

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(Northern Division)

JOSE CRUZ SANTOS
A.K.A. JOSE CRUZ-SANTOSE

Petitioner,

v.

NIKITA BAKER, *in her official capacity*
as Field Office Director of the Baltimore
Field Office of Enforcement and Removal
Operations, U.S. Immigrations and
Customs Enforcement; U.S. Department of
Homeland Security;

TODD M. LYONS, *in his official capacity*
as Acting Director, Immigration and
Customs Enforcement, U.S. Department of
Homeland Security;

KRISTI NOEM, *in her official capacity* as
Secretary, U.S. Department of Homeland
Security; and

PAMELA BONDI, *in her official capacity*
as Attorney General of the United States;

Respondents.

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) Case No. 25-4096
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) PETITION FOR WRIT OF HABEAS CORPUS
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INTRODUCTION

1. Petitioner Jose Cruz Santos is a citizen of Honduras who has resided in the U.S. since about July 31, 2002. Petitioner’s legal name is “Jose Arnaldo Cruz Santos,” but when processed by the Department of Homeland Security, his name was entered as “Jose Arnaldo Cruz-Santose.” *See* ICE Detainee Locator Results, Exhibit 1.
2. Upon information and belief, Immigration and Customs Enforcement (“ICE”) officers

apprehended Petitioner on December 10, 2025, on Adelphi Road in Hyattsville, Maryland.

3. Upon information and belief, Petitioner is detained at the ICE holding center in Baltimore, Maryland. *See* Exhibit 1.
4. Petitioner initially entered the United States at the southern border without inspection on or about July 31, 2002. After apprehending Petitioner on December 10, 2025, ICE served Petitioner with a Notice to Appear (“NTA”) for removal proceedings at the Hyattsville Immigration Court; his first hearing is scheduled for April 24, 2026. *See* Executive Office for Immigration Review Automated Case Information, Exhibit 2.
5. The Board of Immigration Appeals (BIA) has issued a precedential decision that unlawfully reinterprets the Immigration and Nationality Act (INA), Title 8 of the United States Code. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Prior to this decision, noncitizens who have lived in the United States for years and were apprehended by ICE in the interior of the country were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges. In *Yajure Hurtado*, the BIA held that every noncitizen who entered the country without admission – no matter how many years ago – is categorically ineligible for bond under 8 U.S.C. § 1225(b)(2)(A). The government deems Petitioner to be subject to mandatory detention under § 1225(b)(2)(A).
6. Petitioner’s detention pursuant to § 1225(b)(2)(A) violates the plain language of Title 8 of the U.S. Code and its implementing regulations. Petitioner, who has resided in the U.S. for over 23 years and who was apprehended in the interior of the United States, is not an “applicant for admission” who is “seeking admission” under § 1225(b)(2)(A). Rather, Petitioner’s detention is pursuant § 1226(a) and its implementing regulations, which allow for release on bond.

7. Petitioner requests that this Court either order Respondents to release Petitioner from custody or provide him with a bond hearing.

CUSTODY

8. Petitioner is currently in ICE custody at the ICE Holding Center in Baltimore, Maryland. *See* ICE Detainee Locator Results, Exhibit 1. He is therefore in “‘custody’ of [the DHS] within the meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

9. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et. seq.*
10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).
11. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

13. Petitioner is “in custody” for the purpose of 8 U.S.C. § 2241 because Petitioner was arrested and detained by Respondents.

VENUE

14. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the District of Maryland. Petitioner is under the jurisdiction of ICE’s Baltimore, Maryland Field Office, and he is currently detained in Baltimore, Maryland at the ICE Holding Center.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. Administrative exhaustion is unnecessary as it would be futile as the administrative body has predetermined the issue before it. *See McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); *see also Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

16. It would be futile for Petitioner to seek a custody redetermination hearing before an immigration judge because of the recent BIA decision holding that anyone who has entered the U.S. without inspection is now considered an “applicant for admission” who is “seeking admission” and therefore subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA’s decision in *Yajure Hurtado* renders exhaustion futile).

17. Additionally, the agency does not have jurisdiction to review Petitioner’s claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a “futile

exercise because the agency does not have jurisdiction to review” constitutional claims).

PARTIES

18. Petitioner is from Honduras and has resided in the U.S. since about July 2002. He is detained in the ICE Holding Center in Baltimore, MD.
19. Respondent Nikita Baker is sued in her official capacity as Field Office Director, Baltimore Field Office, Enforcement and Removal Operations, ICE. In her official capacity, Respondent Baker is the legal and physical custodian of Petitioner.
20. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.
21. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner’s ultimate legal custodian.
22. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

23. Title 8 of the United States Code prescribes different forms of detention for noncitizens in removal proceedings.
24. Individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

25. Title 8 also provides for mandatory detention of noncitizens subject to expedited removal under § 1225(b)(1) as well as other recent arrivals deemed to be “seeking admission” under § 1225(b)(2).
26. Title 8 authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. *See* § 1231(a)–(b).
27. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
28. Following the enactment of the IIRIRA, the U.S. Department of Justice’s Executive Office of Immigration Review (“EOIR”) drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“[A]liens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination”).
29. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings under § 1229a, were considered for release on bond and received bond hearings before an Immigration Judge, unless their criminal history rendered them ineligible.
30. For decades, long-term residents of the U.S. who entered without inspection and were

subsequently apprehended by ICE in the interior of the country had been detained pursuant to § 1226 and entitled to bond hearings before an immigration judge, unless barred from doing so due to their criminal history.

31. In July 2025, DHS expanded its interpretation of the mandatory detention provisions of § 1225(b)(2)(A) and began asserting that all individuals who entered without inspection should be considered “seeking admission” and therefore subject to mandatory detention under § 1225(b)(2)(A).
32. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the statutory text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
33. Respondents’ new legal interpretation is contrary to the statutory framework and its implementing regulations. For decades, Respondents had applied § 1226(a) to individuals like Petitioner.
34. Federal district court judges throughout the country have rejected Respondents’ new legal interpretation and instead consistently have found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country.
35. The statutory context and structure make clear that § 1226 applies to individuals who have not been admitted and entered without inspection. In 2025, Congress added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted and have been charged, arrested or convicted of certain criminal activity. *See The Laken Riley Act*, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (§ 1226(c)(1)(E)).
36. By specifically referencing inadmissibility for entry without inspection under § 1182(6)(A)

in the Laken Riley Act, Congress made clear that such individuals who have not been charged, arrested or convicted of the indicated criminal activity are otherwise covered by § 1226(a). Thus, § 1226 applies to noncitizens charged as inadmissible, including those present without admission or parole.

37. The Supreme Court has explained that § 1225(b) is concerned “primarily [with those] seeking entry,” and is generally imposed “at the Nation’s borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 297, 2987 (2018). In contrast, § 1226 “authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings.” *Id.* at 289 (emphases added).

38. Furthermore, § 1225(b)(2) specifically applies only to those “seeking admission,” and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are “coming or attempting to come into the United States.” The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer “seeking admission” or “coming [...] into the United States.” *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing “is arriving” in § 1225(b)(1)(A)(i) and observing that “[t]he use of the present progressive, like use of the present participle, denotes an ongoing process”).

39. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner, who entered the U.S. over 23 years before he was apprehended.

STATEMENT OF FACTS

40. Petitioner is a citizen of Honduras.
41. Petitioner has resided in the U.S. since July 31, 2002.
42. Upon information and belief, Petitioner has never been arrested or charged with any crime.
43. Upon information and belief, Petitioner was arrested by immigration authorities on December 10, 2025, in Hyattsville, Maryland.
44. Petitioner is detained at the ICE Holding Center in Baltimore, Maryland. *See* Exhibit 1.
45. Without relief from this Court, Petitioner faces continued detention without a bond hearing.

COUNT I
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

46. Petitioner incorporates by reference all preceding paragraphs.
47. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
48. 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).
49. Petitioner has not been, and will not be, provided with a bond hearing as required by law.
50. Petitioner's continuing detention is therefore unlawful.

COUNT II
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19
Unlawful Denial of Release on Bond

51. Petitioner incorporates by reference all preceding paragraphs.
52. In 1997, after Congress amended Title 8 of the U.S. Code through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply

IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that noncitizens “who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323. The agencies made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before Immigration Judges under § 1226 and its implementing regulations.

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

COUNT III
Violation of Fifth Amendment Right to Due Process

54. Petitioner incorporates by reference all preceding paragraphs.

55. The Fifth Amendment’s Due Process Clause prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V.

56. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

57. Under the *Mathews v. Eldridge*, 424 U.S. 319 (1976) framework, the balance of interests strongly favors Petitioner’s release.

58. Petitioner’s private interest in freedom from detention is profound. The interest in being free from physical detention is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)

(“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”).

59. The risk of erroneous deprivation is exceptionally high. Petitioner has never been arrested for any crime and has deep ties to his family and the community in the United States.

60. The government’s interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

61. Furthermore, the “fiscal and administrative burdens” of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

62. Considering these factors, Petitioner respectfully requests that this Court order his immediate release from custody or provide him with a bond hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Set this matter for expedited consideration;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why his Petition should not be granted;
- (4) Declare that no statute or regulation prohibits an Immigration Judge from holding a bond hearing for Petitioner, and that Petitioner is properly detained, if at all, under 8 U.S.C. § 1226(a);

- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days; and
- (6) Grant him any further relief this Court deems just and proper.

Certification Pursuant to Local Standing Order 2025-01

I certify pursuant to Fed. R. Civ. P. 11, as follows: (1) The Petitioner is presently detained in Maryland. Petitioner's partner and mother of his children spoke with Petitioner at approximately 7:00 a.m. on December 12, 2025 and Petitioner confirmed that he was being held in the Baltimore, Maryland Holding Center; (2) Emergency relief is necessary because Respondents unlawfully deem Petitioner as subject to mandatory detention; and (3) This Court has subject matter jurisdiction over the Petitioner pursuant to 28 U.S.C. § 2241, and no jurisdiction-stripping statute applies to prevent habeas corpus review of detention.

Respectfully Submitted,

Dated: December 12, 2025

/s/ Tamara L. Jezic
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Attorney for the Petitioner

VERIFICATION

I represent the Petitioner and submit this verification on his behalf. I affirm under penalty of perjury that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

Dated this 12th day of December 2025.

/s/ Tamara L. Jezic
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Attorney for the Petitioner

List of exhibits

- Ex. 1) ICE Detainee Locator
- Ex. 2) Executive Office for Immigration Review Automated Case Information

Certificate of Service

I certify that on this 12th day of December, 2025, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I will send a copy by certified U.S. mail, return receipt requested, to:

Civil Process Clerk
U.S. Attorney's Office for the District of Maryland
36 S. Charles St., 4th Floor
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