

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION**

OLVIN OMAR GOMEZ CORTEZ,
Petitioner,

vs.

Warden of Folkston ICE Processing
Center; PAMELA BONDI, in her
official capacity as the U.S. Attorney
General; and U.S. DEPARTMENT OF
HOMELAND SECURITY;
Respondents.

Civil Action No.: 5:25-cv-234

HEARING REQUESTED

PETITION FOR *WRIT OF HABEAS CORPUS* BY AN ALIEN DETAINEE

To the Honorable Judges of this Court:

Petitioner, Olvin Omar Gomez Cortez, respectfully brings this Petition for *Writ of Habeas Corpus* seeking relief to remedy his unlawful detention.

I. FACTUAL BACKGROUND

1. Petitioner, a 44-year-old Honduran national, entered the United States in 1999 with a work visa, and has resided continuously in the country since then. He is a successful business owner and the father of 5 United States Citizen children, 3 of whom are minors and depend on him. He was awaiting the processing of his

application for permanent residence under the Violence Against Women Act, which was filed in April of this year.

2. Petitioner was arrested by U.S. Immigration and Customs Enforcement (ICE) arrested Petitioner on or about November 22, 2025, at a roadblock in Crawford, Georgia. He is now being held at the Folkston ICE Processing Center in Folkston, Georgia.

3. At the time of his arrest by ICE, Petitioner was not seeking lawful admission to the United States.

4. On December 16, 2025, an Immigration Judge entered an Order finding that he lacked jurisdiction to consider Petitioner for bond pursuant to Matter of Yahure Hurtado, 29 I&N Dec. 216 (BIA 2025), Exhibit A, Bond Denial, despite the class action declaratory judgment in Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

5. Petitioner seeks an order declaring § 1225(b)(2) inapplicable to him as he is not applicant for admission and mandating a § 1226(a) bond hearing.

6. Due to irreparable harm to his continuous detention on his children and his business, he requests an order to show cause within three days under 28 U.S.C. § 2243 and reserves the right to seek a temporary restraining order under Fed. R. Civ. P. 65(b).

7. The Court should expeditiously grant this petition. Because Respondents are detaining Petitioner in violation of law, the Court should accordingly order that Respondents release Petitioner within one day, or, alternatively, provide him with a bond hearing under 8 USC § 1226(a) within 3 days.

II. JURISDICTION AND VENUE


8. This action arises under the United States Constitution, the Immigration and Nationality Act of 1952 (INA), 8 U.S.C. § 1101 *et seq.*

9. This Court has jurisdiction to grant a *writ of habeas corpus* under 28 U.S.C. § 2241, Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), and the Fifth Amendment's Due Process Clause. The Court also has federal question jurisdiction under 28 U.S.C. § 1331, mandamus jurisdiction under 28 U.S.C. § 1361, and authority to issue declaratory and injunctive relief under 28 U.S.C. §§ 2201–2202 and the All Writs Act, 28 U.S.C. § 1651.

10. Petitioner challenges only the statutory applicability of § 1225(b)(2), not its implementation or regulations. Thus, 8 U.S.C. § 1252(e)(3), which limits review of such implementation to the District of Columbia, does not apply. Aguirre Villa v. Warden, 5:25-cv-00089-LGW-BWC, 4-7 (S.D. Ga. Nov. 4, 2025).

11. Petitioner is detained at the Folkston ICE Processing Center in Folkston, Georgia, which lies within the Southern District of Georgia, Waycross Division. Venue is therefore proper pursuant to 28 U.S.C. § 1391(b)–(e).

III. PARTIES

12. Petitioner, Olvin Omar Gomez Cortez (aka Cortes), is a Honduran citizen currently detained by Respondents at the Folkston ICE Processing Center. His alien registration number is  He entered the United States in 1999 and has not departed since.

13. Respondent Warden of Folkston ICE Processing Center is being sued in his official capacity. He is responsible for the operations of the detention center and has control over Petitioner as his immediate custodian.

14. Respondent Pamela Bondi is the U.S. Attorney General and is being sued in her official capacity.

15. U.S. Department of Homeland Security (“DHS”) is a governmental agency of the United States charged, *inter alia*, with the adjudication of applications and petitions related to immigration and citizenship. It is a legal custodian of Petitioner.

IV. CLAIM FOR RELIEF – WRIT OF HABEAS CORPUS

16. The Constitution guarantees the right of *writ of habeas corpus* to every individual detained within the United States, including in immigration-related detention. Zadvydas v. Davis, 533 U.S. 678, 687 (2001). A *writ of habeas corpus* must be granted if the person is in custody in violation of the Constitution or federal law, 28 U.S.C. § 2241(c)(3) as in here, where Petitioner is being detained based on an incorrect application of federal law and in violation of his due process rights.

17. The legal issues presented by this Petition have already been resolved by the declaratory judgment in Maldonado Bautista, *supra*, and by this Court in Villa Aguirre v. Warden, 5:25-cv-00089-LGW-BWC (S.D. Ga. Nov. 4, 2025).

A. Count 1: Unlawful Detention Under 8 U.S.C. § 1225(b)(2)

18. Petitioner’s detention is in violation of law because she is being erroneously subject to mandatory detention as classified as an alien seeking admission under 8 U.S.C. § 1225(b)(2). That provision applies only to an alien seeking admission, 8

U.S.C. § 1225(b)(2)(A), not aliens like Petitioner, who have been present in the United States for several years and are not seeking entry at the time of arrest. *See J.A.M. v. Streeval*, No. 4:25-cv-342 (CDL), slip op. at 7-10 (M.D. Ga. Nov. 1, 2025).

19. Two statutes primarily govern the detention of aliens in removal proceedings, 8 USC §§ 1225 and 1226. § 1225 addresses when mandatory detention applies, and it covers aliens who, *inter alia*, are “seeking admission” (emphasis added). In the other hand, § 1226 provides discretionary release for aliens who are neither a flight risk nor a danger to the community.

20. Since §§ 1225 and 1226 were enacted in 1996, Respondents have afforded the procedural safeguards of § 1226 to aliens who, like Petitioner, have been apprehended in the interior of the United States and has not classified them as aliens seeking admission.

21. In July of 2025, Respondents changed course abruptly and began alleging that all aliens who entered without being admitted or inspected are to be considered aliens seeking admission. On September 5, 2025, Respondents’ new position was made binding upon Immigration Judges with the issuance of Matter of Yahure Hurtado, 29 I&N Dec. 216 (BIA 2025).

22. This interpretation, which is contrary to decades of precedent, clear statutory text, regulations, and the government's own long-standing practice, has already been rejected by district courts nationwide, including this Honorable Court in Villa Aguirre v. Warden, 5:25-cv-00089-LGW-BWC (S.D. Ga. Nov. 4, 2025) and the Court in Maldonado Bautista, which certified a national class and issued declaratory relief.

23. Despite being a Bond Denial Class member, the Immigration Judge still found that it had no jurisdiction over Petitioner's bond request.

24. Petitioner is not an alien seeking admission. Under 8 U.S.C. § 1226(a), Petitioner is entitled to a prompt, individualized bond hearing before an Immigration Judge at which the government bears the burden of proving that continued detention is necessary to serve a legitimate purpose such as preventing flight or protecting the community.

25. Petitioner thus merits immediate relief in the form of a bond hearing with the Executive Office of Immigration Review (Immigration Court).

26. By refusing to provide even the minimal safeguards Congress built into § 1226(a), Respondents have acted in a manner that is arbitrary, capricious, and

inconsistent with the basic promise of due process, that the government may not imprison a person first and ask questions later.

27. A *writ of habeas corpus* should issue requiring Respondents to provide Petitioner with a bond hearing in Immigration Court.

WHEREFORE, Petitioner prays this Honorable Court:

- (a) Assume jurisdiction over this matter;
- (b) Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action for *habeas corpus*;
- (c) Issue and order directing Respondents to show cause why a *writ* should not be granted;
- (d) Issue a *writ of habeas corpus* ordering Respondents to release Petitioner unless they provide a bond hearing under § 1226(a) within 5 days;
- (e) grant such other and further relief as this Court deems proper under the circumstances; and
- (f) grant reasonable attorney's fees and costs of Court to Petitioner under the Equal Access to Justice Act.

Respectfully submitted this December 19, 2025.

/s/ Giovanna Andrea Holden

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