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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

LUIS ALBERTO BERRA ISIDOR,



Petitioner,

v.

TONY NORMAND, Warden, Folkston
ICE Processing Center

Respondent.

Case No. CV 526-168

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1
2 1. Petitioner Luis Alberto Berra Isidor is in custody of Respondent at the
3 Folkston Detention Center. Petitioner is now unlawfully detained without
4 opportunity for bond because the Department of Homeland Security (DHS) and the
5 Executive Office of Immigration Review (EOIR) have concluded Petitioner is
6 subject to 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 ICE employees to consider anyone
13 inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States
14 without admission or inspection—to be subject to detention under 8 U.S.C. §
15 1225(b)(2)(A) and therefore ineligible to be released on bond.
16

17 4. Similarly, on September 5, 2025, the Board of Immigration Appeals
18 (BIA) issued a precedent decision, binding on all immigration judges, holding that
19 an immigration judge has no authority to consider bond requests for any person who
20 entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. &
21 N. Dec. 216 (BIA 2025). *Yajure Hurtado* determined that such individuals are
22 subject to detention under § 1225(b)(2)(A) and therefore ineligible for bond.
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1 (emphasis added). “The application for the writ usurps the attention and displaces
2 the calendar of the judge or justice who entertains it and receives prompt action from
3 him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120
4 (9th Cir. 2000) (citation omitted).

5 **PARTIES**

6
7 15. Petitioner Berra Isidor is native and citizen of Mexico who has been in
8 immigration detention since January 7, 2026. Petitioner was detained and taken into
9 ICE custody, who did not set bond, and Petitioner is unable to obtain review of his
10 custody by an Immigration Judge, pursuant to the Board’s decision in *Matter of*
11 *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

12
13 16. Respondent Tony Normand is employed by Core Civic Group as
14 Warden of the Folkston ICE Processing Center, where Petitioner is detained.
15 Respondent has physical custody of Petitioner. He is sued in his official capacity.

16 **LEGAL FRAMEWORK**

17 17. The Immigration and Nationality Act (“INA”) prescribes three basic
18 forms of detention for the majority of noncitizens in removal proceedings.

19
20 18. First, 8 U.S.C. § 1226 governs the detention of individuals placed in
21 standard removal proceedings under § 1229a. Noncitizens detained under § 1226(a)
22 are generally entitled to a custody redetermination before an Immigration Judge
23 unless they fall into the narrow mandatory-detention categories of § 1226(c).
24

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

6
7 20. Third, 8 U.S.C. § 1231 governs detention of individuals who are subject
8 to final orders of removal, including individuals in withholding-only proceedings,
9 *see* U.S.C. § 1231(a)-(b).

10 21. This case turns on the proper application of § 1226(a) versus §
11 1225(b)(2).

12
13 22. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as
14 part of the Illegal Immigration Reform Act (“IIRIRA”) of 1996, Pub. L. No. 104-
15 208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.
16 Section 1226(a) was most recently amended earlier this year by the Laken Riley Act,
17 Pub. L. No. 119-1, 139 Stat. 3 (2025).

18
19 23. Historically, individuals who entered without inspection and were later
20 placed in § 1229a removal proceedings were treated as detained under § 1226, not §
21 1225. EOIR regulations following IIRIRA confirm that such individuals were not
22 considered “arriving” and therefore were eligible for bond hearings. *See* 62 Fed.
23 Reg. 10312, 10323 (Mar. 6, 1997).

1 24. For decades, consistent with this regulatory framework and prior
2 immigration law, noncitizens who entered without inspection and were apprehended
3 inside the United States received custody redeterminations unless subject to §
4 1226(c). *See* former 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229
5 (1996).
6

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

8 25. On July 8, 2025, ICE—“in coordination with” DOJ—issued guidance
9 declaring that all individuals who entered without inspection must now be detained
10 under § 1225(b)(2)(A), regardless of when they entered the United States or whether
11 they were ever inspected by an immigration officer.
12

13 26. On September 5, 2025, the BIA adopted this new position in *Matter of*
14 *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that any noncitizen who
15 entered without admission is subject to § 1225(b)(2)(A) and categorically barred
16 from a bond hearing.
17

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

19 27. This Court has already rejected the government’s reading of §
20 1225(b)(2). *Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov.
21 4, 2025). In *Villa*, this Court held that § 1225(b)(2) applies only to noncitizens who
22 are “seeking admission” in the context of an arrival inspection by an examining
23 immigration officer.
24

1 28. *Villa* explained that “seeking admission” requires an affirmative act at
2 or near the time of arrival to obtain legal entry, coupled with contemporaneous
3 inspection. *Villa* rejected DHS’s argument that individuals apprehended years after
4 entering the United States may be treated as if they were seeking admission.

5
6 29. Applying that interpretation, the Court concluded that § 1225(b)(2)
7 does not apply to individuals like Petitioner, whose alleged inadmissibility is based
8 on conduct occurring long after entry and not in connection with an arrival
9 inspection.

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

11 30. Federal courts across the country have agreed that § 1226(a)—not §
12 1225(b)—governs detention of individuals apprehended inside the United States,
13 even when they originally entered without inspection. *See, e.g., Rodriguez Vazquez*
14 *v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, 2025 WL
15 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, 2025 WL 2084238 (D.
16 Mass. July 24, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11,
17 2025); *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025);
18 *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Pizarro*
19 *Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025).

20
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22 31. These courts uniformly conclude that Respondents’ interpretation
23 contradicts the statutory text, structure, and decades of agency practice.
24

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

2 32. Despite this Court’s *Villa* decision, the Folkston Immigration Court
3 continues to decline jurisdiction over custody redeterminations for noncitizens like
4 Petitioner, based on the BIA’s erroneous decision in *Matter of Yajure Hurtado*.

5
6 33. Because Petitioner has no administrative avenue to challenge his
7 custody, habeas corpus is the only available remedy to address the ongoing violation
8 of federal law.

9 **FACTUAL BACKGROUND**

10 34. Petitioner, Luis Alberto Berra Isidor, is a twenty-one (21) year old
11 national of Mexico who has resided in the U.S. since he entered without inspection—
12 along with his adult mother and two minor siblings—over eight (8) years ago on or
13 about October 17, 2017.

14
15 35. Petitioner was thirteen (13) years old when he entered the U.S., and
16 since then has graduated high school at Cross Keys High School on May 20, 2022.

17 36. Petitioner was gainfully employed as an electrician and continued his
18 trade education. Petitioner works tirelessly in his trade field to support his family.

19
20 37. Petitioner suffers from medical issues, including a vertebrae L5-S1 disc
21 bulge, that stems from a sports accident, which causes pain and numbness in his
22 extremities.

1 38. On or about June 13, 2020, Petitioner was included as a derivative in
2 Form I-589, Application for Asylum and Withholding of Removal. On December
3 7, 2020, the Immigration Judge denied the application for relief and Petitioner
4 appealed the decision.
5

6 39. On June 10, 2022, DHS filed a motion to dismiss these proceedings
7 with the Board of Immigration Appeals (BIA), which was granted thereby
8 dismissing the removal proceedings and avoiding an final order of removal.

9 40. On January 3, 2026, Petitioner regrettably was arrested for
10 misdemeanor obstruction and interference. Petitioner paid bond of \$350 and was
11 transferred to DHS detention. The case is pending in the Brookhaven, Georgia
12 Municipal Court. Prior to this incident, no other arrests have occurred.
13

14 41. Petitioner was originally held by DHS at FCI Atlanta and then
15 transferred to Folkston Detention Center, where he currently resides.

16 42. DHS initiated a Notice to Appear (NTA) and subsequently initiated
17 removal proceedings, with an upcoming master hearing slated for February 11, 2026,
18 at 1:00 p.m., with an IJ at the 401 W. Peachtree location in Atlanta, Georgia.
19

20 43. ICE charged Petitioner with, inter alia, 8 U.S.C. § 1182(a)(7)(A)(i)(I)
21 immigrant not in possession of a valid unexpired immigrant visa or other required
22 entry document at the time of application for admission.
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1 49. Petitioner incorporates by reference the allegations of fact set forth in
2 preceding paragraphs.

3 50. In 1997, after Congress amended the INA through IIRIRA, EOIR and
4 the then-Immigration and Naturalization Service issued an interim rule to interpret
5 and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and
6 Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants
7 for admission, [noncitizens] who are present without having been admitted or
8 paroled (formerly referred to as [noncitizens] who entered without inspection) will
9 be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis
10 added). The agencies thus made clear that individuals who had entered without
11 inspection were eligible for consideration for bond and bond hearings before IJs
12 under 8 U.S.C. § 1226 and its implementing regulations.

13 51. Nonetheless, pursuant to *Yajure Hurtado*, EOIR has a policy and
14 practice of applying § 1225(b)(2) to individual like Petitioner.

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

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20 **COUNT III**
Violation of Due Process

21 53. Petitioner repeats, re-alleges, and incorporates by reference each and
22 every allegation in the preceding paragraphs as if fully set forth herein.
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1 f. Award Petitioner attorney’s fees and costs under the Equal Access to
2 Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other
3 basis justified under law; and

4 g. Grant any other and further relief that this Court deems just and proper.

5 DATED this 6th day of February, 2026.

6 /s/ Matthew K. Winchester

7 Matthew K. Winchester

8 Georgia Bar No. 399094

9 Garland Law Building

10 3151 Maple Drive, NE

11 Atlanta, Georgia 30305

12 T: (678) 517-6894

13 E: K.Winchestercb@gmail.com

14 *Attorney for Petitioner*

