

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION**

Silvestre Resendis Aviles

Petitioner,

v.

Michael Breckon, Warden, Folkston D Ray
ICE Detention Center

Respondent.

Case No.: CV 526-207

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Silvestre Resendis Aviles, is a national of Mexico who is unlawfully detained in the physical and legal custody of Respondent at the Folkston D Ray ICE Processing Center in Folkston, Georgia. Exhibit 1.

2. Petitioner challenges the legality of his prolonged civil immigration detention and the categorical denial of any meaningful bond hearing. Petitioner has been continuously detained since October 28, 2025, pursuant to removal proceedings initiated by the Department of Homeland Security on January 29, 2020. Exhibit 2.

3. Although Petitioner has never been afforded an individualized custody determination, he remains detained without any opportunity to demonstrate that continued detention is unnecessary because he is neither a flight risk nor a danger to the community.

4. Petitioner has not requested a bond hearing before the Immigration Court because Immigration Judges at the Stewart and Atlanta Immigration Courts hearing bonds for detainees in this facility have consistently maintained that they lack jurisdiction to conduct bond hearings for

individuals classified as arriving aliens. As a result, any attempt to seek bond administratively would be futile and unavailable as a matter of law.

5. Any attempt to justify Petitioner's confinement by classifying him as an "arriving alien" subject to mandatory detention under 8 U.S.C. § 1225(b) is legally erroneous. Petitioner's detention is governed by 8 U.S.C. § 1226(a), which expressly contemplates discretionary custody and an individualized determinations regarding release on bond.

6. For the foregoing reasons issuance of the writ of habeas corpus is warranted. Petitioner respectfully requests that this Court declare his continued detention unlawful and order his immediate release or in the alternative order a prompt individualized bond hearing before an immigration judge with authority to grant release.

JURISDICTION

7. This action is brought pursuant to the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, and challenges the legality of Petitioner's ongoing detention under federal law.

7. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in custody in violation of the Constitution and laws of the United States. Jurisdiction is also proper under 28 U.S.C. § 1331 because this action presents federal questions. The Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706, and the Suspension Clause of Article I, Section 9, Clause 2 of the Constitution further support the Court's jurisdiction.

8. Sovereign immunity does not bar this action. Congress has waived immunity for non-monetary claims seeking relief from unlawful agency action under 5 U.S.C. § 702, and federal courts may enjoin unconstitutional or ultra vires conduct by federal officers.

VENUE

9. Venue is proper in this District because Petitioner is detained at the Folkston D Ray Detention Facility in Folkston, Georgia, within the territorial jurisdiction of this Court. Venue is also proper because Respondent is a federal officer of the United States and a substantial part of the events giving rise to this Petition occurred in this District. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. Although 28 U.S.C. § 2241 does not impose a statutory exhaustion requirement, courts may consider whether a petitioner has pursued available administrative remedies before seeking habeas relief.

11. Any prudential exhaustion requirement is satisfied or in the alternative should be excused. Petitioner has effectively been denied any available administrative remedy to challenge his custody. Immigration Judges at the Stewart Immigration Court have made clear through their rulings in similar cases that they interpret the law to preclude jurisdiction to conduct bond hearings for individuals classified as arriving aliens. Based on that position the Immigration Court has declined to conduct any individualized custody determination for Petitioner.

12. Further administrative review would be futile. The Board of Immigration Appeals lacks authority to grant the relief Petitioner seeks or to adjudicate the constitutional claims raised in this Petition. Where the Immigration Judge has expressly disclaimed jurisdiction to consider bond, no administrative remedy exists to address the legality of Petitioner's detention.

13. Administrative remedies are also inadequate under these circumstances because Petitioner challenges the legality of his continued civil detention under the Constitution and the INA, claims that fall squarely within the province of the federal courts.

PARTIES

14. Petitioner, Silvestre Resendis Aviles, is a citizen and national of Mexico who is currently detained at the Folkston ICE processing Center in Folkston, Georgia.

15. Respondent is the Warden of the Folkston D Ray Detention Center, who has immediate physical custody of Petitioner and is the sole proper respondent in this action. *See Rumsfeld v. Padilla*, 542 U.S. 426 (2004) (in a habeas petition, the proper respondent is the petitioner's immediate custodian).

STATEMENT OF FACTS

16. Petitioner has been in removal proceedings since January 29, 2020, when the Department of Homeland Security served him with a Notice to Appear charging inadmissibility under INA § 212(a)(6)(A)(i). *See Exhibit 2*. After being released on bond, Petitioner remained at liberty for several years. *Exhibit 3*.

17. On or about September 10, 2025, Immigration and Customs Enforcement ("ICE") issued a *Notice to Obligor to Deliver Alien* directing Petitioner's bond obligor to produce him for an interview at the ICE Charleston, South Carolina Office on October 28, 2025. *Exhibit 4*. The notice indicated that Petitioner was to appear for an interview, creating a reasonable expectation of a noncustodial administrative interaction. No interview was conducted. Instead, on October 28, 2025, ICE arrested Petitioner and took him into custody in connection with his long pending removal proceedings. Petitioner has remained detained since that date.

18. Despite his prior release on bond and his continued compliance with all immigration requirements, ICE rearrested Petitioner on October 28, 2025, without a judicial warrant and without making any individualized determination that he posed a flight risk or a danger to the community. ICE took Petitioner into custody pursuant to a categorical enforcement decision

rather than a case specific assessment, and without affording him any opportunity to contest the basis for his detention.

19. Since October 28, 2025, Petitioner has remained continuously detained without bond. He has never received a custody determination hearing by an immigration judge.

Jurisdictional Bar to Bond Hearing

20. From the outset of Petitioner's detention, any attempt to obtain release on bond was categorically precluded by DHS's classification of Petitioner as an arriving alien and the consistent adherence to that classification by Immigration Judges at the Stewart Immigration Court.

21. Immigration Judges have made clear that they lack jurisdiction to conduct bond hearings for individuals deemed applicants for admission and subject to mandatory detention.

22. In other words, because Petitioner was treated as an arriving alien, the Immigration Judges concluded that INA § 1225(b) deprived the court of authority to review ICE's custody determination. Relying on agency interpretations of the immigration detention statutes, the Immigration Judges declined to consider whether Petitioner's continued detention was justified by any flight risk or danger he might pose. No individualized assessment of Petitioner's suitability for release was ever conducted.

23. This categorical jurisdictional bar foreclosed any meaningful review of Petitioner's detention at an early stage of his confinement. Petitioner was denied the basic procedural safeguard of a bond hearing, even as his detention began and continued for months.

24. The ordinary process by which a detainee could seek reconsideration of custody status was entirely unavailable to Petitioner, setting the stage for his prolonged confinement

without the benefit of the case-by-case evaluation that Congress ordinarily provides in INA § 1226(a) custody redeterminations.

Prolonged Detention Without Bond Hearing

25. As Petitioner's removal case progresses, he remains jailed without any opportunity for release. By late 2025, multiple federal district courts in Georgia had issued decisions recognizing that noncitizens in Petitioner's circumstances, longtime residents detained within the United States and charged under INA § 212(a)(6)(A)(i), are entitled to individualized bond hearings under 8 U.S.C. § 1226(a), notwithstanding DHS's contrary view.

26. Despite this growing body of case law, the Immigration Judge's at the Stewart Immigration Court continue to apply a blanket rule that they cannot entertain a bond request. The Immigration Judges refuse to evaluate Petitioner's individual circumstances and make any findings as to whether Petitioner might be a flight risk or a danger to the community.

27. Petitioners' detention has now extended for months without any opportunity for release or meaningful review. Less restrictive alternatives to incarceration including release on reasonable bond or conditions of supervision have never been considered.

28. The continued categorical denial of a bond hearing has left Petitioner with no administrative avenue to secure his freedom while he awaits the resolution of his immigration case.

BREAKDOWN OF IMMIGRATION COURT NEUTRALITY AND NEED FOR ARTICLE III RELEASE

29. Federal courts traditionally presume that when a habeas petitioner prevail, the immigration courts will implement the court's ruling in good faith by conducting a lawful and neutral bond hearing. That presumption no longer holds.

30. Since mid 2025 and continuing into 2026, the Department of Justice's immigration court system has made clear that it does not view itself as bound to implement federal district court

rulings recognizing detainees' entitlement to bond under 8 U.S.C. § 1226(a). Instead, the Executive Office for Immigration Review (EOIR) leadership has instructed immigration judges to continue denying bond categorically under *Matter of Yajure Hurtado*, even where an Article III court has determined that detention under § 1225(b) is unlawful.

31. Once a noncitizen has effected entry into the United States, constitutional protections attach in full. The Supreme Court has repeatedly recognized that physical presence within the country triggers the Fifth Amendment's guarantee of due process, regardless of whether the individual's entry was lawful. See *Landon v Plasencia*, 459 U.S. 21, 32 (1982); *Kwong Hai Chew v Colding*, 344 U.S. 590, 596 (1953). Among these protections are the right to a fair hearing, an individualized assessment of liberty, and adjudication by a neutral decisionmaker. These safeguards are substantive constitutional requirements, not procedural formalities, and they exist to prevent arbitrary or unchecked civil detention by the Executive Branch.

32. Recent developments, however, have substantially eroded the independence and neutrality of the immigration court system. Public reporting and documentary evidence reflect that widespread personnel changes, including mass firings and administrative restructuring, have placed immigration judges under heightened institutional pressure. In this environment, judges face the realistic prospect of discipline, reassignment, or removal if they grant relief to noncitizens, including release on bond. Exhibit 5.

33. The predictable consequence of these pressures is an adjudicatory system in which immigration judges are no longer able to function as independent arbiters but instead operate within constraints that favor continued detention. As a result, noncitizens cannot reliably provide the neutral and effective custody determination required under current agency directives. Compounding this problem, there is no effective external oversight of immigration judges' custody

decisions, and a bond denial typically results in months or years of continued detention while an appeal remains pending before the Board of Immigration Appeals.

34. Even where an immigration judge does grant bond, release is often illusory. In recent practice, the Department of Homeland Security routinely appeals bond grants to the Board of Immigration Appeals and invokes an automatic stay regulation to keep noncitizens detained throughout the pendency of the appeal.

35. What was once an extraordinary and rarely used mechanism has become standard operating procedure. Numerous federal courts have concluded that this automatic stay regulation exceeds statutory authority and violates due process. See, e.g., *Campos Leon v Forestal*, No. 1:25 cv 01774 SEB MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *B.D.V.S. v Forestal*, No. 1:25 cv 01968 SEB TAB, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025). The practical effect is that even a favorable bond decision by an immigration judge does not result in release but instead prolongs unlawful detention without meaningful review.

36. Under these circumstances, if the Court concludes that immediate release is not appropriate but that a custody determination is required, any bond hearing should be conducted by an Article III court. Federal judges are structurally insulated from political and administrative pressure and are uniquely positioned to apply due process principles faithfully.

37. Only an Article III judge can provide the neutral, individualized assessment of liberty that the Constitution requires. A remand to the immigration court system would risk perpetuating the very due process violations at issue and would not provide the meaningful hearing contemplated by *Landon*, *Kwong Hai Chew*, and the Fifth Amendment. Retention of jurisdiction by this Court is therefore necessary to ensure the integrity of any custody determination.

38. Finally, if the Court orders a bond hearing, it should place the burden squarely on the government to justify continued detention. Although the Eleventh Circuit has not yet resolved the burden of proof under § 1226(a), every circuit to address the issue has held that the government must establish, by clear and convincing evidence, that detention is necessary based on flight risk or danger. See *Diaz v Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022); *Velasco Lopez v Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020); *Hernandez Lara v Lyons*, 10 F.4th 19 (1st Cir. 2021). This allocation of the burden reflects Congress’s design that discretionary detention under § 1226(a) operates against a presumption of release for noncriminal noncitizens, in contrast to the mandatory detention scheme set forth in § 1226(c). Without a clear evidentiary burden imposed on the government, a bond hearing would provide only the appearance of process, not the constitutional protection due process demands.

39. Recent developments confirm that this is not a matter of isolated error or individual judicial misunderstanding, but rather a coordinated institutional policy. Exhibit 6.

40. Recent experience across immigration courts demonstrates a systemic breakdown in the neutrality and reliability of bond adjudications, particularly in cases involving noncitizens detained under contested detention authority. Immigration judges are increasingly denying bond on conclusory findings of “flight risk,” without meaningfully engaging with the evidentiary record or weighing the mandatory factors articulated in *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

41. These denials routinely disregard extensive evidence of long-term residence, family and community ties, prior compliance with immigration proceedings, eligibility for relief, and the absence of recent criminal history. Instead, judges rely on generalized assumptions untethered to the individual before the court, converting what is statutorily discretionary detention into de facto mandatory detention.

CLAIM FOR RELIEF

COUNT ONE

Violation of the Fifth Amendment Due Process Clause

42. The allegations in the above paragraph are realleged and incorporated herein.

43. The Fifth Amendment to the United States Constitution prohibits the federal government from depriving any person of liberty without due process of law. These protections extend to all persons within the United States, including noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

44. Whether the procedures accompanying a noncitizen's civil detention satisfy due process is evaluated under the balancing test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), which considers: (1) the private interest affected by official action; (2) the risk of an erroneous deprivation of that interest through the procedures used; and (3) the government's interest, including the function involved and the fiscal or administrative burdens that additional procedural requirements would entail.

45. Petitioner has been detained for several months without any individualized bond hearing. His liberty interest is substantial, and the risk of erroneous deprivation of that liberty is extraordinarily high where detention is automatic and categorical, without a case-by-case evaluation.

46. The government's interest in ensuring Petitioner's appearance does not justify the complete denial of any hearing, particularly when less restrictive alternatives to incarceration, such as release on bond, supervision, or other conditions, are available. The blanket refusal to provide a bond hearing violates fundamental principles of due process.

47. The government's interest does not outweigh Petitioner's due process rights to an individualized determination. Providing a bond hearing would impose minimal administrative

burden and is the precise procedure Congress contemplated under 8 U.S.C. § 1226(a) for individuals in Petitioner's situation.

48. Under the balancing framework set forth in *Mathews v. Eldridge*, Petitioner's continued detention without a bond hearing violates the Due Process Clause.

COUNT TWO
Detention Not Authorized by the Immigration and Nationality Act and Agency
Action Not in Accordance with Law
(5 U.S.C § 706(2)(A) and 8 U.S.C. § 1226)

49. The allegations in the above paragraph are realleged and incorporated herein.

50. The INA authorizes only discretionary civil immigration detention, with individualized custody determinations under 8 U.S.C. § 1226(a).

51. Congress did not mandate unconditional, prolonged detention for immigrants like Petitioner who were arrested inside the United States and have substantial ties to the community. The categorical denial of bond in Petitioner's case, based solely on an agency's interpretation that classifies him as an arriving alien and thereby strips Immigration Judges of jurisdiction, exceeds the detention authority that Congress has granted.

52. It effectively places Petitioner in the category of mandatory detention without statutory basis, in contravention of the framework set forth by Congress in the INA.

53. Under the APA, a reviewing court must set aside agency action that is arbitrary, capricious, or not in accordance with law. 5 U.S.C. § 706(2)(A). An agency acts unlawfully when it fails to consider relevant factors, departs from the evidence before it, or applies a categorical rule that exceeds its statutory authority.

54. The categorical denial of bond consideration based solely on a jurisdictional interpretation rather than Petitioner's individual circumstances, is inconsistent with 8 U.S.C. § 1226(a) and exceeds the authority granted by Congress.

55. Respondent's continued detention of Petitioner is therefore unlawful under the Immigration and Nationality Act and the Administrative Procedure Act. Accordingly, habeas relief is warranted.

PRAYER FOR RELIEF

Wherefore, Petitioner seeks the same relief granted in Villa v. Normand, 5:25-cv-89, and related cases in with the Southern District of Georgia granted habeas relief for individuals unlawfully detained without a bond hearing under the same legal theory. As such, Petitioner respectfully requests that this Court:

- A. Assume jurisdiction over this Petition;
- B. Declare that Respondent's continued detention of Petitioner without an individualized bond hearing violates the Constitution and laws of the United States;
- C. Issue a Writ of Habeas Corpus ordering Respondent to release Petitioner immediately, or, in the alternative, to provide a prompt individualized bond hearing before an immigration judge authorized to order release;
- D. Prohibit Respondent from transferring Petitioner from this District without prior approval of the Court; and
- E. Grant any further relief this Court deems just and proper.

Respectfully Submitted,
This 12th day of February, 2026.

A handwritten signature in black ink, appearing to read "Rachel Effron Sharma". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rachel Effron Sharma
DreamPath Law, LLC
5425 Peachtree Parkway NW
Norcross, GA 30092
rachel@dreampathlaw.com
Tel: (470) 273-3444

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's family members and have reviewed various documents for Petitioner. Based on those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

This 12th day of February, 2026.



Rachel Effron Sharma
DreamPath Law, LLC
5425 Peachtree Parkway NW
Norcross, GA 30092
rachel@dreampathlaw.com
Tel: (470) 273-3444