

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION

GARY DANIEL TECUN ALVAREZ,  
Petitioner,

v.

LADEON FRANCIS, Field Office Director of  
Enforcement and Removal Operations,  
ATLANTA Field Office, Immigration and  
Customs Enforcement; Kristi NOEM,  
Secretary, U.S. Department of Homeland  
Security; U.S. DEPARTMENT OF  
HOMELAND SECURITY; Pamela BONDI,  
U.S. Attorney General; EXECUTIVE OFFICE  
FOR IMMIGRATION REVIEW; Warden,  
Folkston D. Ray James ICE Processing Center,  
*in their official capacities*

Respondents.

Case No.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

**INTRODUCTION**

1  
2 1. Petitioner GARY DANIEL TECUN ALVAREZ is in the physical custody of  
3 Respondents at the Folkston D. Ray James ICE Processing Center. He now faces unlawful  
4 detention because the Department of Homeland Security (DHS) and the Executive Office of  
5 Immigration Review (EOIR) will conclude that Petitioner is subject to mandatory detention.

6 2. Petitioner is charged with, inter alia, having entered the United States without  
7 admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

8 3. Based on this allegation in Petitioner’s removal proceedings, DHS will certainly  
9 deny Petitioner’s release from immigration custody, consistent with a new DHS policy issued on  
10 July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider  
11 anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without  
12 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and  
13 therefore ineligible to be released on bond.

14 4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or  
15 Board) issued a precedent decision, binding on all immigration judges, holding that an  
16 immigration judge has no authority to consider bond requests for any person who entered the  
17 United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).  
18 The Board determined that such individuals are subject to detention under 8 U.S.C. §  
19 1225(b)(2)(A) and therefore ineligible to be released on bond.

20 5. Petitioner’s detention on this basis violates the plain language of the Immigration  
21 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who  
22 previously entered and are now residing in the United States. Instead, such individuals are  
23 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.

1 That statute expressly applies to people who, like Petitioner, are charged as inadmissible for  
2 having entered the United States without inspection.

3 6. Respondents' new legal interpretation is plainly contrary to the statutory  
4 framework and contrary to decades of agency practice applying § 1226(a) to people like  
5 Petitioner.

6 7. Moreover, on November 20, 2025, the district court granted partial summary  
7 judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide  
8 class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*,  
9 No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at \*11 (C.D. Cal. Nov.  
10 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado*  
11 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at  
12 \*9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond  
13 Eligible Class, incorporating and extending declaratory judgment from Order Granting  
14 Petitioners' Motion for Partial Summary Judgment).

15 8. The declaratory judgment held that the Bond Denial Class members are detained  
16 under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under §  
17 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at \*11.

18 9. On December 18, 2025 a final judgment was entered in *Maldonado Bautista v.*  
19 *Santacruz*; nonetheless, the Executive Office for Immigration Review and its subagency the  
20 Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to  
21 abide by the declaratory relief and have unlawfully ordered that class members be denied the  
22 opportunity to be released on bond.

1 10. Immigration judges have informed class members in bond hearings that they have  
2 been instructed by “leadership” that the declaratory judgment in *Maldonado Bautista* is  
3 not controlling, even with respect to class members, and that instead Immigration Judges  
4 remain bound to follow the agency’s prior decision in *Matter of Yajure Hurtado*, 29 I. &  
5 N. Dec. 216 (BIA 2025).

6 11. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released  
7 unless Respondents provide a bond hearing under § 1226(a) within seven days.

### 8 JURISDICTION

9 12. Petitioner is in the physical custody of Respondents. Petitioner is detained at the  
10 Folkston D. Ray James ICE Processing Center located in Folkston, Georgia.

11 13. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28  
12 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States  
13 Constitution (the Suspension Clause).

14 14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory  
15 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

### 16 VENUE

17 15. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-  
18 500 (1973), venue lies in the United States District Court for the SOUTHERN DISTRICT OF  
19 GEORGIA, the judicial district in which Petitioner currently is detained.

20 16. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
21 Respondents are employees, officers, and agencies of the United States, and because a  
22 substantial part of the events or omissions giving rise to the claims occurred in the SOUTHERN  
23 DISTRICT OF GEORGIA.





1 while noncitizens who have been arrested, charged with, or convicted of certain crimes are  
2 subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

3 28. Second, the INA provides for mandatory detention of noncitizens subject to  
4 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission  
5 referred to under § 1225(b)(2).

6 29. Last, the INA also provides for detention of noncitizens who have been ordered  
7 removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

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

9 31. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
10 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.  
11 104--208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section  
12 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1,  
13 139 Stat. 3 (2025).

14 32. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining  
15 that, in general, people who entered the country without inspection were not considered detained  
16 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited  
17 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;  
18 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

19 33. Thus, in the decades that followed, most people who entered without inspection  
20 and were placed in standard removal proceedings received bond hearings, unless their criminal  
21 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent  
22 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”  
23 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)

1 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply  
2 “restates” the detention authority previously found at § 1252(a)).

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

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

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

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

18 38. Even before ICE or the BIA introduced these nationwide policies, IJs in the  
19 Tacoma, Washington, immigration court stopped providing bond hearings for persons who  
20 entered the United States without inspection and who have since resided here. There, the U.S.  
21 District Court in the Western District of Washington found that such a reading of the INA is  
22 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not

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

1 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d  
2 1239 (W.D. Wash. 2025).

3 39. Subsequently, court after court has adopted the same reading of the INA's  
4 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*,  
5 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,  
6 No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025);  
7 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,  
8 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL  
9 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025  
10 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE,  
11 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-  
12 ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-  
13 BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH),  
14 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-  
15 BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-  
16 02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-  
17 JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051  
18 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v.*  
19 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);  
20 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,  
21 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.  
22 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.  
23 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.

1 Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2  
2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not §  
3 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL  
4 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-  
5 RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).

6 40. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it  
7 defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the  
8 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

9 41. Section 1226(a) applies by default to all persons “pending a decision on whether  
10 the [noncitizen] is to be removed from the United States.” These removal hearings are held under  
11 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

12 42. The text of § 1226 also explicitly applies to people charged as being inadmissible,  
13 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph  
14 (E)’s reference to such people makes clear that, by default, such people are afforded a bond  
15 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress  
16 creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions,  
17 the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove*  
18 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025  
19 WL 1869299, at \*7.

20 43. Section 1226 therefore leaves no doubt that it applies to people who face charges  
21 of being inadmissible to the United States, including those who are present without admission or  
22 parole.

1           44. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
2 recently entered the United States. The statute’s entire framework is premised on inspections at  
3 the border of people who are “seeking admission” to the United States. 8 U.S.C.  
4 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme  
5 applies “at the Nation’s borders and ports of entry, where the Government must determine  
6 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583  
7 U.S. 281, 287 (2018).

8           45. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not  
9 apply to people like Petitioner, who have already entered and were residing in the United States  
10 at the time they were apprehended.

11           46. Finally as mentioned above, on November 20, 2025, the district court granted  
12 partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified  
13 a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista*  
14 *v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861, at \*11  
15 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-  
16 Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d --  
17 --, 2025 WL 3288403, at \*9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners’  
18 proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment  
19 from Order Granting Petitioners’ Motion for Partial Summary Judgment).

20           47. Despite this declaratory judgment, and then the subsequent final judgement,  
21 holding that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus  
22 may not be denied consideration for release on bond under § 1225(b)(2)(A), class members are  
23  
24

1 being blatantly refused bond hearings across the country. *Maldonado Bautista*, 2025 WL  
2 3289861, at \*11.

3 **FACTS**

4 48. Petitioner has resided in the United States since 2008 and lives in Delmar,  
5 Maryland.

6 49. On December 12, 2025, Petitioner was on his way to work when Immigration and  
7 Customs Enforcement officers stopped him and asked him for his identification. Once he  
8 identified himself, Petitioner overheard the officers say that “he was not the one they were  
9 looking for” but then they took him into custody anyway.

10 50. Petitioner has a United States Citizen son who is going on four years old. He has  
11 a Lawful Permanent Resident mother, and a United States Citizen brother. Petitioner is the  
12 financial provider for his household and a hardworking member of his community. Petitioner has  
13 a pending T-visa petition and has received a bona-fide determination which allows him to work  
14 legally while his petition is pending. Petitioner is not a flight risk, nor a danger to his community,  
15 as he has a clean criminal history.

16 51. DHS placed Petitioner in removal proceedings before the Atlanta Immigration  
17 Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being  
18 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States  
19 without inspection.

20 52. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider  
21 Petitioner’s bond request. Additionally, despite being a member of the certified nationwide class  
22 pursuant to *Maldonado Bautista v. Santaacruz*, the Executive Office for Immigration Review and  
23 its subagency the Immigration Court and the Department of Homeland Security (DHS) have  
24

1 blatantly refused to abide by the declaratory relief for this petitioner, and for his fellow class  
2 members before the Atlanta Immigration Court and other Immigration Courts across the country.

3 53. As a result, Petitioner remains in detention. Without relief from this court, he  
4 faces the prospect of months, or even years, in immigration custody, separated from his family  
5 and his community.

## 6 CLAIMS FOR RELIEF

### 7 COUNT I 8 Violation of the INA

9 54. Petitioner incorporates by reference the allegations of fact set forth in the  
10 preceding paragraphs.

11 55. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
12 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As  
13 relevant here, it does not apply to those who previously entered the country and have been  
14 residing in the United States prior to being apprehended and placed in removal proceedings by  
15 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to  
16 § 1225(b)(1), § 1226(c), or § 1231.

17 56. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued  
18 detention and violates the INA.

### 19 COUNT II 20 Violation of the Bond Regulations

21 57. Petitioner incorporates by reference the allegations of fact set forth in preceding  
22 paragraphs.

23 58. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-  
24 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.

1 Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the  
2 agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present  
3 without having been admitted or paroled (formerly referred to as [noncitizens] who entered  
4 without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323  
5 (emphasis added). The agencies thus made clear that individuals who had entered without  
6 inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. §  
7 1226 and its implementing regulations.

8 59. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and  
9 practice of applying § 1225(b)(2) to individuals like Petitioner.

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

12 **COUNT III**  
13 **Violation of Due Process**

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

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

20 63. Petitioner has a fundamental interest in liberty and being free from official restraint.

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

23 **PRAYER FOR RELIEF**

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

- 1 a. Assume jurisdiction over this matter;
- 2 b. Order that Petitioner shall not be transferred outside the Southern District of  
3 Georgia while this habeas petition is pending;
- 4 c. Issue an Order to Show Cause ordering Respondents to show cause why this  
5 Petition should not be granted within three days;
- 6 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in  
7 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §  
8 1226(a) within seven days;
- 9 e. Declare that Petitioner's detention is unlawful;
- 10 f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act  
11 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under  
12 law; and
- 13 g. Grant any other and further relief that this Court deems just and proper.

14 DATED this 12<sup>th</sup> day of January, 2026.

15  
16 Respectfully submitted,

17 /s/ Matthew O. Boles

18 Matthew O. Boles

GA Bar No. 904287; LA Bar No. 37593

19 MANJI LAW, P.C.

5745 Lawrenceville Hwy

20 Tucker, GA 30084

matt@manjilaw.com

21 941-524-7913

22 *Counsel for Petitioner*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**Verification**

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

/s/ Matthew O. Boles

Date: January 12, 2026