

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

JOAN SEBASTIAN LOPEZ CACERES

Petitioner,

v.

DAVID WESLING, Acting Field Office Director
of the Immigration and Customs Enforcement,
Enforcement and Removal Operations, Boston
Field Office; **CHRISTOPHER BRACKETT**,
Superintendent of the Strafford County Department
of Corrections

Respondents.

Case No.:

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

INTRODUCTION

Petitioner Joan Sebastian Lopez Caceres is a 23-year-old native and citizen of Honduras and Special Immigrant Juvenile (“SIJ”) status holder here in the U.S. On information and belief, he entered the U.S. on or about March 2022 and has been present in the U.S. since then. Petitioner has built a life for himself here in the U.S. and has even initiated the process to become a lawful permanent resident. In fact, Petitioner has already been granted SIJ status by the U.S. Citizenship and Immigration Services (USCIS), which rendered him immediately eligible to apply to become a lawful permanent resident. However, through no fault of his own, he has been unable to do so. Petitioner, along with thousands of other young people, remains stuck in the visa backlog waiting for a visa to become available. Because of this backlog, USCIS also granted Petitioner deferred action, which is a form of prosecutorial discretion intended to protect SIJ holders from removal and provide

them employment authorization eligibility.

After living freely in the U.S. for more than four years, Petitioner was stopped by police, allegedly for driving without a license, and was subsequently transferred to the custody of U.S. Immigration and Customs Enforcement (“ICE”) on or around May 6, 2026 or May 7, 2026. Petitioner was thereafter placed in removal proceedings and has remained in immigration detention since that time. This occurred notwithstanding Petitioner’s grant of deferred action.

On information and belief, the Department of Homeland Security (“DHS”) has alleged or will allege that Petitioner was not previously admitted or paroled into the U.S., and so is subject to mandatory detention and cannot seek release from immigration custody before an Immigration Judge (“IJ”). However, Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), including because Petitioner does not meet the criteria for Expedited Removal. *See* 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). Petitioner also cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, as a person already present in the United States, Petitioner is not presently “seeking admission” to the United States. *See Guerrero Orellana v. Moniz*, 813 F. Supp. 3d 185, 189 (D. Mass. Dec. 19, 2025) (“The Seventh Circuit and most district courts to have addressed the issue have rejected the government’s new, more expansive interpretation of § 1225(b)(2)(A).”); *Jimenez v. FCI Berlin*, 799 F. Supp. 3d 59, 71 (D.N.H. 2025). Further, Petitioner is not subject to mandatory detention under § 1225 because, on information and belief, Petitioner was not, at the time of arrest, paroled into the U.S. pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Petitioner could not “be returned” under that provision to mandatory custody under § 1225(b) or any other form of custody.

Instead, as a person arrested inside the U.S. and held in civil immigration detention, Petitioner is subject to detention, if at all, pursuant to § 1226. *See Romero v. Hyde*, 795 F. Supp.

3d 271, 272-73 (D. Mass. Aug. 19, 2025) (collecting cases). Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability). Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).

As a person detained under § 1226(a), Petitioner must, upon his request, receive a custody redetermination hearing with strong procedural protections. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment); 8 C.F.R. 236.1(d) & 1003.19(a)-(f). However, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals (“BIA”) issued a decision which purports to require the Immigration Court to unlawfully deny a bond hearing to all persons such as Petitioner.¹¹ The responsible administrative agency has therefore predetermined that Petitioner will be denied a bond hearing. Indeed, on January 13, 2026, the Chief Immigration Judge instructed all immigration judges that they are to follow *Matter of Yajure Hurtado*, notwithstanding declaratory relief granted in classwide injunctions to the contrary.

¹¹ The BIA’s reversal and newly revised interpretation of the statute are not entitled to any deference. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024). *See also Elias Escobar v. Hyde*, No. 1:25-cv-12620-IT, 2025 U.S. Dist. LEXIS 196284, at *7 (D. Mass. Oct. 3, 2025) (rejecting the BIA’s reasoning in *Matter of Yajure Hurtado* because, in part, “the decision is inconsistent with other BIA decisions and with decades of the Department of Homeland Security’s practice”); *Chogillo Chafila v. Scott*, 804 F. Supp. 3d 247, 259-60 (D. Me. 2025) (same).

This Court and three circuit courts have recently addressed similar cases and held that noncitizens in Petitioner's position – those who may be subject to *Matter of Yajure Hurtado* – are subject to detention pursuant to § 1226(a), and are, therefore, entitled to bond hearings. *See Lopez Campos v. Raycraft*, --- F.4th ----, 2026 U.S. App. LEXIS 13519, at *31-32 (6th Cir. May 11, 2026) (holding that noncitizens who were apprehended in the interior after living in the United States for years cannot be detained under 8 U.S.C. § 1225(b)(2)(A) because they are not “seeking admission or lawful entry into the United States[.]”); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, --- F.4th ---, 2026 U.S. App. LEXIS 13180, at *5-6 (11th Cir. 2026) (same); *Barbosa da Cunha v. Freden*, --- F.4th ---, 2026 U.S. App. LEXIS 12201, at *2 (2d Cir. 2026) (same); *Lamidi v. FCI Berlin*, No. 25-cv-297-LM-TSM, at *10 (D.N.H. Sept. 15, 2025) (same); *see also Castañon-Nava v. U.S. Department of Homeland Security*, --- F.4th ----, 2026 U.S. App. LEXIS 13044 (7th Cir. May 5, 2026) (no controlling decision); *Guerrero Orellana*, 813 F. Supp. 3d at 199 (entering declaratory judgment that “class members are subject to detention under § 1226(a) including access to consideration for release on bond and/or conditions before immigration officers and Immigration Judges.”)²; *but see Avila v. Bondi*, 170 F.4th 1128, 1138 (8th Cir. 2026) (holding that 8 U.S.C. § 1225(b)(2)(A) applies to noncitizens arrested in the interior); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. 2026) (same).

Moreover, it is well settled that Petitioner has due process rights. *See K-S- v. FCI-Berlin*, 2025 DNH 126 P, 2025 U.S. Dist. LEXIS 260379, at *7 (D.N.H. Dec. 17, 2025) (reasoning that Due Process Protections apply to all noncitizens in immigration detention, regardless of the detention statute); *Fils-Aime v. FCI Berlin*, No. 1:25-cv-287-JL-TSM, 2025 U.S. Dist. LEXIS

² The government appealed Judge Saris's declaratory judgment entered in *Guerrero Orellana*. *See Guerrero Orellana v. Moniz, et al.*, No. 25-2151. The First Circuit heard oral argument on the issue on May 4, 2026, and a decision remains pending.

215595, at *8 (D.N.H. Oct. 31, 2025) (same even for an arriving alien). *See also Destino v. FCI Berlin, Warden*, No. 1:25-cv-374-SE-AJ, 2025 U.S. Dist. LEXIS 269322, at *16 (D.N.H. Dec. 24, 2025) (“While noncitizens paroled into the country for years may not be ‘admitted’ within the meaning of the INA, they have lived at liberty here, and so may acquire the protection of the Constitution, at least insofar as it protects against detention without bond hearings.”). Petitioner has accrued substantial liberty interests, and his detention without a bond hearing violates his Due Process rights. *See Destino*, No. 1:25-cv-374-SE-AJ, at *16 (“[petitioner] has a due process right to an individualized bond hearing, and neither the legislature nor the executive can strip him of that right by classifying him as detained under § 1225.”).

Therefore, this Court should order a bond hearing before an IJ, at which DHS bears the burden of justifying Petitioner’s detention under the *Hernandez-Lara* standard. *Hernandez-Lara*, 10 F. 4th at 41 (“due process requires the government to either (1) prove by clear and convincing evidence that [the noncitizen] poses a danger to the community or (2) prove by a preponderance of the evidence that she poses a flight risk”).

Petitioner further alleges as follows:

PARTIES

1. Petitioner Joan Sebastian Lopez Caceres is a noncitizen who is currently detained by Respondents at the Strafford County Department of Corrections in Dover, New Hampshire.
2. Respondent David Wesling is the Acting Boston Field Office Director, U.S. Immigration and Customs Enforcement, and he is being sued in his official capacity. He is Petitioner’s legal custodian.

3. Respondent Christopher Brackett is the Superintendent of the Strafford County Department of Corrections, and he is being sued in his official capacity. He is Petitioner's immediate custodian.

JURISDICTION AND VENUE

4. This Court has jurisdiction under 28 U.S.C. § 1331, 2241 (habeas corpus) and Article I, Section 9, Clause 2 of the U.S. Constitution ("Suspension Clause").

5. Venue is proper in the District of New Hampshire because Petitioner is currently detained at the Strafford County Department of Corrections in Dover, New Hampshire, which is in the territorial jurisdiction of this Court. 28 U.S.C. § 1391; *Vasquez v. Reno*, 233 F. 3d 688, 696 (1st Cir. 2000).

FACTS

6. Petitioner is a 23-year-old native and citizen of Honduras. *See Ex. 1* (Notice to Appear).

7. On information and belief, Petitioner entered the United States on or around March 2022.

8. On information and belief, Petitioner has ties to the U.S.

9. Petitioner was granted SIJ status and deferred action from immigration enforcement activities by USCIS on July 11, 2023. The deferred action is in effect for four years from the date of the grant. On information and belief, neither the SIJ status nor the deferred action have been terminated by USCIS. *See Ex. 2* (I-797 Approval Notice).

10. On information and belief, on or around May 6, 2026 or May 7, 2026 Petitioner was stopped by police allegedly for driving without a license. Petitioner was then turned over to ICE custody.

11. Petitioner was placed in removal proceedings and has a hearing coming up before an IJ on May 19, 2026. *See* Ex. 1; Ex. 3 (EOIR Automated Case Information).

12. On information and belief, Petitioner has been in immigration custody since his arrest on or around May 6, 2026 or May 7, 2026.

13. On information and belief, Petitioner has not sought a bond hearing before an IJ.

14. Petitioner is currently being held in ICE's custody in the District of New Hampshire at the Strafford County Department of Corrections. *See* Ex. 4 (ICE Detainee Locator).

LEGAL BACKGROUND

8 U.S.C. § 1226(a)

15. Two different statutory schemes govern the detention of noncitizens during the pendency of their removal proceedings. *See* 8 U.S.C. §§ 1225(b)(1)-(b)(2); 8 U.S.C. § 1226(a), (c). Generally, individuals arrested inside the United States are subject to the detention authority of 8 U.S.C. § 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018) (describing § 1226 detention as relating to people “inside the United States” and “present in the country”). Most of these individuals are eligible for release on bond and conditions under § 1226(a) and are consequently entitled to a bond hearing before an IJ to decide whether they should be detained or released with the exception of noncitizens who “fall[] into one of several enumerated categories involving criminal offenses and terrorist activities.” *Jennings*, 583 U.S. at 289. *See* 8 U.S.C. §§ 1226(a)(2)(A)-(B), (c); 8 C.F.R. §§ 1003.19(a), 1236.1(d).

16. For almost 30 years, it has been understood that people arrested inside the U.S. generally fall within § 1226(a) for detention purposes and are therefore required to receive a bond hearing upon request – even if they initially entered the country without permission. *See Martinez v. Hyde*, 792 F. Supp. 3d 211, 223 n.9 (D. Mass. 2025) (citing the United States Solicitor General's

representation to the Supreme Court at oral argument that “DHS’s long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended”).

17. However, on September 5, 2025, in *Matter of Yajure Hurtado* the BIA issued a decision which purports to require the Immigration Court to unlawfully deny a bond hearing to noncitizens arrested inside of the country such as Petitioner. Indeed, on January 13, 2026, the Chief Immigration Judge instructed all immigration judges that they are to follow *Matter of Yajure Hurtado*, notwithstanding declaratory relief granted in classwide injunctions to the contrary.

18. This Court has already found that “§ 1226 generally governs the arrest and detention of noncitizens already present in the country, while § 1225(b) applies to the detention of noncitizens seeking to enter the country.” *Lamidi*, No. 25-cv-297-LM-TSM, at *10. *See also Lema v. FCI Berlin*, 808 F. Supp. 3d 227, 230 (D.N.H. 2025); *Jimenez*, 799 F. Supp. 3d at 71 (“Because § 1225(b)(2)(A) applies to applicants for admission who are seeking to enter the United States, it cannot apply to [Petitioner], who has already entered the country and has been residing here for over two years.”). This Court has also already affirmed that a noncitizen being detained in these circumstances has the right to receive a bond hearing. *See, e.g., Lamidi*, No. 25-cv-297-LM-TSM, at *10.

19. Nearly every court nationwide to have considered these issues, including three circuit courts, has come to the same conclusion. *See Lopez Campos v. Raycraft*, --- F.4th ---, 2026 U.S. App. LEXIS 13519, at *31-32 (6th Cir. May 11, 2026) (holding that noncitizens who were apprehended in the interior after living in the United States for years cannot be detained under 8 U.S.C. § 1225(b)(2)(A) because they are not “seeking admission or lawful entry into the United States[.]”); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, --- F.4th ---, 2026 U.S. App.

LEXIS 13180, at *5-6 (11th Cir. 2026) (same); *Barbosa da Cunha v. Freden*, --- F.4th ---, 2026 U.S. App. LEXIS 12201, at *2 (2d Cir. 2026) (same); *Rocha v. Hyde*, No. 25-CV-12584-ADB, 2025 U.S. Dist. LEXIS 195462, at *2 (D. Mass. Oct. 2, 2025) (“[a]s Respondents acknowledge in their opposition, “[o]ther sessions of this court, as well as other courts across the country, have determined that 8 U.S.C. § 1226(a), and not 8 U.S.C. § 1225(b)(2), appl[ies] to aliens arrested and detained within the United States, even if such alien meets the definition of an applicant for admission as an alien present in the United States who has not been admitted”); *see also Castañon-Nava v. U.S. Department of Homeland Security*, --- F.4th ----, 2026 U.S. App. LEXIS 13044 (7th Cir. May 5, 2026) (no controlling decision); *Guerrero Orellana*, 813 F. Supp. 3d at 199 (entering declaratory judgment that “class members are subject to detention under § 1226(a) including access to consideration for release on bond and/or conditions before immigration officers and Immigration Judges.”)³; *but see Avila*, 170 F.4th at 1138 (holding that 8 U.S.C. § 1225(b)(2)(A) applies to noncitizens arrested in the interior); *Buenrostro-Mendez*, 166 F.4th at 498.

Other Due Process Limits on Detention

20. Noncitizens have due process protections against detention without a bond hearing even outside of the prolonged detention context. *See Destino*, 2025 U.S. Dist. LEXIS 269322, at *16 (“While noncitizens paroled into the country for years may not be ‘admitted’ within the meaning of the INA, they have lived at liberty here, and so may acquire the protection of the Constitution, at least insofar as it protects against detention without bond hearings.”). Constitutional protections under the Due Process Clause may be conferred to an individual through accrued liberty interests. *See id.* at 15 (“In non-admission contexts...the Due Process Clause

³ The government appealed Judge Saris’s declaratory judgment entered in *Guerrero Orellana*. *See Guerrero Orellana v. Moniz, et al.*, No. 25-2151. The First Circuit heard oral argument on the issue on May 4, 2026, and a decision remains pending.

protects liberty interests that may accrue[].”). “Liberty interests may spring from lives lived, connections fostered, and promises made or implied.” *Destino*, 2025 U.S. Dist. LEXIS 269322, at *16.

21. Indeed, a noncitizen’s liberty interests may become so strong such that they require a bond hearing under the Due Process Clause. *See id.* at 16 (reasoning that paroled noncitizens “have lived at liberty [in the U.S.], and so may acquire the protection of the Constitution, at least insofar as it protects against detention without bond hearings.”).

22. Therefore, even if mandatory detention without a bond hearing is statutorily authorized, mandatory detention may become constitutionally impermissible when the individual’s accrued liberty interests are substantial and that individual has not received an individualized hearing at which the government must justify the continued detention. *See id.* (“In non-admission contexts, which do not directly implicate the executive’s sovereign prerogative, the Due Process Clause protects liberty interests that may accrue regardless of statutory allowances.”).

23. To determine if mandatory detention without a bond hearing has resulted in a violation of the Due Process Clause outside of the prolonged detention context, this Court should apply the three-part balancing test established in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Upon finding a Due Process violation, this Court should order a bond hearing before an IJ where DHS bears the burden of showing that continued detention is necessary under the *Hernandez-Lara* standard. *See K-S-*, 2025 U.S. Dist. LEXIS 260379, at *10.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF 8 U.S.C. § 1226(a) AND ASSOCIATED REGULATIONS

24. The foregoing allegations re realleged and incorporated herein.

25. On information and belief, Petitioner is a member of the certified class in *Guerrero Orellana* and the Honorable Judge Saris of the U.S. District Court for the District of Massachusetts has already ordered that “members of the certified class are subject to detention under 8 U.S.C. § 1226(a), including access to consideration for release on bond and/or conditions before immigration officers and Immigration Judges.” *Guerrero Orellana*, 813 F. Supp. 3d at 199.

26. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

27. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

28. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

29. Petitioner’s continuing detention without a bond hearing violates his rights under § 1226(a) and its associated regulations.

COUNT TWO

DUE PROCESS – RIGHT TO BOND HEARING UNDER 8 U.S.C. § 1226(a)

30. The foregoing allegations are realleged and incorporated herein.

31. Because Petitioner is a person arrested inside the United States and is subject to detention, if at all, under 8 U.S.C. § 1226(a), the Due Process Clause of the Fifth Amendment to the United States Constitution requires that Petitioner receive a bond hearing with strong procedural protections. *See Hernandez-Lara*, 10 F.4th at 41; *Doe*, 11 F.4th at 2; *Brito*, 22 F.4th at 256-57.

32. This Court has already found that “§ 1226 generally governs the arrest and detention of noncitizens already present in the country, while § 1225(b) applies to the detention of noncitizens seeking to enter the country.” *Lamidi*, No. 25-cv-297-LM-TSM, at *10. *See also Lema v. FCI Berlin*, 808 F. Supp. 3d 227, 230 (D.N.H. 2025); *Jimenez*, 799 F. Supp. 3d at 71. This Court

has also already affirmed that a noncitizen being detained in these circumstances has the right to receive a bond hearing. *See, e.g., Lamidi*, No. 25-cv-297-LM-TSM, at *10.

33. Indeed, on information and belief, Petitioner is a member of the certified class in *Guerrero Orellana* and the Honorable Judge Saris of the U.S. District Court for the District of Massachusetts has already ordered that “members of the certified class are subject to detention under 8 U.S.C. § 1226(a), including access to consideration for release on bond and/or conditions before immigration officers and Immigration Judges.” *Guerrero Orellana*, 813 F. Supp. 3d at 199.

34. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

35. Therefore, Petitioner’s continuing detention without a bond hearing violates his rights under the Due Process Clause. This Court should order a prompt bond hearing where DHS bears the burden of showing that his detention is necessary under the *Hernandez-Lara* standard.

COUNT THREE
DUE PROCESS – RIGHT TO A BOND HEARING

36. The foregoing allegations are realleged and incorporated herein.

37. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend V.

38. To justify Petitioner’s ongoing detention, due process requires that Respondents establish, at an individualized hearing before a neutral decision-maker, that Petitioner’s detention is justified under the *Hernandez-Lara* standard.

39. *First*, Petitioner has accrued substantial liberty interests in the U.S., where he has lived freely for more than four years, including with Special Immigrant Juvenile (SIJ) status and a grant of deferred action since November 2023. For more than two years, Petitioner has been

eligible to apply for lawful permanent resident status and has continued to reside in the U.S. in reliance on that opportunity, yet he has been unable to adjust status solely because no visa has been available through no fault of his own. During that time, Petitioner has developed ties to the U.S.

40. *Second*, the risk of an erroneous deprivation of Petitioner's liberty interest is significant as he has never received a bond hearing, and, based on information and belief, will not. *See Destino*, 2025 U.S. Dist. LEXIS 269322, at *30 (reasoning that the second factor weighs in favor of the Petitioner where the Petitioner "has been denied any opportunity to be heard regarding his confinement.").

41. *Third*, the cost of providing a bond hearing is not unduly burdensome. *See Rincon v. Hyde*, 810 F. Supp. 3d 101, 116 (D. Mass. 2025) ("courts generally have found that the cost of providing a bond hearing is relatively minimal.") (quotation omitted). Petitioner is neither a flight risk nor a danger to the public.

42. Each of the *Mathews* factors favor Petitioner and his detention without a bond hearing violates his rights under the Due Process Clause. This Court should order a prompt bond hearing where DHS bears the burden of showing that his detention is necessary under the *Hernandez-Lara* standard.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Order a constitutionally adequate, individualized bond hearing at which the government will bear the burden of establishing that Petitioner's continued detention is justified under the *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021) standard before this Court;
- (3) Award attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504, if applicable; and

(4) Order any further relief this Court deems just and proper.

Dated: May 20, 2026

Respectfully submitted,

/s/ SangYeob Kim

Gilles R. Bissonnette (NH Bar: 265393)

SangYeob Kim (NH Bar: 266657)

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Caroline Meade (*Pro Hac Vice motion
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