

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

INOCENCIO ROJO MENDEZ,

Petitioner,

v.

JASON STREEVAL, Warden of Stewart
Detention Center,
LADEON FRANCIS, Field Office Director of
Enforcement and Removal Operations,
ATLANTA Field Office, Immigration and
Customs Enforcement;
TODD LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement;
MARKWAYNE MULLIN, Secretary, U.S.
Department of Homeland Security;
TODD BLANCHE, U.S. Attorney General;

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner INOCENCIO ROJO MENDEZ brings this petition for a writ of habeas corpus to seek enforcement of the Immigration and Nationality Act's (INA) provisions for bond hearings before an Immigration Judge. Petitioner is in the physical custody of Respondents at the **STEWART DETENTION CENTER in LUMPKIN, Georgia**. Petitioner now faces unlawful detention because the Department of Homeland Security (DIIS) and the Executive Office for Immigration Review (EOIR) have continued to deny bond hearings under INA 236, instead treating unlawful entrants, even of longstanding residence in the U.S., under the mandatory detention scheme at INA 235.

2. Immigration Judges at the Stewart and Atlanta Immigration Court, with jurisdiction over STEWART detainees, continue to decline jurisdiction, despite the fact that hundreds of Courts have found DHS's policy regarding detention of unlawful entrants without bond hearings to be unlawful. The Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have now created a de facto procedural detour: what would previously have been a straightforward, discretionary procedure where a detained Respondent could vindicate his rights expeditiously and economically by requesting a bond hearing, EOIR now in effect requires this honorable Court to, once again, order the agency to hold the very bond hearing which the statute requires.

JURISDICTION

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

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).

10. The Court should grant the petition for writ of habeas corpus “forthwith,” as the legal issues have already been resolved for class members in *Maldonado Bautista*

PARTIES

11. Petitioner INOCENCIO ROJO MENDEZ is alleged to be a citizen of MEXICO who is in immigration detention at STEWART Detention Center under the auspices of the Stewart and Atlanta Immigration Court in LUMPKIN, Georgia, where Respondents continue to require a Federal District Court Order before they will grant a bond hearing.

12. Respondent Ladeon Francis is the Director of the Atlanta Field Office of ICE’s Enforcement and Removal Operations division; however, on information and belief, the DHS is rotating their Field Office Director without publishing a schedule of rotation. As such, LADEON FRANCIS or his unknown, unannounced provisional replacement is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He or his acting counterpart is named in his or her official capacity.

13. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in his official capacity.

14. Respondent Todd Blanche is the Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration

1 Review and the immigration court system it operates is a component agency. He is sued in
2 his official capacity.

3 15. Respondent Todd Lyons is the Acting Director of Immigration and Customs
4 Enforcement (hereinafter “ICE”). As such, Respondent Lyons is responsible for the
5 oversight of ICE operations. Respondent Lyons is being sued in his official capacity.

6 16. Respondent Markwayne Mullin is the Secretary of the Department of Homeland
7 Security (hereinafter “DIIS”). As Secretary of DIIS, Secretary Mullin is responsible for the
8 general administration and enforcement of the immigration laws of the United States.
9 Respondent Secretary Noem is being sued in his official capacity

10 17. Respondent, Jason Streeval, Warden of Stewart Detention Center, is employed by
11 the private, for-profit detention corporation contracted by the Government as an agent to
12 confine immigrants at STEWART Detention Center, where Petitioner is detained. He has
13 immediate physical custody of Petitioner. He is sued in his official capacity.

14 **CLAIMS FOR RELIEF**

15 **COUNT I**

16 **Violation of the INA and Bond Regulations**

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

19 19. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-
20 Immigration and Naturalization Service issued an interim rule to interpret and apply
21 IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of
22 [Noncitizens],” the agencies explained that “[d]espite being applicants for admission,
23 [noncitizens] who are present without having been admitted or paroled (formerly referred to
24 as [noncitizens] who entered without inspection) will be eligible for bond and bond

1 redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear
2 that individuals who had entered without inspection were eligible for consideration for bond
3 and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

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

6 21 The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued
7 detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

8 **COUNT II**
9 **Violation of Due Process**

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

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

16 24. Petitioner has a fundamental interest in liberty and being free from official
17 restraint.

18 25. The government’s detention of Petitioner without a bond redetermination hearing
19 to determine whether he is a flight risk or danger to others violates his right to due process.

20 **LEGAL FRAMEWORK**

21 26. The INA prescribes three basic forms of detention for the vast majority of
22 noncitizens in removal proceedings.

23 27. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
24 proceedings before an IJ. *See* 8 U.S.C. § 1229a. 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, *see* 8 U.S.C. § 1226(c).

28. 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).

29. 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).

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

31. 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).

32. 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).

33. 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

1 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer.
2 See 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting
3 that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

4 34 In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly
5 acknowledged that individuals who have already entered the United States and are not
6 apprehended within 100 miles of the border or within 14 days of entry are subject to
7 discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b).
8 During oral argument on November 30, 2016, then-Solicitor General Ian Gershengorn
9 stated: “If they are not detained within 100 miles of the border or within 14 days... then
10 they are under 1226(a) and not 1226(c)” and further clarified, in response to a question
11 concerning “an alien who has come into the United States illegally without being admitted
12 [and] who takes up residence 50 miles from the border,” the Government responded, “The
13 answer is they are held under 1226(a) and that they get a bond hearing...” Transcript of Oral
14 Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. ____ (2018) (No. 15-1204). DHS
15 reiterated that such individuals “would be held under 1226(a)” and cited the administrative
16 record to support that position. *Id.* These statements reflect DHS’s prior litigation stance that
17 § 1226(a) governs detention for noncitizens who have entered and are residing in the United
18 States, a position directly contrary to the agency’s current interpretation applying §
19 1225(b)(2)(A) to such individuals. Having prevailed in *Jennings* after taking this position,
20 they should be estopped from taking the contrary position now simply because their political
21 or litigation interests have changed. Estoppel in this case is necessary to preserve the
22 predictability inherent in the rule of law and due process under the Fifth Amendment, as
23 well as to protect the integrity of the judicial system.

1 35. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
2 rejected well-established understanding of the statutory framework and reversed decades of
3 practice.

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

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

13 38. Since Respondents adopted their new policies, several federal courts have rejected
14 their new interpretation of the INA’s detention authorities. Courts have likewise rejected
15 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

16 39. A growing number of federal courts have rejected ICE and EOIR’s expanded
17 interpretation of the Immigration and Nationality Act’s detention provisions. These courts
18 have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority
19 applicable in these cases. For example, courts in Massachusetts, Arizona, New York,
20 Minnesota, California, and Nebraska have reached this conclusion. See: *Gomes v. Hyde*, No.
21 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX
22 DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH)

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

1 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25 cv 03142 SRN SGE (D. Minn.
2 Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez*
3 *Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*,
4 No. 8:25CV494 (D. Neb. Sept. 3, 2025).

5 40. As of December 18, 2025, the DHS policy was VACATED. *Maldonado Bautista*
6 *v. Santacruz*, No. 5:25 cv 01873 SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3549826, at *8–9
7 (C.D. Cal. Dec. 18, 2025) (vacating DHS’s July 8, 2025 “Interim Guidance Regarding
8 Detention Authority for Applicants for Admission” under the Administrative Procedure
9 Act); *id.*, 2025 WL 3549854, at *2 (entering final judgment as to Counts I–III).

10 41. These decisions reflect a clear judicial consensus, now binding as to class
11 members, that the government’s reliance on § 1225(b)(2) is misplaced in cases involving
12 those whose immigration status lawfully falls under § 1226(a).

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

16 43. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
17 recently entered the United States and were not free to mingle with the general population
18 after being free from official restraint. The statute’s entire framework is premised on
19 inspections at the border of people who are “seeking admission” to the United States. 8
20 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory
21 detention scheme applies “at the Nation’s borders and ports of entry, where the Government
22 must determine whether a[] [noncitizen] seeking to enter the country is admissible.”
23 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

1 44. Because arriving aliens are processed under 8 U.S.C. § 1225(b) and remain under
2 official restraint, the government cannot charge them simultaneously under 8 U.S.C.
3 § 1182(a)(6)(A)(i) as individuals who “entered without inspection,” a charge that
4 presupposes the completion of an “entry” as defined in *Patel*. The distinct statutory
5 detention regimes further underscore this incompatibility: arriving aliens fall within the
6 mandatory § 1225(b) framework, whereas those alleged to have entered without inspection
7 fall under § 1226. Consequently, DHS must select a single, legally coherent classification
8 and may not pursue allegations premised on contradictory theories of entry status.

10 FACTS

11 45. INOCENCIO ROJO MENDEZ is a citizen of MEXICO who has resided in the
12 United States since about 2011. He entered without inspection. He is currently detained at
13 STEWART Detention Center in LUMPKIN, Georgia. ICE did not set bond.

14 46. Petitioner is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. DHS
15 has charged Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and placed him in
16 removal proceedings pursuant to 8 U.S.C. § 1229a. Petitioner is a member of the Bond
17 Eligible Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM
18 (C.D. Cal.), which includes noncitizens without lawful status who entered without
19 inspection and are not subject to mandatory detention under the INA.

20 47. Despite the intervention of hundreds of Federal District Courts holding that class
21 members are detained under 8 U.S.C. § 1226(a) and entitled to consideration for release on
22 bond—Respondents continue to apply § 1225(b)(2) and deny bond hearings to class
23 members, including Petitioner. Immigration Judges at the Atlanta and Stewart Immigration
24

1 Court in Atlanta, Georgia (who exercise jurisdiction over Folkston cases) have refused
2 jurisdiction, citing agency directives to disregard the Court's earlier rulings, and insisting on
3 awaiting guidance from the 11th Circuit or EOIR to assume jurisdiction. Respondents'
4 continued detention of Petitioner violates the INA.

5
6 **PRAYER FOR RELIEF**

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

- 8 a. Assume jurisdiction over this matter;
- 9 b. Issue a writ of habeas corpus requiring that within one day, Respondents release
10 Petitioner;
- 11 c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner
12 unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;
- 13 d. Order that Petitioner shall not be transferred outside the MIDDLE District of Georgia
14 while this habeas petition is pending;
- 15 e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
16 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;
17 and
18
- 19 f. Grant any other and further relief that this Court deems just and proper.

20 DATED this 4th day of May, 2026.

21
22 (SIGNATURE ON NEXT PAGE)

23 Respectfully submitted,
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