enforcement (hereinafter "FOD"). As such, Respondent Francis is responsible for the oversight of ICE operations at the Stewart Detention Center. Respondent Sterling is being sued in his official capacity.
12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (hereinafter "DHS"). As Secretary of DHS, Secretary Noem is responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Noem is being sued in her official capacity.

IV. EXHAUSTION OF REMEDIES

13. Petitioner has exhausted her administrative remedies to the extent required by law, and her only remedy is by way of this judicial action.

V. STATEMENT OF FACTS

14. Petitioner, Victoria Brito is a 36-year old native and citizen of Guatemala who entered the United States without inspection in 2002 and has resided in the country for the past 23 years. See **Exhibit 1**, *Petitioner's Passport, ID Card, and Birth Certificate with English Translation*.
15. Prior to her arrest on or about July 1, 2025, Petitioner had never had any contact with immigration authorities and had never applied for any legal status.

16. Petitioner is the mother of three (3) U.S. citizen children, to wit: Oscar Castro-Brito, born on November 13, 2006; Lorenzo Luis Castro-Brito, born on December 11, 2007; and Amy Sabina Castro-Brito, born on January 22, 2010. See **Exhibit 2**, *Birth Certificates for Petitioner's U.S. Citizen Children*.
17. On or about July 1, 2025, ICE officers arrested Petitioner at her place of work – a car wash, which the officers were patronizing at the time they encountered and detained Petitioner.
18. On July 25, 2025, Petitioner, through counsel, filed a Motion for Bond with the IJ. See **Exhibit 3**, *Petitioner's Motion for Bond Filed with the Immigration Judge*.
19. In that bond motion, Petitioner asserted that she was neither a danger to the community nor a flight risk, as she has no criminal history whatsoever and is eligible for relief from removal in the form of 42B Cancellation of Removal for Nonpermanent Residents. *Id.*
20. In addition to that motion, Petitioner filed with the IJ her Brief in Support of Immigration Court Jurisdiction in Bond Proceedings, which explained the IJ's jurisdiction to consider bond in Petitioner's case, as her detention falls under section 236(a) of the Immigration and Nationality Act ("INA"); 8 U.S.C. § 1226(a). **Exhibit 4**, *Petitioner's Brief in Support of Immigration Court Jurisdiction in Bond Proceedings*.
21. On July 31, 2025, the IJ found that he lacked jurisdiction to consider Petitioner's request for bond because, under a new interpretation of the INA proposed by DHS, Petitioner was subject to mandatory detention under INA § 235(b); 8 U.S.C. § 1225(b). See **Exhibit 5**, *IJ's Order Denying Bond for Lack of Jurisdiction*.
22. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a decision which proposes 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.” See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

23. As of November 6, 2025, Petitioner has been detained for 128 days and denied the opportunity to request bond before an IJ.

24. Petitioner’s continued detention is causing irreparable harm, as Petitioner has been separated from her U.S. citizen children and continues to be traumatized by this unlawful restraint on her liberty.

VI. LEGAL FRAMEWORK

25. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings.

26. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. See 8 U.S.C. § 1229a. This provision applies to “applicants for admission,” defined as those “present in the United States who has not been admitted.” § 1225(a)(1). Individuals in §1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention until their removal proceedings are concluded, *see* 8 U.S.C. § 1226(c).

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

28. Third, the INA provides for detention of noncitizens who have received a final order of removal from the United States, 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).

VII. CAUSES OF ACTION

COUNT I

Violation of 8 U.S.C. 1226(a) Unlawful Denial of Release on Bond

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

31. At the time of her arrest, Petitioner was a noncitizen present in the United States who had not been admitted, and thus she falls within the broad definition of “applicant for admission,” which is distinct from an “alien seeking admission,” and her detention is therefore governed by § 1226(a)(2).

32. The IJ and the BIA have wrongfully construed § 1225(b)(2) as applying to all noncitizens who are found in the United States unlawfully, such as the Petitioner. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

33. The IJ’s ruling in Petitioner’s case and the BIA’s decision in *Yajure Hurtado* erroneously synonymize the terms “applicant for admission” and “alien seeking admission” in order to apply mandatory detention under § 1225(b)(2) to an entire class of noncitizens for whom it was never intended by Congress.

34. The unlawful application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention without a discretionary bond hearing and violates the INA.

COUNT II

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

35. Petitioner incorporates by reference the allegations and facts set forth in paragraphs 1-28 as if fully set forth herein.
36. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the headings 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.
37. Nonetheless, the IJ and the BIA have asserted that, instead, § 1225(b)(2) should apply to those noncitizens “present without having been admitted or paroled.”
38. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Violation of Fifth Amendment Due Process Clause

39. Petitioner incorporates by reference the allegations and facts set forth in paragraphs 1-28 as if fully set forth herein.

40. The Fifth Amendment provides that “[n]o person” shall “be deprived of life, liberty, or property, without due process of law.”
41. “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).
42. Moreover, “[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.” *Id.* at 693.
43. Respondents’ mandatory detention of Petitioner without consideration for release on bond or access to a bond hearing violates her due process rights.

PRAYER FOR RELIEF

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

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing Respondents to immediately provide Petitioner with a bond hearing to determine if she may be released on bond under § 1226(a)(2) and the applicable regulations. See 8 C.F.R. §§ 236.1, 1236.1.
- 3) Order Respondents to refrain from transferring Petitioner out of the jurisdiction of this court during the pendency of these proceedings and while the Petitioner remains in Respondents’ custody;
- 4) Order Respondents to file a response within 3 days of the filing of this petition;
- 5) Award attorneys’ fees to Petitioner; and
- 6) Grant any other and further relief which this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this 6th day of November, 2025.

/s/ Jessica Calmes
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Verification

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

/s/ Jessica Calmes

Date: November 6, 2025