UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLOMBUS DIVISION

JOSE MIGUEL SURI HERNANDEZ,	§	
	§	
Petitioner,	§	
	§	PETITION FOR
v.	§	WRIT OF HABEAS CORPUS
	§	PURSUANT TO 28 U.S.C §2241
	§	
JASON STREEVAL, in his official capacity as Warden of Stewart Detention Center,	§	
	§	
KRISTEN SULLIVAN, in his official capacity as Acting Field Office Director of ICE Enforcement and Removal Operations, Atlanta Field Office,	§	
	§	
MARKWAYNE MULLIN, in his official Capacity as Secretary of the Department of Homeland Security;	§	
	§	
TODD BLANCHE, in his official capacity as Acting Attorney General of the United States.	§	
	§	
Respondents.	§	

PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Petitioner JOSE MIGUEL SURI HERNANDEZ is a 26-year-old citizen of Cuba who has lived in Stauton, VA for approximately 1 1/2 years. He was employed at [redacted] and lived at [redacted], Stauton, VA 24401.

2. On July 25, 2025, officers of U.S. Immigration and Customs Enforcement ("ICE") arrested Petitioner at his third court appearance. The officers had no judicial or administrative warrant in hand at the moment of arrest, and no officer made — or on these facts could have made — the individualized determination that Petitioner was "likely to escape before a warrant can be obtained," as 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii) require for any warrantless immigration arrest.

3. Petitioner is now detained at Stewart Detention Center in Lumpkin, GA— for 362 days and counting — without any hearing at which any neutral decisionmaker has ever asked whether his imprisonment is justified.

4. This custody is unlawful. First, the arrest that initiated it violated the only statutes that authorize interior immigration arrests: it was made without the warrant that 8 U.S.C. § 1226(a) requires, and without the escape-risk finding that § 1357(a)(2) demands as the sole exception. Second, Detention of a long-term resident for a prolonged and indefinite period, with no individualized custody determination of any kind, violates the Due Process Clause of the Fifth Amendment, as more than four hundred federal district judges — including judges of every district in this Circuit — and multiple courts of appeals have held. Third, Petitioner is properly classified under § 1226(a), not § 1225(b)(2)(A).

5. Petitioner seeks a writ ordering immediate release, without prejudice to re-arrest upon a warrant lawfully issued in advance, or, in the alternative, an order requiring an individualized

custody hearing on the terms set out in the Prayer for Relief. Because Petitioner is detained, expedited consideration is requested. *See* 28 U.S.C. § 2243 (return ordinarily due within three days).

II. JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3), which extends the writ to any person "in custody in violation of the Constitution or laws or treaties of the United States," and under 28 U.S.C. § 1331. The Suspension Clause, U.S. Const. art. I, § 9, cl. 2, independently preserves review.

7. No jurisdiction-stripping provision applies. Petitioner challenges only the lawfulness of his arrest and present detention — not the commencement of removal proceedings, the adjudication of any application, or the execution of any removal order. 8 U.S.C. § 1252(g) therefore does not apply, and the Supreme Court has repeatedly adjudicated § 2241 challenges to immigration detention. *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

8. Venue is proper and jurisdiction over the custodian exists because Petitioner is confined at Stewart Detention Center, 146 CCA Road, Lumpkin, GA 31815, within this District, and Respondent Jason Streeval — Petitioner's immediate custodian — is found within this District. *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35, 443 (2004).

9. No exhaustion requirement bars this petition. Section 2241 contains no statutory exhaustion requirement for challenges to immigration detention.

III. PARTIES

10. Petitioner Jose Hernandez is a native and citizen of Cuba, detained in ICE custody at Stewart Detention Center in Lumpkin, GA. His alien registration number is A[redacted]

11. Respondent Jason Streeval is the Warden of Stewart Detention Center and Petitioner's immediate custodian. He is sued in his official capacity.

12. Respondent Kristen Sullivan is the Director of the ICE Atlanta Field Office, with authority over Petitioner's detention and any decision to release, transfer, or re-detain Petitioner. Respondents Markwayne Mullin and Todd Blanche head the agencies with legal custody of Petitioner and responsibility for the policies challenged here. All are sued in their official capacities.

IV. STATUTORY AND REGULATORY FRAMEWORK

13. Congress created exactly one authority for arresting a noncitizen in the interior of the United States for removal proceedings: 8 U.S.C. § 1226(a), which provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed." The warrant precedes and authorizes the arrest; it is the source of the power, not paperwork that follows it.

14. Congress created exactly one exception: 8 U.S.C. § 1357(a)(2) permits a warrantless arrest only where the officer "has reason to believe" the person is in the United States in violation of law **and** the person "is likely to escape before a warrant can be obtained for his arrest." The Department of Homeland Security's own binding regulation repeats the limitation: a warrantless arrest is permitted "only if" the officer "has reason to believe that the person is likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii).

V. STATEMENT OF FACTS

15. Petitioner entered the United States on November 16, 2024. He has never left the United States since he entered. He was employed at [redacted]

16. Petitioner entered the United States by using CBP One.

17. On July 25, 2025, Petitioner attended his third court date. Petitioner avers that at that hearing the judge stated that he did not meet the criteria for asylum. Petitioner's undersigned attorney called the attorney who represented Petitioner in his asylum and adjustment under the Cuban Adjustment Act pursuant to 8 U.S.C. 1255. Petitioner's previous attorney relayed that the judge dismissed the case against Peittioner. As Petitioner was walking out, he was detained and removal proceedings were initiated again.

18. At the moment of the arrest, the officers possessed no warrant of any kind. On information and belief, no Form I-200 was issued before the arrest; the I-200 and Form I-213 are in Respondents' exclusive possession and are demanded below.

19. No officer articulated — to Petitioner or in any contemporaneous record known to Petitioner — any determination that Petitioner was likely to escape before a warrant could be obtained. Nor could any such determination honestly have been made: Petitioner was detained after appearing at his *third* court date. He clearly showed ability and willingness to appear for removal proceedings. Further, he has a United States citizen girlfriend and had a job at the time.

20. The detention. Petitioner has been detained since July 25, 2025 — nearly a year as of filing. Petitioner requested a bond hearing; the immigration judge held that Petitioner was not eligible

for a bond because he entered using CBP One. No neutral decisionmaker has ever made any individualized determination that Petitioner's detention is justified by flight risk or danger.

21. Petitioner has been subjected to mistreatment while in detention. On some occasions he complained about stomach issues but did not received any medical attention. Due to his detention, he has been seeing the counselor.

VI. CLAIMS FOR RELIEF

COUNT I

UNLAWFUL ARREST AND SEIZURE CUSTODY IN VIOLATION OF THE LAWS OF THE UNITED STATES

22. Petitioner realleges and incorporates the foregoing paragraphs.

23. Section 2241 reaches custody "in violation of the Constitution or laws of the United States." 28 U.S.C. § 2241(c)(3). Detention that begins with an arrest no statute authorized is custody in violation of law from its first moment, and the writ is the remedy designed for it.

24. Respondents must identify the legal source of the arrest that initiated this custody, and only two candidates exist. Each fails on these facts.

25. If the arrest was under § 1226(a), that statute authorizes arrest only "[o]n a warrant." No warrant existed before or at the moment Petitioner was seized.

26. Nor can Respondents invoke the warrantless-arrest exception. Section 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii) permit warrantless arrest "only if" the officer has reason to believe the person is "likely to escape before a warrant can be obtained." That element is judicially reviewable and the government bears the burden of justifying warrantless action. *See Abel v. United States*, 362 U.S. 217, 232–34 (1960). Here no such finding was made, and none could honestly have

been made: Petitioner was detained after appearing at his *third* court date. He clearly showed ability and willingness to appear for removal proceedings. Further, he has a United States citizen girlfriend and had a job at the time. A person who voluntarily presents himself to court is the definitional opposite of a person likely to escape before a warrant can be obtained.

27. If Petitioner is detained under § 1225(b)(2)(A): then no statute authorized this arrest at all. Section 1225 is an inspection statute; it contains no interior arrest provision. Respondents cannot classify Petitioner under § 1225 for purposes of denying bond while borrowing § 1226(a)'s arrest power without honoring § 1226(a)'s warrant requirement. Every filing in which Respondents assert that Petitioner is a § 1225 detainee is a concession that the statute they invoke supplied no authority for the seizure that produced this custody.
28. Independently, the arrest violated the agency's own binding regulation, 8 C.F.R. § 287.8(c)(2)(ii). An agency is bound by its own rules, and action taken in violation of a regulation affecting individual liberty cannot stand. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). This ground is statutory and regulatory; the Court may grant relief on it without reaching any constitutional question.
29. The unlawful seizure is not severable from the present custody. Today's custody therefore rests on nothing but the defective arrest.
30. The remedy is release from the unlawful custody, without prejudice to Respondents' authority to effect a new arrest upon a warrant lawfully issued in advance, or upon a genuine, individualized, and contemporaneous determination satisfying § 1357(a)(2). Petitioner does not seek termination of removal proceedings or suppression of evidence; Petitioner challenges only the custody.

COUNT II

FIFTH AMENDMENT — PROCEDURAL DUE PROCESS

31. Petitioner realleges and incorporates the foregoing paragraphs.

32. "Freedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Due Process Clause applies to all persons within the United States, including those whose presence is unlawful. *Id.* at 693. Civil detention is constitutionally permissible only when accompanied by adequate procedural protections and a sufficiently strong special justification. *Id.* at 690–92; *Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J., concurring) (an individualized determination becomes necessary where detention becomes unreasonable or unjustified).

33. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the process due turns on (1) the private interest affected; (2) the risk of erroneous deprivation under the procedures used and the value of additional safeguards; and (3) the government's interest. Each factor favors Petitioner. The private interest — physical liberty — is the weightiest known to law. The risk of erroneous deprivation is total: there are no procedures; no decisionmaker has ever assessed whether Petitioner is dangerous or a flight risk, and the facts, entry through CBP One and appearance to court, show he is neither. And the government has no legitimate interest in detaining a person whom no one has found to be dangerous or likely to flee.

34. Petitioner's detention is unreasonably prolonged and, because it is untethered to any individualized finding, effectively indefinite: it will continue for however long removal proceedings last, a period with no fixed endpoint. An appeal for Petitioner's asylum case was entered on April 17, 2026.

35. Due process further requires that any custody hearing be meaningful: the government must bear the burden of proving danger or flight risk by clear and convincing evidence, *see Velasco Lopez v. Decker*, 978 F.3d 842, 855–56 (2d Cir. 2020); *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011); the decisionmaker must consider ability to pay and alternative conditions of release, *see ODonnell v. Harris County*, 892 F.3d 147, 157–63 (5th Cir. 2018) (detention resulting from inability to pay, without inquiry into ability to pay and alternatives, violates due process); *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017); and the period of detention must be measured from the date of arrest. A hearing lacking these features would not cure the violation.

36. For any period of detention, and independently as detention lengthens, the absence of any individualized determination renders Petitioner's confinement unconstitutional as applied. Detention without justification was unlawful on day one; it does not ripen into legality by persisting.

COUNT III

STATUTORY CLASSIFICATION — DETENTION IS GOVERNED BY 8 U.S.C. § 1226(a)

44. Petitioner realleges and incorporates the foregoing paragraphs.

45. Petitioner, a noncitizen arrested in the interior of the United States years after entry and placed in removal proceedings under 8 U.S.C. § 1229a, is detained "pending a decision on whether he is to be removed" and is therefore subject to discretionary detention under 8 U.S.C. § 1226(a), with the right to an individualized bond determination — as the statutory text, structure, and history, and three decades of consistent executive practice.

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Issue an order to show cause directing Respondents to file a return within three days, 28 U.S.C. § 2243, and set this matter for expedited consideration;

b. Order Respondents to produce, with the return, the complete Form I 213 and any Form I-200 or other warrant relating to Petitioner's arrest, including the date and time of issuance and the identity of the issuing and arresting officers;

c. On Count I, grant the writ and order Petitioner's immediate release under reasonable conditions of supervision, without prejudice to re-arrest upon a warrant lawfully issued in advance or upon a lawful, individualized, contemporaneous determination under 8 U.S.C. § 1357(a)(2), and enjoin re-detention absent such lawful process;

d. In the alternative, on Count II, grant the writ unless, within 7 days, Respondents provide Petitioner an individualized custody hearing before a neutral decisionmaker — before this Court if no administrative forum has jurisdiction — at which (i) the government bears the burden of proving, by clear and convincing evidence, that Petitioner presents an identified and articulable danger to the community or risk of flight; (ii) the decisionmaker considers Petitioner's ability to pay any bond and alternative conditions of release; (iii) the period of detention is measured from the date of arrest; and (iv) a written or on-the-record reasoned decision issues; and order that Petitioner may not be re-detained following release except upon a hearing satisfying these requirements;

e. Declare that Petitioner's arrest and detention violate the statutes, regulation, and constitutional provisions cited above;

f. Award reasonable attorneys' fees and costs, including under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

g. Grant such other and further relief as is just and proper.

Dated. **July 21, 2026**

Respectfully submitted,

/s/ Manuel E. Solis

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VERIFICATION

Because Petitioner is detained and counsel cannot timely obtain Petitioner's signature, counsel verifies on Petitioner's behalf based on interviews with Petitioner and review of the record. See 28 U.S.C. § 2242 (petition may be signed and verified by "someone acting in [the detainee's] behalf")].

Executed on July 21, 2026, at Houston, TX.

/s/ Manuel E. Solis

CERTIFICATE OF SERVICE

On July 21, 2026, Counsel for Plaintiff served a copy of the attached Petition via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Jason Streeval, in his official capacity as Warden of Stewart Detention Center at 146 CCA Road, Lumpkin, GA 31815.

/s/ Manuel Solis July 21, 2026
Manuel Solis Date
Attorney for Petitioner

On July 21, 2026, Counsel for Plaintiff served a copy of the attached Petition via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, KRISTEN SULLIVAN, in her official capacity as Director of the ICE Enforcement and Removal Operation, Atlanta Field Office, at 180 Ted Turner Dr. SW, Suite 522, Atlanta, GA 30303.

/s/ Manuel Solis July 21, 2026
Manuel Solis Date
Attorney for Petitioner

On July 21, 2026, Counsel for Plaintiff served a copy of the attached Petition via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, MARKWAYNE MULLIN, in his Official Capacity as Director of U.S. Department of Homeland Security, at the Office of General Counsel, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0485, Washington, D.C. 20530.

/s/ Manuel Solis July 21, 2026
Manuel Solis Date
Attorney for Petitioner

On July 21, 2026, Counsel for Plaintiff served a copy of the attached Petition via USPS, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, TODD BLANCHE, in his Official Capacity as Acting Attorney General of the United States, at the Office of the Attorney General, 950 Pennsylvania Avenue, NW Washington, DC 20530.

/s/ Manuel Solis July 21, 2026
Manuel Solis Date
Attorney for Petitioner