

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

LUIS VILLACORTA PERLERA,
Petitioner,

-against-

Case No. 2:25-cv-17122

**PETITION FOR A WRIT
OF HABEAS CORPUS**

JOHN DOE, Warden, Delaney Hall Detention
Facility;
JOHN TSOUKARIS, Director, Newark Field
Office,
US Customs and Immigration Enforcement;
TODD LYONS, Acting Director, U.S. Immigration
and Customs Enforcement;
KRISTINOEM, Secretary, Department of Homeland
Security;
PAMELA BONDI, U.S. Attorney General; and
DARIN K. MARGOLIN, Director, Executive Office
for Immigration Review
Respondents.

INTRODUCTION

1. Petitioner Luis Villacorta Perlera hereby seeks a writ of habeas corpus releasing him immediately from detention, or in the alternative, directing that he be provided with a bond hearing before an Immigration Judge forthwith.
2. Petitioner is a citizen of El Salvador, who has been physically present in the U.S. since 2007. Petitioner is married to Carmen Herrera, who is a US citizen, is a step-father to her young son and has been employed in the same position (as a restaurant worker) for the last several years, and pays taxes. He was detained by officers from US Immigration and Customs Enforcement (ICE) on or about October 30, 2025 and is currently at the Delaney Hall federal immigration detention facility in Newark NJ. Upon information and belief, prior to this detention, Petitioner had never been

detained or held in custody by US immigration officials, nor does he have any criminal history.

3. Respondents have detained Mr. Villacorta Perlera without a bond and take the position that he is not eligible for a bond hearing. He now brings this Petition for a writ of habeas corpus, seeking immediate release from custody or a bond hearing in the alternative, as well as an order enjoining his removal out of this district while this case remains pending.

JURISDICTION

4. This action arises under the U.S. Constitution and the Immigration and Nationality Act, at 8 U.S.C. §1101 et seq. This Court has habeas corpus jurisdiction pursuant to 5 U.S.C. §703, 28 U.S.C. §2241 et seq., and Article I, § 9, Clause 2 of the United States Constitution (suspension clause).
5. Petitioner is in custody under color of the authority of the U.S., in violation of the constitution and laws of the U.S.

VENUE

6. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(e), because Petitioner is physically detained in this District and Respondents' principal place of business is in this district.

PARTIES

7. Petitioner Luis Villacorta Perlera is a citizen of El Salvador, who has resided continually in the U.S. since on or about 2007. He was arrested in Paterson New Jersey on or about October 20, 22, 2025 and is currently detained at the Delaney Hall

Federal Detention Facility in Newark New Jersey.

8. Respondent John Doe is the warden or facility director at the Delaney Hall Federal Detention Facility and is Petitioner's immediate custodian.
9. Respondent John Tsoukaris is the Newark Field Office Director of US Immigration and Customs Enforcement, and is Petitioner's legal and physical custodian.
10. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement (ICE). ICE oversees enforcement of the immigration laws and is responsible for, *inter alia*, decisions regarding the detention of non-citizens inside the US, including those regarding Mr. Villacorta Perlera.
11. Kristi Noem is Secretary of the Department of Homeland Security of the United States, an agency of the US government, of which ICE is a sub-agency, and is responsible for administration and enforcement of the nations' immigration laws.
12. Pamela Bondi is the United States Attorney General, who is responsible for the actions of the US Department of Justice, including its sub-agency the Executive Office for Immigration Review, of which the US Immigration Courts are a part.
13. Daren K. Margolin is director of the Executive Office for Immigration Review ("EOIR"), an agency within the Department of Justice. EOIR administers the Immigration Courts which are responsible for, *inter alia*, the holding of bond hearings for detained non- citizens such as Petitioner.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. Mr. Villacorta Perlera has no administrative remedies to exhaust. While he has not requested a bond hearing, requesting such a hearing would be futile in light of the recent Board of Immigration Appeals ("BIA") decision in *Matter of Yajure Hurtado*,

29 I&N Dec. 216 (BIA 2025). In that case the BIA interpreted the detention provisions of the INA to preclude the right to a bond hearing for most noncitizens who, like Petitioner, entered the U.S. without inspection. An Immigration Judge cannot grant Petitioner a bond hearing, as Immigration Judges are bound by precedential BIA decisions.

15. Further, there are no exhaustion requirements with regard to the claim of unlawful detention, and exhaustion is only required when specifically mandated by Congress.

RELEVANT LAW

16. Detention of non-citizens can only occur in two discrete situations: pending a decision on whether they are to be removed (i.e., during their removal proceedings), and after a final order of removal has been issued. 8 U.S.C. § 1226 governs the detention of non-citizens pending removal proceedings. § 1226(a) authorizes the arrest, detention, and release on a bond or conditional parole of a non-citizen pending a decision on whether they are to be removed from the United States. 8 U.S.C. § 1186(b) authorizes the revocation of a bond or parole granted under § 1226(a). 8 U.S.C. § 1186(c), known as the “mandatory detention” statute, renders ineligible for bond pending removal proceedings several classes of non-citizens. 8 U.S.C. § 1231 governs the detention of non-citizens after they have been ordered removed. Other than pursuant to these two statutory provisions, Respondents have no authority to detain non-citizens.
17. A recent Board of Immigration Appeals decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), precludes Immigration Judges from providing bond hearings to any non-citizen alleged to have entered the US without inspection. However,

almost every district court judge – now over one hundred - to have considered the matter has rejected the reasoning in that case, and found the non-citizen to be eligible for a bond hearing.

FACTS

18. Petitioner Luis Villacorta Perlera is a native and citizen of El Salvador, who has been living in Massachusetts since entering the US in 2007. He has worked in a restaurant for over the last ten years, is married to a US citizen, and files and pays taxes.
19. Petitioner has never been arrested or charged with any crime, and prior to his detention by ICE in September, had never been detained by any immigration officers since his entry in 2007.
20. On or about September 22, 2025, Respondent ICE detained Petitioner near Paterson, New Jersey, and took him to the Delaney Hall immigration detention facility, located at 451 Doremus Avenue, Newark, NJ 07105, where he remains.
21. Respondents have not placed Petitioner in removal proceedings, and so there is no statutory or other legal basis for his detention. If he is placed in removal proceedings, Petitioner will be eligible to apply for what is known as cancellation of removal for non-lawful permanent residents pursuant to 8 U.S.C. § 1229b(b).
22. To the extent there is a statutory basis for Petitioner's detention, it is 8 U.S.C. § 1226(a).
23. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a custody redetermination hearing before an immigration judge (colloquially called a "bond hearing") after which he must be released unless the government can show that he is either a flight risk or a danger to the community.

24. However, the Board of Immigration Appeals has issued a decision (*Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)) which precludes Immigration Judges from holding a bond hearing for any non-citizen alleged to have entered the US without inspection. Even though over one hundred District Court judges have rejected the reasoning in this decision and found that such non-citizens are eligible for a bond hearing, and only a few have upheld it, Immigration Judges are still precluded by this decision from finding jurisdiction to hold such a hearing.
25. Petitioner is being irreparably harmed by his ongoing unlawful detention without a bond hearing.

CLAIMS FOR RELIEF

COUNT ONE: Violation of 8 U.S.C. 1226(a) and Associated Regulations

26. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
27. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).
28. Petitioner has not been, and will not be, provided with a bond hearing by Respondents as required by law.
29. Petitioner's continuing detention is therefore unlawful.

COUNT TWO: Violation of Fifth Amendment Right to Procedural Due Process (Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a))

30. Because Petitioner is a person arrested inside the United States and is subject to detention, if at all, under 8 U.S.C. § 1226(a), the Due Process Clause of the Fifth Amendment to the United States Constitution requires that Petitioner receive a bond hearing with strong procedural protections, after which he is entitled to

release unless Respondents show that he is a danger to the community or a flight risk. Petitioner is neither.

31. Petitioner has not been, and will not be, provided with a bond hearing by Respondents as required by law.
32. Petitioner's continuing detention is therefore unlawful.

COUNT THREE: Violation of Fifth Amendment Right to Substantive Due Process

33. Pre-removal immigration detention is only authorized during the pendency of removal proceedings, 8 USC § 1226(a), and must bear a "reasonable relation" to the prevention of flight and danger to the community during the pendency of removal proceeding, and not be impermissibly punitive.
34. Although Petitioner has been detained by Respondents, they have not placed him in removal proceedings, and so there is no statutory basis for his detention.

Accordingly, his detention violates his rights under the Fourth Amendment to be free from unlawful government seizure.
35. Petitioner has a protected liberty interest in his liberty. Respondents' unlawful detention of Petitioner, without placing him in removal proceedings, has no statutory basis and thus violates his rights to substantive due process as guaranteed by the Fifth Amendment.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be transferred outside the District of New Jersey;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this

Petition should not be granted;

- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, provide Petitioner with a bond hearing and order Petitioner's release on conditions the Court deems just and proper.
- (5) Declare that Petitioner's detention without a bond hearing is unlawful; and
- (6) Award Petitioner his reasonable litigation costs and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.
- (7) Grant any further relief this Court deems just and proper.

Dated: November 1, 2025

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