UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

EDWIN LOLY ROSALES GUILLEN,
A[redacted]

Petitioner,

v.

WILLIE THOMAS
Warden, Irwin County Detention Center

Respondent.

Case No. 7:26-cv-118

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Edwin Loly Rosales Guillen is in the custody of Respondent at the Irwin County Detention Center. Petitioner faces unlawful detention because the Department of Homeland Security and the Executive Office of Immigration Review have concluded Petitioner is subject to mandatory detention.

2. 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 denied Petitioner 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 for bond.

4. Similarly, 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). In *Yajure Hurtado*, the BIA 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 Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.

6. Respondent's new legal interpretation is plainly contrary to the statutory framework, contrary to decades of agency practice applying § 1226(a), and contrary to recent federal decisions—including decisions of this Court—holding that § 1225(b)(2) applies only to individuals who are "seeking admission" in the context of an arrival inspection by an examining immigration officer.

7. Despite this Court's recent decisions, the Immigration Court continues to refuse to find jurisdiction to conduct bond hearings for individuals like Petitioner—leaving habeas corpus as the only available mechanism for judicial review of Petitioner's detention.

8. Thus, Petitioner seeks habeas corpus requiring that he be released unless Respondent provides a bond hearing under § 1226(a) within seven days.

JURISDICTION

9. Petitioner is in the custody of Respondent. Petitioner is detained at the Irwin Detention Center located in Ocilla, Georgia.

10. 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).

11. 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

12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the U.S. District Court for the Middle District of Georgia, Columbus Division, the judicial district in which Petitioner is detained.

13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondent is an employee, officer, and agent of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Georgia.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 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.*

15. 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

16. Petitioner Mr. Edwin Loly Rosales Guillen is native and citizen of Peru. After arresting Petitioner, ICE did not set bond and Petitioner is unable to obtain review of her custody by an Immigration Judge, pursuant to the Board's decision *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

17. Respondent is employed as Warden of the Irwin County Detention Center, where Petitioner is detained. Respondent has immediate physical custody of Petitioner. Respondent is sued in his official capacity.

LEGAL FRAMEWORK

18. The Immigration and Nationality Act ("INA") establishes several detention schemes for noncitizens in removal proceedings.

19. First, 8 U.S.C. § 1226 governs the detention of individuals placed in standard removal proceedings under § 1229a. Noncitizens detained under § 1226(a)

are generally entitled to a custody redetermination before an Immigration Judge unless they fall into the narrow mandatory-detention categories of § 1226(c).

20. Second, 8 U.S.C. § 1225(b)(1) (2) provides for mandatory detention of certain individuals seeking admission who are inspected at the border and determined not "clearly and beyond a doubt entitled to be admitted." This detention framework is tied to the process of arrival inspection performed by an examining immigration officer.

21. Third, 8 U.S.C. § 1231 governs detention of individuals who are subject to final orders of removal.

22. This case turns on the proper application of § 1226(a) versus § 1225(b)(2) for a noncitizen like Petitioner—an individual who entered the United States years ago, resided here, and was apprehended within the interior, *not* at a port of entry.

23. Historically, individuals who entered without inspection and were later placed in § 1229a removal proceedings were treated as detained under § 1226, not § 1225. EOIR regulations following IIRIRA confirm that such individuals were not considered "arriving" and therefore were eligible for bond hearings. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

24. For decades, consistent with this framework and prior immigration law, noncitizens who entered without inspection and were apprehended inside the United

States received custody redeterminations unless subject to § 1226(c). *See* former 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

The Government's Recent Policy Shift

25. On July 8, 2025, ICE—"in coordination with" DOJ—issued guidance declaring that all individuals who entered without inspection must now be detained under § 1225(b)(2)(A), regardless of when they entered the United States or whether they were ever inspected by an immigration officer.

26. On September 5, 2025, the BIA adopted this new position in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that any noncitizen who entered without admission is subject to § 1225(b)(2)(A) and categorically barred from a bond hearing.

This Court Has Rejected Respondents' Interpretation

27. Courts within this district have already rejected the government's reading of § 1225(b)(2). In *J.A.M. v. Streeval*, Case No. 4:25-cv-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) and *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025), the Court held that § 1225(b)(2) applies only to noncitizens who are "seeking admission" in the context of an arrival inspection by an examining immigration officer.

28. *J.E.M.* and *P.R.S.* explained that "seeking admission" requires an affirmative act at or near the time of arrival to obtain legal entry, coupled with

contemporaneous inspection. This Court rejected DHS's argument that individuals apprehended years after entering the United States may be treated as if they were seeking admission. *Id.* at 3.

29. Applying that interpretation, *J.E.M.* and *P.R.S.* held that § 1225(b)(2) does not apply to individuals like Petitioner, whose alleged inadmissibility is based on conduct occurring long after entry and *not* in connection with an arrival inspection.

Courts Nationwide Have Rejected the Government's Theory

30. Federal courts across the country have agreed that § 1226(a)—not § 1225(b)—governs detention of individuals apprehended inside the United States, even when they originally entered without inspection. *See, e.g., Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); Vasquez Garcia v. Noem, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025).

31. These courts uniformly conclude that Respondent's interpretation contradicts the statutory text, structure, and decades of agency practice.

Immigration Court's Continued Refusal to Exercise Jurisdiction

32. Despite this Court's recent decisions, the Immigration Court continues to decline jurisdiction over custody redeterminations for noncitizens like Petitioner, based on the BIA's erroneous decision in *Matter of Yajure Hurtado*.

33. Because Petitioner has no administrative avenue to challenge her custody, habeas corpus is the only remedy capable of addressing the ongoing violation of federal law.

FACTUAL BACKGROUND

34. Petitioner entered the United States in 2023 without admission. Since that time, Petitioner has established a life in the United States.

35. Petitioner has no disqualifying criminal convictions that would make him mandatory detention.

36. Petitioner has employment authorization pursuant to his pending application for asylum.

37. Petitioner's ongoing detention imposes severe financial and emotional hardship on his U.S. citizen family.

38. Prior to his detention, Petitioner worked full-time and has a history of steady employment. Petitioner is known as a hard-working individual who supports his family and contributes to his community.

39. Petitioner poses no danger to the community and is not a flight risk. His community ties, employment history, lack of criminal record, and consistent community involvement demonstrate that he is an appropriate candidate for release under § 1226(a).

40. Petitioner's continued detention also violates due process because it is based on an unlawful statutory interpretation already rejected by this Court and by a certified nationwide class action. In *J.A.M. and P.R.S.* this Court held that 8 U.S.C. § 1225(b)(2) applies only when a noncitizen is "seeking admission" in the context of an arrival inspection by an examining immigration officer. Petitioner, however, was apprehended inside the United States years after his entry and falls squarely within the detention framework of § 1226(a), which entitles her to a bond hearing.

41. Nevertheless, ICE continues to detain Petitioner under § 1225(b)(2), and the Immigration Court refuses to exercise jurisdiction to conduct a bond hearing.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

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

43. 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 previously

entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

COUNT II

Violation of the Bond Regulations

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

46. 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 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.

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

48. 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 Due Process

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

50. 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).

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

52. The government's detention of Petitioner without a bond redetermination hearing to determine whether she is a flight risk or danger to others violates her right to due process.

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 Southern 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 21st day of April, 2026.

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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I represent Petitioner, Mr. Edwin Loly Rosales Guillen, 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.

DATED this 21st day of April, 2026.

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