

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

ANTONIO GOMEZ SALMERON,

Petitioner,

v.

JOHN TSOUKARIS, 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;
TONY NORMAND, Warden of FOLKSTON
ICE PROCESSING CENTER,

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner **ANTONIO GOMEZ SALMERON** brings this petition for a writ of habeas corpus to seek enforcement of the Immigration and Nationality Act's (INA) provisions for bond hearings before an Immigration Judge. Petitioner is in the physical custody of Respondents at the **FOLKSTON ICE PROCESSING Center in FOLKSTON, Georgia**. Petitioner now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have continued to deny bond hearings under INA 236, instead treating unlawful entrants, even of longstanding residence in the U.S., under the mandatory detention scheme at INA 235.

2. Immigration Judges at Stewart Immigration Detention Center with jurisdiction over Folkston detainees continue to decline jurisdiction, despite the fact that hundreds of Courts have found DHS's policy regarding detention of unlawful entrants without bond hearings to be unlawful. The Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have now created a de facto procedural detour: what would previously have been a straightforward, discretionary procedure where a detained Respondent could vindicate his rights expeditiously and economically by requesting a bond hearing, EOIR now in effect requires this honorable Court to, once again, order the agency to hold the very bond hearing which the statute requires.

JURISDICTION

3. Petitioner is in the physical custody of Respondents. Petitioner is detained at the FOLKSTON ICE PROCESSING CENTER in FOLKSTON, GEORGIA.¹

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

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

VENUE

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

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

REQUIREMENTS OF 28 U.S.C. § 2243

8. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If

¹ Typically, an exhibit showing the detainee locator information would be submitted with this Petition to show proof of location; however, the Department of Homeland Security has not updated the Petitioner’s location in the Detainee Locator.

1 an order to show cause is issued, Respondents must file a return “within three days unless
2 for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

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

9 10. The Court should grant the petition for writ of habeas corpus “forthwith,” as the
10 legal issues have already been resolved for class members in *Maldonado Bautista*.

11 **PARTIES**

12 11. Petitioner ANTONIO GOMEZ SALMERON is alleged to be a citizen of
13 MEXICO who is in immigration detention at FOLKSTON Immigration Detention Center
14 under the auspices of the STEWART Immigration Court in LUMPKIN, Georgia, where
15 Respondents continue to require a Federal District Court Order before they will grant a bond
16 hearing.

17 12. Respondent JOHN TSOUKARIS is the Director of the Atlanta Field Office of
18 ICE’s Enforcement and Removal Operations division; however, on information and belief,
19 the DHS is rotating their Field Office Director without publishing a schedule of rotation. As
20 such, JOHN TSOUKARIS or his unknown, unannounced provisional replacement is
21 Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal.
22 He or his acting counterpart is named in his or her official capacity.

13. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

14. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

15. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

16. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

17. Respondent, Warden TONY NORMAND, is employed by the private, for-profit detention corporation contracted by the Government as an agent to confine immigrants at FOLKSTON ICE PROCESSING Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA and Bond Regulations

18. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

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

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

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

14 **COUNT II**
15 **Violation of Due Process**

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

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

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

1 detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection
2 and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
3 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

4 33. Thus, in the decades that followed, most people who entered without inspection
5 and were placed in standard removal proceedings received bond hearings, unless their
6 criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was
7 consistent with many more decades of prior practice, in which noncitizens who were not
8 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer.
9 *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting
10 that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

11 34. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly
12 acknowledged that individuals who have already entered the United States and are not
13 apprehended within 100 miles of the border or within 14 days of entry are subject to
14 discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b).
15 During oral argument on November 30, 2016, then-Solicitor General Ian Gershengorn
16 stated: “If they are not detained within 100 miles of the border or within 14 days... then
17 they are under 1226(a) and not 1226(c)” and further clarified, in response to a question
18 concerning “an alien who has come into the United States illegally without being admitted
19 [and] who takes up residence 50 miles from the border,” the Government responded, “The
20 answer is they are held under 1226(a) and that they get a bond hearing...” Transcript of Oral
21 Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. ____ (2018) (No. 15-1204). DHS
22 reiterated that such individuals “would be held under 1226(a)” and cited the administrative
23 record to support that position. *Id.* These statements reflect DHS’s prior litigation stance that
24

1 § 1226(a) governs detention for noncitizens who have entered and are residing in the United
2 States, a position directly contrary to the agency's current interpretation applying §
3 1225(b)(2)(A) to such individuals. Having prevailed in *Jennings* after taking this position,
4 they should be estopped from taking the contrary position now simply because their political
5 or litigation interests have changed. Estoppel in this case is necessary to preserve the
6 predictability inherent in the rule of law and due process under the Fifth Amendment, as
7 well as to protect the integrity of the judicial system.

8 35. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that
9 rejected well-established understanding of the statutory framework and reversed decades of
10 practice.

11 36. The new policy, entitled "Interim Guidance Regarding Detention Authority for
12 Applicants for Admission,"² claims that all persons who entered the United States without
13 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A).
14 The policy applies regardless of when a person is apprehended, and affects those who have
15 resided in the United States for months, years, and even decades.

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

20 38. Since Respondents adopted their new policies, several federal courts have rejected
21 their new interpretation of the INA's detention authorities. Courts have likewise rejected
22 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

23
24 ² Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

39. A growing number of federal courts have rejected ICE and EOIR's expanded interpretation of the Immigration and Nationality Act's detention provisions. These courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority applicable in these cases. For example, courts in Massachusetts, Arizona, New York, Minnesota, California, and Nebraska have reached this conclusion. See: *Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025).

40. As of December 18th, 2025, the DHS policy was VACATED. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3549826, at *8–9 (C.D. Cal. Dec. 18, 2025) (vacating DHS's July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission" under the Administrative Procedure Act); *id.*, 2025 WL 3549854, at *2 (entering final judgment as to Counts I–III).

41. These decisions reflect a clear judicial consensus, now binding as to class members, that the government's reliance on § 1225(b)(2) is misplaced in cases involving those whose immigration status lawfully falls under § 1226(a).

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

1 43. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
2 recently entered the United States and were not free to mingle with the general population
3 after being free from official restraint. The statute's entire framework is premised on
4 inspections at the border of people who are "seeking admission" to the United States. 8
5 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory
6 detention scheme applies "at the Nation's borders and ports of entry, where the Government
7 must determine whether a[] [noncitizen] seeking to enter the country is admissible."
8 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

9 44. Because arriving aliens are processed under 8 U.S.C. § 1225(b) and remain under
10 official restraint, the government cannot charge them simultaneously under 8 U.S.C.
11 § 1182(a)(6)(A)(i) as individuals who "entered without inspection," a charge that
12 presupposes the completion of an "entry" as defined in *Patel*. The distinct statutory
13 detention regimes further underscore this incompatibility: arriving aliens fall within the
14 mandatory § 1225(b) framework, whereas those alleged to have entered without inspection
15 fall under § 1226. Consequently, DHS must select a single, legally coherent classification
16 and may not pursue allegations premised on contradictory theories of entry status.

18 FACTS

19 45. Petitioner ANTONIO GOMEZ SALMERON is a citizen of MEXICO who has
20 resided in the United States for decades. He is the father of U.S. Citizen children. He
21 entered without inspection. He is currently detained at Immigration Detention Center in
22 FOLKSTON, Georgia. ICE did not set bond.

1 46. Petitioner is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. DHS
2 has charged Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and placed him in
3 removal proceedings pursuant to 8 U.S.C. § 1229a. Petitioner is a member of the Bond
4 Eligible Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM
5 (C.D. Cal.), which includes noncitizens without lawful status who entered without
6 inspection and are not subject to mandatory detention under the INA.

7 47. Despite the intervention of hundreds of Federal District Courts holding that class
8 members are detained under 8 U.S.C. § 1226(a) and entitled to consideration for release on
9 bond—Respondents continue to apply § 1225(b)(2) and deny bond hearings to class
10 members, including Petitioner. Immigration Judges at Stewart Immigration Court in
11 Lumpkin, Georgia (who exercise jurisdiction over Folkston cases) have refused jurisdiction,
12 citing agency directives to disregard the Court's earlier rulings, and insisting on awaiting
13 guidance from the 11th Circuit or EOIR to assume jurisdiction. Respondents' continued
14 detention of Petitioner violates the INA.

15
16 **PRAYER FOR RELIEF**

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

- 18 a. Assume jurisdiction over this matter;
- 19 b. Issue a writ of habeas corpus requiring that within one day, Respondents release
- 20 Petitioner;
- 21 c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner
- 22 unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;
- 23
- 24

- 1 d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA),
2 as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
3
4 e. Grant any other and further relief that this Court deems just and proper.
5
6

7 DATED this 17th day of February, 2026.

8 *Attorney for Petitioner*

9 Respectfully submitted,
10

11 /s/ Gabriela Picazo Batista

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19 *To Be Designated Local Counsel for Petitioner

20 Pursuant to L.R. 83.4
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