

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

Carlos Alberto Duarte-Ávila,
Petitioner,

v.

JASON STREEVAL, Warden, Stewart Detention Center; MARKWAYNE MULLIN, Secretary of the Department of Homeland Security; DEPARTMENT OF HOMELAND SECURITY (DHS); TODD BLANCHE, Attorney General of the United States; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; TODD LYONS, Director of Immigration and Customs Enforcement; and GEORGE STERLING, Director of the Atlanta Field Office of Enforcement and Removal Operations,

Respondents.

Civil Action No.: _____

Agency Case No.: A# 

**AMENDED PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF**

I. INTRODUCTION

Petitioner Carlos Alberto Duarte-Ávila (hereinafter "Mr. Duarte" or "Petitioner") is a Venezuelan national detained at the Stewart Detention Center in Lumpkin, Georgia, in the custody of Immigration and Customs Enforcement (ICE). His alien registration number is A#  Mr. Duarte has been deprived of his liberty for a considerable period without access to a bond hearing, in direct violation of his constitutional and statutory rights.

This Amended Petition incorporates critical new arguments that further establish the illegality of Mr. Duarte's continued detention: (1) the unlawful application of §1225(b) when §1226(a) is the governing statute; (2) the violation of due process by denying bond based on the erroneous interpretation of Matter of Yajure-Hurtado, which has been expressly vacated by

numerous federal courts, including the Eleventh Circuit itself; (3) a serious violation of due process in Petitioner's asylum proceedings before the Board of Immigration Appeals, specifically the denial of access to personal evidence stored on his cell phone, which was held by the Detention Center; (4) the existence of strong community and family ties that eliminate any risk of flight; and (5) the devastating impact of the detention on his minor son diagnosed with Asperger's Syndrome, as supported by a clinical psychological evaluation.

Petitioner is an accredited Chaplain with 356 hours of voluntary service to public safety agencies in Georgia, with no criminal record, with a dependent family in the United States, and with a genuine and pending asylum case before the Board of Immigration Appeals. His prolonged detention without a bond hearing is unconstitutional, contrary to law, and must cease.

II. JURISDICTION AND VENUE

- This Court has jurisdiction under 28 U.S.C. §2241(c)(3), because Petitioner is in custody under color of authority of the United States and is detained in violation of the Constitution and laws of the United States.
- The Court also has jurisdiction under 28 U.S.C. §1331 (federal question) and Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).
- This action arises under the Constitution and laws of the United States, including the Immigration and Nationality Act (INA), 8 U.S.C. §1101 et seq., and the Administrative Procedure Act (APA), 5 U.S.C. §§701–706.
- Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue is proper in this Court because Petitioner is detained at the Stewart Detention Center, 146 CCA Road, Lumpkin, Georgia 31815, located within this district.

III. PARTIES

A. Petitioner

Carlos Alberto Duarte-Ávila is a 57-year-old Venezuelan national and an accredited Chaplain with the International Federation Police Chaplain Ministry Inc. (IFPCM), having completed 356 hours of voluntary service to law enforcement agencies in Georgia. He has resided in the United States since January 27, 2022. He has immediate family in Georgia: his

spouse and two minor dependent children, one of whom has been diagnosed with Asperger's Syndrome and is critically dependent on Petitioner for emotional support.

B. Respondents

- Jason Streeval: Warden of the Stewart Detention Center (CoreCivic); immediate physical custodian of Petitioner.
- Markwayne Mullin: Secretary of DHS; responsible for the implementation and enforcement of the INA.
- Department of Homeland Security (DHS): Federal agency responsible for Petitioner's detention and removal.
- Todd Blanche: Attorney General of the United States; responsible for the DOJ and EOIR.
- Executive Office for Immigration Review (EOIR): Federal agency responsible for removal proceedings, including bond hearings.
- Todd Lyons: Director of ICE; responsible for Petitioner's detention.
- George Sterling: Director of the Atlanta Enforcement and Removal Operations Field Office; immediate custodian with detention authority.

IV. STATEMENT OF FACTS

A. Petitioner's History in the United States

Petitioner entered the United States on or about January 27, 2022, without formal inspection, fleeing direct political persecution in Venezuela. According to immigration records, he was placed in removal proceedings in 2022 and charged with inadmissibility under 8 U.S.C. §1182(a)(6)(A)(i). His Notice to Appear (NTA) did not charge him as an "arriving alien."

Petitioner applied for asylum and withholding of removal before a United States Immigration Court beginning approximately in 2023. His asylum case is grounded in documented political persecution in Venezuela [REDACTED]

[REDACTED]

B. Current Detention and Denial of Bond

After being arrested and transferred to the Stewart Detention Center, ICE unlawfully classified Petitioner under §1225(b)(2)(A), denying him any opportunity to seek bond before an immigration judge. This classification directly violates §1226(a), which is the governing statute

for individuals such as Petitioner who were not detained at the border crossing but were arrested in the interior of the country.

The bond motion was denied on the purported basis of flight risk, an argument the record refutes: Petitioner has a dependent family in Georgia, verifiable community roots, active accreditation as a Chaplain, and a pending asylum case before the Board of Immigration Appeals — all of which provide a powerful incentive to remain and appear before the court.

C. The Critical Due Process Violation: Denial of Access to Asylum Case Evidence

This is a new and critically important argument that this Amended Petition presents to the Court. Petitioner was subjected to his final asylum hearing before the Immigration Court while his personal cell phone — which contained crucial evidence in support of his defense — remained in the custody of the Stewart Detention Center.

That phone contained photographs, communications, and direct documentation of the threats Petitioner suffered in Venezuela, as well as evidence of his community service and personal history that directly supported his asylum application. The detention facility's refusal to allow access to these materials constitutes a serious violation of his due process rights under the Fifth Amendment, as it effectively prevented him from presenting material evidence in his own defense.

As a direct consequence of this violation, the Immigration Court denied asylum without being able to evaluate the totality of the available evidence. The case is currently on appeal before the Board of Immigration Appeals (BIA). Petitioner's continued detention during the appellate process compounds the violation: he was not only deprived of his evidence for the original hearing, but his status as a detainee in a remote location materially impedes his access to counsel and his preparation of the ongoing appeal.

This situation finds direct support in the principle established by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976), under which the deprivation of a fair procedure — including access to one's own evidence — constitutes a violation of due process when the liberty interests at stake are as significant as those present here. A hearing conducted under conditions that prevent the petitioner from accessing his own evidence does not satisfy the minimum standard of due process. Detention prolonged beyond that hearing, further restricting access to

counsel and to evidence needed for the pending appeal, perpetuates and deepens this constitutional violation.

D. Petitioner's Community, Professional, and Family Ties

Petitioner is an officially accredited Chaplain with the International Federation Police Chaplain Ministry Inc. (IFPCM), bearing official Chaplain I.D. #25-332. To date, he has completed 356 hours of voluntary service, providing crisis intervention, grief counseling to bereaved families, and spiritual support directly to local law enforcement agencies in Lawrenceville and Gwinnett County, Georgia. Dr. General Carlos Fernando Nielsen, President and Founder of the IFPCM, has certified under penalty of perjury Petitioner's absolute integrity, honesty, and law-abiding character.

Petitioner's minor son, S [REDACTED] age 17, resides at [REDACTED] [REDACTED] and has been diagnosed with Asperger's Syndrome. The clinical psychological report prepared by Licensed Clinical Psychologist Lidexy C. Urdaneta (C.P.E.Z. [REDACTED] establishes that the paternal bond between S [REDACTED] and Petitioner is clinically indispensable for the minor's emotional and behavioral stability, and that the separation has caused severe anxiety episodes, emotional instability, and impairment in the minor's daily functioning. The report explicitly recommends "maintaining the paternal bond between S [REDACTED] and his father Carlos Duarte, since due to the child's special condition, his father is an indispensable figure of affection and support for his emotional and behavioral stability." S [REDACTED] has himself submitted a letter to this Court describing the devastating impact of his father's detention.

V. LEGAL FRAMEWORK: DETENTION IS UNLAWFUL UNDER THE INA

A. §1226(a), Not §1225(b), Governs Petitioner's Detention

The INA provides essentially three detention frameworks for non-citizens in removal proceedings. Section 1226(a) is the default rule governing individuals who are pending a decision on their removal and who, like Petitioner, were not arrested at the border but were detained in the interior of the country. Section 1225(b) applies exclusively to individuals arriving at ports of entry or apprehended immediately upon crossing the border.

Petitioner entered the United States in January 2022 and resided in this country for years before being detained by ICE. His Notice to Appear did not charge him as an "arriving alien."

Therefore, the applicable statute is §1226(a), which entitles him to seek a discretionary bond hearing before an immigration judge.

The text of §1226 makes clear beyond doubt that it applies to individuals facing inadmissibility charges in the United States, including those present without admission or parole. See 8 U.S.C. §1226(c)(1)(E). As explained in *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025): when Congress creates specific exceptions to the applicability of a statute, it proves that, absent those exceptions, the statute generally applies.

B. Matter of Yajure-Hurtado Has Been Vacated by Federal Courts

On September 5, 2025, the Board of Immigration Appeals (BIA) issued *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting the government’s position that all non-citizens who entered without inspection are subject to mandatory detention under §1225(b)(2)(A). This interpretation has been rejected by an overwhelming majority of federal courts.

On December 18, 2025, the federal court in *Maldonado Bautista v. DHS* issued a final judgment declaring that class members are detained under §1226(a) — not under §1225(b)(2) — and are entitled to bond consideration. The court also vacated the DHS Interim Guidance of July 8, 2025 as unlawful under the APA. On February 18, 2026, the same court expressly vacated *Matter of Yajure-Hurtado*.

C. Binding Eleventh Circuit Precedent: Hernandez Alvarez v. Warden (May 6, 2026)

THIS IS THE BINDING PRECEDENT FOR THIS COURT.

On May 6, 2026, the United States Court of Appeals for the Eleventh Circuit — the circuit to which this Court belongs — issued its decision in *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, Case No. 25-14065. The Eleventh Circuit categorically rejected the Government’s reinterpretation of §1225(b)(2)(A). The court held that the no-bond detention rule of that statute is limited to applicants for admission who are actively “seeking admission,” and that petitioners who were already residing in the interior of the country do not fall within that category. The district court had held that the discretionary detention provisions of §1226 governed their detention, rendering them eligible for bond, and the Eleventh Circuit affirmed that determination.

This decision is directly and mandatorily applicable to the present case. Petitioner — like the petitioners in *Hernandez Alvarez* — entered the United States without inspection, resided in

the interior of the country, and was detained by ICE in the interior, without having been arrested at the border. The only legally possible conclusion is that his detention is governed by §1226(a) and that he is entitled to a bond hearing.

D. Additional Circuits Support This Interpretation

The judicial consensus is overwhelming. The Second Circuit, in *Cunha v. Freden* (April 28, 2026), in a unanimous three-judge opinion authored by Trump-appointed Judge Joseph Bianco, held that the Government’s interpretation violates immigration law and would create the broadest mass-detention-without-bond mandate in American history. The Sixth Circuit, in *Lopez-Campos*, concluded that hundreds of district courts and five federal circuits had uniformly resolved this statutory question against the Government’s position. This very Court, in *J.A.M. v. Streeval*, 4:25-CV-342, 2025 WL 3050094 (M.D. Ga., Nov. 1, 2025), held that the EWI petitioner in that case was entitled to a bond hearing under §1226(a), forcefully stating that “under no reasonable interpretation is ‘alien seeking admission’ synonymous with ‘any alien present in the United States who has not been admitted.’”

VI. CONSTITUTIONAL DUE PROCESS VIOLATIONS

A. Prolonged Detention Without an Individualized Hearing

The Due Process Clause of the Fifth Amendment protects Petitioner’s liberty interest. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The government may only civilly detain a non-citizen to mitigate risks of danger to the community or to prevent flight. *Id.*; *Demore v. Kim*, 538 U.S. 510, 522 (2003). When detention is prolonged, due process requires an individualized hearing before a neutral decision-maker to determine whether the detention remains reasonably necessary.

Petitioner presents no flight risk and no danger to the community. He has a dependent family in Georgia, verifiable community roots through his work as a Chaplain, an active and pending asylum application before the Board of Immigration Appeals — which gives him a positive incentive to appear before the court — and no criminal record. His accreditation as a Chaplain with the IFPCM, with formally recognized moral, religious, and community responsibilities, reinforces these conclusions.

B. Due Process Violation: Denial of Access to Evidence

The most serious violation this Petition presents to the Court is the systematic denial of Petitioner's access to the evidence contained on his personal cell phone, held by the authorities of the Stewart Detention Center. That phone contained material evidence directly relevant to his asylum application, including documentation of the threats he received in Venezuela and communications corroborating his well-founded fear of political persecution.

When Petitioner appeared at his final asylum hearing, he was forced to defend himself without access to the evidence he possessed. His attorney could not present that evidence because the Detention Center maintained the phone in its custody and did not facilitate access to it by the detainee or his legal representative.

This fact constitutes an independent and grave violation of due process that alone justifies the granting of habeas corpus relief. The legal system of the United States guarantees every person a genuine and meaningful opportunity to present his case. A hearing conducted under conditions that prevent the petitioner from accessing his own evidence does not satisfy the minimum standard of due process. See *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Zadvydas*, 533 U.S. at 690.

The Board of Immigration Appeals is currently reviewing the merits of Mr. Duarte's asylum case on appeal. Petitioner's continued detention during this appellate process: (a) deprives him of reasonable access to his attorney given his confinement in a remote location; (b) impedes the gathering of additional evidence for the appeal; and (c) perpetuates a condition of injustice that began with the unlawful retention of his phone. *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 478 (3d Cir. 2015) (the likelihood that detention will continue is a relevant factor in determining its constitutional unreasonableness).

C. Impact on Minor Child with Special Needs

The report of Licensed Clinical Psychologist Lidexy C. Urdaneta establishes that the paternal bond between Petitioner and his son S [REDACTED] — diagnosed with Asperger's Syndrome — is clinically indispensable. The report documents that the separation has caused severe anxiety episodes, emotional instability, difficulties with eating and sleeping, and deterioration in the minor's daily functioning. The report explicitly recommends "maintaining the paternal bond between S [REDACTED] and his father Carlos Duarte, since due to the child's special condition, his father is an indispensable figure of affection and support for his emotional and behavioral

stability.” This Court may consider this impact as part of the analysis of Petitioner’s liberty interest and the balance of harms in deciding the injunctive relief sought herein.

VII. CLAIMS FOR RELIEF

COUNT I – VIOLATION OF THE INA: UNLAWFUL CLASSIFICATION UNDER §1225(B)

The mandatory detention provision of 8 U.S.C. §1225(b)(2) does not apply to Petitioner. Individuals who entered the country without inspection and who were not detained at the border are detained under §1226(a), unless subject to §1225(b)(1), §1226(c), or §1231. Petitioner is subject to none of those exceptions. Application of §1225(b)(2) to his detention is unlawful and violates the INA.

COUNT II – VIOLATION OF BOND REGULATIONS

Under the 1997 regulatory framework following IIRIRA, EOIR and the then-INS made clear that individuals who entered without inspection and are present in the country are eligible for bond and custody redetermination hearings before immigration judges under 8 U.S.C. §1226. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Application of the policy derived from Yajure-Hurtado — which has been vacated — to Petitioner violates 8 C.F.R. §§236.1, 1236.1, and 1003.19.

COUNT III – FIFTH AMENDMENT VIOLATION: DETENTION WITHOUT INDIVIDUALIZED HEARING

Petitioner’s prolonged detention without an individualized bond hearing violates the Due Process Clause of the Fifth Amendment. The Government cannot justify Petitioner’s detention on the basis of flight risk or danger to the community without having given him the opportunity to rebut those charges before a neutral decision-maker. Zadvydas, 533 U.S. at 690; Demore, 538 U.S. at 532.

COUNT IV – FIFTH AMENDMENT VIOLATION: DENIAL OF ACCESS TO EVIDENCE

The Stewart Detention Center’s retention of Petitioner’s cell phone during his final asylum hearing, preventing him from accessing his own evidence, constitutes an independent and serious violation of due process. This violation directly affected the outcome of the asylum hearing, the appeal from which is currently pending before the Board of Immigration Appeals.

Petitioner's continued detention during the appeal perpetuates and aggravates this constitutional violation.

COUNT V – ADMINISTRATIVE PROCEDURE ACT: UNLAWFUL AGENCY ACTION

Respondents' decision to classify and detain Petitioner under §1225(b) rather than §1226(a), and to deny him any opportunity for an individualized bond hearing, constitutes final agency action that is "not in accordance with law" and "contrary to constitutional right" within the meaning of 5 U.S.C. §706(2)(A) and (B), as it contravenes the INA's detention framework and violates the Due Process Clause of the Fifth Amendment.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Honorable Court grant the following relief:

- Assume jurisdiction over this matter;
- Issue an order prohibiting the transfer of Petitioner outside the Middle District of Georgia while this Petition is pending;
- Issue an Order to Show Cause directing Respondents to show cause, within three (3) days, why this Petition should not be granted;
- Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner or, alternatively, to provide him with a bond hearing pursuant to 8 U.S.C. §1226(a) within seven (7) days;
- Declare that Petitioner's detention under §1225(b) is unlawful and that §1226(a) is the applicable statute;
- Declare that the denial of Petitioner's access to the evidence contained on his cell phone during his asylum hearing constituted a violation of due process;
- Order Respondents to ensure Petitioner unrestricted access to all personal devices and means of communication necessary for the preparation of his appeal before the Board of Immigration Appeals;
- Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), 28 U.S.C. §2412; and
- Grant such other and further relief as this Court deems just and proper.

Respectfully submitted, this 8th day of June, 2026.

/s/ Daniel Joseph Ortiz, II, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2026, I electronically filed the foregoing Amended Petition for Writ of Habeas Corpus with the Clerk of Court using the CM/ECF system, which will automatically send notice of such filing to all counsel of record. I further certify that a copy of this Petition has been served by e-mail and U.S. mail upon the following individuals or entities:

/s/ Daniel Joseph Ortiz, II, Esq.
Attorney for Petitioner