

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

LUIS ALBERTO GARCIA-  
CERVANTES,

A 

Petitioner,

v.

TONY NORMAND, Warden, Folkston  
ICE Processing Center

Respondent.

Case No. CV 526-113

**PETITION FOR WRIT OF  
HABEAS CORPUS**

1 **INTRODUCTION**

2 1. Petitioner Mr. Luis Alberto Garcia Cervantes is in the custody of  
3 Respondent at the Folkston Detention Center. Petitioner now faces unlawful  
4 detention because the Department of Homeland Security (DHS) and the Executive  
5 Office of Immigration Review (EOIR) have concluded Petitioner is subject to  
6 mandatory detention.  
7

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

10 3. Based on this allegation in Petitioner’s removal proceedings, DHS  
11 denied Petitioner release from immigration custody, consistent with a new DHS  
12 policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement  
13 (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e.,  
14 those who entered the United States without admission or inspection—to be subject  
15 to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released  
16 on bond.  
17

18 4. Similarly, on September 5, 2025, the Board of Immigration Appeals  
19 (BIA or Board) issued a precedent decision, binding on all immigration judges,  
20 holding that an immigration judge has no authority to consider bond requests for any  
21 person who entered the United States without admission. *See Matter of Yajure*  
22 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The BIA in *Yajure Hurtado* determined  
23  
24

1 that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and  
2 therefore ineligible to be released on bond.

3 5. Petitioner’s detention on this basis violates the plain language of the  
4 Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to  
5 individuals, like Petitioner, who previously entered and now reside in the United  
6 States. Instead, such individuals are subject to a different statute, § 1226(a), that  
7 allows for release on conditional parole or bond.  
8

9 6. Respondent’s new legal interpretation is plainly contrary to the  
10 statutory framework, contrary to decades of agency practice applying § 1226(a), and  
11 contrary to recent federal decisions—including decisions of this Court—holding that  
12 § 1225(b)(2) applies only to individuals who are “seeking admission” in the context  
13 of an arrival inspection by an examining immigration officer.  
14

15 7. Notably, Petitioner is a member of the certified class in *Lazaro*  
16 *Maldonado Bautista v. Santacruz*, No. 5:25-cv-1873-SSS-BFM, 2025 WL 3288403  
17 (C.D. Cal. Nov. 25, 2025), which rejected Respondent’s interpretation of §  
18 1225(b)(2). Yet despite this class-wide decision, and despite this Court’s own  
19 holding in *Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov. 4,  
20 2025), *report and recommendation adopted*, 2025 WL 3188406 (S.D. Ga. Nov. 14,  
21 2025), the Folkston Immigration Court continues to refuse to find jurisdiction to  
22  
23  
24

1 conduct bond hearings for individuals like Petitioner—leaving habeas corpus as the  
2 only available mechanism for judicial review of Petitioner’s detention.

3 8. Thus, Petitioner seeks a writ of habeas corpus requiring that he be  
4 released less Respondent provides a bond hearing under § 1226(a) within seven days.  
5

### 6 JURISDICTION

7 9. Petitioner is in the custody of Respondent. Petitioner is detained at the  
8 Folkston Detention Center located in Folkston, Georgia (Charlton County).

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

13 11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the  
14 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.  
15 § 1651.  
16

### 17 VENUE

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

21 13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e)  
22 because Respondent is an employee, officer, and agency of the United States, and  
23  
24

1 because a substantial part of the events or omissions giving rise to the claims  
2 occurred in the Southern District of Georgia.

3  
4 **REQUIREMENTS OF 28 U.S.C. § 2243**

5 14. This Court must grant the petition for writ of habeas corpus or order  
6 Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief.  
7 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return  
8 “within three days unless for good cause additional time, not exceeding twenty days,  
9 is allowed.” *Id.*

10 15. Habeas corpus is “perhaps the most important writ known to the  
11 constitutional law . . . affording as it does a *swift* and imperative remedy in all cases  
12 of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963)  
13 (emphasis added). “The application for the writ usurps the attention and displaces  
14 the calendar of the judge or justice who entertains it and receives prompt action from  
15 him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120  
16 (9th Cir. 2000) (citation omitted).  
17

18 **PARTIES**

19  
20 16. Petitioner Mr. Luis Alberto Garcia Cervantes is native and citizen of  
21 Mexico who has been in immigration detention since January 26, 2026. After  
22 arresting Petitioner, ICE did not set bond. Petitioner is unable to obtain review of  
23  
24

1 his custody by an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*,  
2 29 I. & N. Dec. 216 (BIA 2025).

3 17. Respondent Tony Normand is employed by Core Civic Group as  
4 Warden of the Folkston ICE Processing Center, where Petitioner is detained.  
5 Respondent has immediate custody of Petitioner. He is sued in his official capacity.  
6

### 7 **LEGAL FRAMEWORK**

8 18. The Immigration and Nationality Act (“INA”) establishes several  
9 detention schemes for noncitizens in removal proceedings.

10 19. First, 8 U.S.C. § 1226 governs the detention of individuals placed in  
11 standard removal proceedings under § 1229a. Noncitizens detained under § 1226(a)  
12 are generally entitled to a custody redetermination before an Immigration Judge  
13 unless they fall into the narrow mandatory detention categories of § 1226(c).  
14

15 20. Second, 8 U.S.C. § 1225 (b) (1)-(2) provides for mandatory detention  
16 of certain individuals seeking admission who are inspected at the border and  
17 determined not “clearly and beyond a doubt entitled to be admitted.” This detention  
18 framework is tied to the process of arrival inspection performed by an examining  
19 immigration officer.  
20

21 21. Third, 8 U.S.C. § 1231 governs detention of individuals who are subject  
22 to final orders of removal.  
23  
24

1           22. This case turns on the proper application of § 1226(a) versus §  
2 1225(b)(2) for a noncitizen like Petitioner—an individual who entered the United  
3 States years ago, resided here, and was apprehended within the interior, *not* at a port  
4 of entry.

5  
6           23. Historically, individuals who entered without inspection and were later  
7 placed in § 1229a removal proceedings were treated as detained under § 1226, not §  
8 1225. EOIR regulations following IIRIRA confirm that such individuals were not  
9 considered “arriving” and therefore were eligible for bond hearings. *See* 62 Fed.  
10 Reg. 10312, 10323 (Mar. 6, 1997).

11  
12           24. For decades, consistent with this regulatory framework and prior  
13 immigration law, noncitizens who entered without inspection and were apprehended  
14 inside the United States received custody redeterminations unless subject to §  
15 1226(c). *See* former 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229  
16 (1996).

17 **The Government’s Recent Policy Shift**

18           25. On July 8, 2025, ICE—“in coordination with” DOJ—issued guidance  
19 declaring that all individuals who entered without inspection must now be detained  
20 under § 1225(b)(2)(A), regardless of when they entered the United States or whether  
21 they were ever inspected by an immigration officer.  
22

1           26. On September 5, 2025, the BIA adopted this new position in *Matter of*  
2 *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that any noncitizen who  
3 entered without admission is subject to § 1225(b)(2)(A) and categorically barred  
4 from a bond hearing.  
5

6 **This Court Has Rejected Respondents’ Interpretation**

7           27. This Court has already rejected the government’s reading of §  
8 1225(b)(2). In *Villa*, this Court rejected the BIA’s reasoning in *Yajure Hurtado* and  
9 held that § 1226(a), *not* 1225(g)(2)(A), controlled the analysis of aliens who  
10 apprehended after entering the United States years prior without inspection. 2025  
11 WL 3188406, at \*7-9. *Villa* explained that the dispositive phrase “seeking  
12 admission” “implies action—something that is currently occurring, and would most  
13 logically occur at the border upon inspection.” *Id.* at \*6. *Villa* rejected DHS’s  
14 argument that individuals apprehended years after entering the United States may be  
15 treated as if they were seeking admission. *Id.* at \*6-9.  
16

17           28. *Villa* concluded that § 1225(b)(2)(A) does not apply to individuals like  
18 Petitioner, whose alleged inadmissibility is based on conduct occurring long after  
19 entry and not in connection with an arrival inspection.  
20

21 **The Bautista Class Action Confirms Petitioner’s Eligibility for Bond**

22           29. Petitioner is also a member of the certified class in *Lazaro Maldonado*  
23 *Bautista v. Santacruz*, No. 5:25-cv-1873-SSS-BFM, 2025 WL 3288403 (C.D. Cal.  
24

1 Nov. 25, 2025), which likewise held that § 1225(b)(2) mandatory detention does not  
2 apply absent an arrival inspection. DHS has acknowledged in other litigation that it  
3 is still “developing its decision” concerning the application of that ruling.

4 **Courts Nationwide Have Rejected the Government’s Theory**

5  
6 30. Federal courts across the country have agreed that § 1226(a)—not §  
7 1225(b)—governs detention of individuals apprehended inside the United States,  
8 even when they originally entered without inspection. *See, e.g., Rodriguez Vazquez*  
9 *v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, 2025 WL  
10 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, 2025 WL 2084238 (D.  
11 Mass. July 24, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11,  
12 2025); *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025);  
13 *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Pizarro*  
14 *Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025).

15  
16 31. These courts uniformly conclude that Respondent’s interpretation  
17 contradicts the statutory text, structure, and decades of agency practice.

18 **Folkston Immigration Court’s Continued Refusal to Exercise Jurisdiction**

19  
20 32. Despite *Villa* and the *Bautista* class decision, the Immigration Judges  
21 at the Folkston ICE Processing Center continue to decline jurisdiction over custody  
22 redeterminations for noncitizens like Petitioner, based on the BIA’s erroneous  
23 decision in *Yajure Hurtado*.

1 33. Because Petitioner has no administrative avenue to challenge his  
2 custody, habeas corpus is the only remedy capable of addressing the ongoing  
3 violation of federal law.

4 **FACTUAL BACKGROUND**

5  
6 34. Petitioner, 44 years old, entered the United States in 1998 without  
7 inspection. Since that time, he has established a life and family in the United States.

8 35. Petitioner, a Mexican National, entered the United States at the ripe age  
9 of 14 years old, and has one United States citizen child in the United States.  
10 Petitioner's child is 19 years old.

11 36. Petitioner provides emotional and financial support to his United States  
12 citizen son.

13  
14 37. Petitioner has no criminal history other than a pending driving while  
15 unlicensed and DUI arrest in Clayton County, Georgia. After this arrest, Petitioner  
16 was transferred to DHS custody.

17 38. Petitioner's ongoing detention imposes severe financial and emotional  
18 hardship on his U.S. citizen family.

19  
20 39. Prior to his detention, Petitioner worked full-time as a laborer in a  
21 warehouse and has a history of steady employment. He is known as a hard-working  
22 individual who supports his family and contributes to his community.

1 40. Petitioner poses no danger to the community and is not a flight risk. His  
2 family ties, employment history, lack of significant criminal record, and consistent  
3 community involvement demonstrate that he is an appropriate candidate for release  
4 under § 1226(a).

5  
6 41. Petitioner's continued detention also violates due process because it is  
7 based on an unlawful statutory interpretation already rejected by this Court in *Villa*.  
8 Under *Villa*, Petitioner was apprehended inside the United States years after his entry  
9 and therefore falls squarely within the detention framework of § 1226(a), which  
10 entitles him to a bond hearing.

11  
12 42. Likewise, Petitioner is a member of the certified class in *Lazaro*  
13 *Maldonado Bautista v. Santacruz*, which likewise held that § 1225(b)(2) mandatory  
14 detention cannot apply absent an arrival inspection. Nevertheless, ICE continues to  
15 detain Petitioner under § 1225(b)(2), and the Folkston Immigration Court refuses to  
16 exercise jurisdiction to conduct a bond hearing. Because Petitioner is a long-term  
17 resident with deep family ties, no criminal history, his prolonged imprisonment  
18 without any opportunity for individualized custody review violates the fundamental  
19 requirements of due process and reinforces the necessity of habeas relief.  
20

21 **CLAIMS FOR RELIEF**

22 **COUNT I**

23 **Violation of the INA**

1 43. Petitioner incorporates by reference the allegations of fact set forth in  
2 the preceding paragraphs.

3 44. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not  
4 apply to all noncitizens residing in the United States who are subject to the grounds  
5 of inadmissibility. As relevant here, it does not apply to those who previously  
6 entered the country and have been residing in the United States prior to being  
7 apprehended and placed in removal proceedings by Respondents. Such noncitizens  
8 are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or  
9 § 1231.  
10

11 45. The application of § 1225(b)(2) to Petitioner unlawfully mandates his  
12 continued detention and violates the INA.  
13

## 14 COUNT II

### 15 **Violation of the Bond Regulations**

16 46. Petitioner incorporates by reference the allegations of fact set forth in  
17 preceding paragraphs.

18 47. In 1997, after Congress amended the INA through IIRIRA, EOIR and  
19 the then-Immigration and Naturalization Service issued an interim rule to interpret  
20 and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and  
21 Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants  
22 for admission, [noncitizens] who are present without having been admitted or  
23  
24

1 paroled (formerly referred to as [noncitizens] who entered without inspection) will  
2 be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis  
3 added). The agencies thus made clear that individuals who had entered without  
4 inspection were eligible for consideration for bond and bond hearings before IJs  
5 under 8 U.S.C. § 1226 and its implementing regulations.  
6

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

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

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

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

16 51. The government may not deprive a person of life, liberty, or property  
17 without due process of law. U.S. CONST. AMEND. V. “Freedom from  
18 imprisonment—from government custody, detention, or other forms of physical  
19 restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*,  
20 533 U.S. 678, 690 (2001).

21 52. Petitioner has a fundamental interest in liberty and being free from  
22 official restraint.  
23  
24

1 53. The government's detention of Petitioner without a bond  
2 redetermination hearing to determine whether he is a flight risk or danger to others  
3 violates his right to due process.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner prays that this Court grant the following relief:  
6

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

20 DATED this 27th day of January, 2026.

21 /s/ Matthew K. Winchester

22 Matthew K. Winchester  
23 Georgia Bar No. 399094  
24 Garland Law Building  
3151 Maple Drive, NE  
Atlanta, Georgia 30305  
T: (678) 517-6894  
E: K.Winchestercb@gmail.com

1                                   **VERIFICATION PURSUANT TO 28 U.S.C. 2242**

2           I represent Petitioner, Mr. Luis Alberto Garcia Cervantes, and submit this  
3 verification on his behalf. I hereby verify that the factual statements made in the  
4 foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my  
5 knowledge.

6                                   DATED this 27th day of January, 2026.

7  
8                                   */s/ Matthew K. Winchester*  
9                                   Matthew K. Winchester  
10                                  Georgia Bar No. 399094  
11                                  Garland Law Building  
12                                  3151 Maple Drive, NE  
13                                  Atlanta, Georgia 30305  
14                                  T: (678) 517-6894  
15                                  E: K.Winchestercb@gmail.com

16  
17  
18  
19  
20  
21  
22  
23  
24                                  *Attorney for Petitioner*