UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BAYRON LOPEZ PEREZ,
Petitioner,

-against-

KENNETH GENALO, New York Field Office Director, Immigration and Customs Enforcement and Removal Operations (ICE/ERO);
TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, Department of Homeland Security;
Respondents.

Case No. 1:26-cv-00715-JPO

FIRST AMENDED PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Bayron Lopez Perez 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 2013, when he entered the US by crossing the Mexican border. He filed an application for asylum with US Citizenship and Immigration Services (USCIS) in 2024. On January 28, 2026 he was detained by officers from US Immigration and Customs Enforcement (ICE) at the USCIS Asylum Office at Varick Street, New York, while attending his asylum interview. He is currently detained by Respondents at 26 Federal Plaza, New York NY.
3. Respondents have detained Mr. Lopez Perez without making any finding that he is a

flight risk or a danger to the community (he is neither), 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 Lopez Perez is a citizen of El Salvador, who has resided continually in the U.S. since 2013. He was arrested at 201 Varick Street, New York NY on January 28, 2026, and is currently in the physical custody of the New York City Field Office of US Customs and Immigration Enforcement.

8. Respondent Kenneth Genalo is the Director of the New York Field Office, US Immigration and Customs Enforcement and Removal Operations (ICE/ERO), and is

Petitioner's physical and legal custodian.

9. 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.

10. 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.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

11. Mr. Lopez Perez 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.

12. 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

13. Detention of non-citizens can only occur in two discrete situations: pending a decision on whether they are to be removed, U.S.C. §§ 1225 and 1226, and after a final order of removal has been issued, 8 U.S.C. § 1231.

14. 8 U.S.C. § 1225(a) provides that "An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival…) shall be deemed for purposes of this chapter an applicant for admission." § 1225(b)(2) provides that an applicant for admission "seeking admission" "who is not clearly and beyond a doubt entitled to be admitted shall be detained for a [removal] proceeding." There is thus no provision for a re-determination of custody for a person detained under § 1225(b)(2).
15. 8 U.S.C. § 1226(a) provides that "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States", and that pending such decision they may be released on a bond or a conditional parole (*id*, § 1226(a)(1) and (2)).
16. For non-citizens detained under § 1226(a), the arresting immigration officer has discretion to release them upon a showing that they are not a danger to others or a flight risk, 8 C.F.R. § 1236.1(c)(8). If the immigration officer does not order release, the non-citizen can seek review of that determination before an Immigration Judge, 8 C.F.R. § 1236.1(d)(1). Thus, an applicant for admission who is also seeking admission is detained under 8 U..S.C. § 1225(b)(2) and is subject to mandatory detention while removal proceedings are ongoing, while all other applicants for admission are detained under 8 U.SA.C. § 1226(a) and are eligible to seek release either from the arresting immigration agency (usually Respondent ICE), or via a bond hearing before an Immigration Judge.
17. US immigration law (as well as Respondents) has long treated "seeking admission" as different from, and additional to, being an "applicant for admission". "[B]eing an

"applicant for admission" under section [1225(a)(1)] is distinguishable from "applying ... for admission to the United States", *Matter of Y-N-P-*, 26 I. & N. Dec. 10, 13 (BIA 2012). "Seeking admission" has generally referred to an application for admission made at a port of entry, rather than just the status of being in the US without having been inspected and admitted or paroled. In other words, while all non-citizens who are seeking admission are also applicants for admission, not all applicants for admission are seeking admission. For example, Petitioner herein has filed an application for asylum, which would allow him remain legally in the US, yet an application for asylum is not treated as an "application for admission", see *Matter of V-X-*, 26 I&N Dec. 147, 150 (BIA 2013), holding that although a grant of asylum conferred a lawful status, it did not entail an "admission.". Unadmitted non-citizens detained in the interior of the country have thus always been considered to be detained under § 1226(a), and thus eligible for a bond hearing, because they are not "seeking admission".

18. Despite this, 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, holding instead that they are all subject to mandatory detention under § 1225(b)(2). However, this decision flies in the face of the plain language of the statute, which limits mandatory detention under § 1225(b)(2) to those applicants for admission who are also "seeking admission". It is also contrary to decisions of the US Supreme Court, decades of agency practice, including regulations and administrative decisions, and has been rejected by almost every district court judge – now over two hundred and eighty - to have considered the matter.

FACTS

19. Petitioner Bayron Lopez Perez is a native and citizen of El Salvador, who fled to the US in 2013 after enduring years of persecution there on account of his sexual orientation. He entered the US by crossing the US/Mexico border, and has lived in the New Jersey/New York region since then. In 2023, he married his long-term partner, who is a US citizen, and they remain married. Because he entered the US by crossing the border, petitioner is ineligible to adjust status to permanent resident based on his marriage.

20. Petitioner has never been arrested or charged with any crime, and prior to his arrest and detention by Respondents in January 2026, he had never been detained by any immigration officers, including upon his entry to the US.

21. In 2024, Petitioner filed an application for asylum with USCIS, citing a fear of persecution on account of his sexual orientation if returned to El Salvador. Respondents detained Petitioner while attending his asylum interview at the USCIS Asylum Office located at 201 Varick Street, New York NY on January 28, 2026, and he remains in their custody.

22. Respondents did not make any determination as to whether or not Petitioner is a flight risk or a danger to society prior to or subsequent to his detention.

23. To the extent there is a statutory basis for Petitioner's detention, it is 8 U.S.C. § 1226(a).

24. 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.

25. However, because of the Board of Immigration Appeals decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), an Immigration Judges is precluded from holding a bond hearing for petitioner, absent an Order from a US District Court directing them to hold one.

26. On November 20, 2025, the U.S. District Court for the Central District of California issued an order in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. CA) granting partial summary judgment for four petitioners in that case, who are similarly situated to Petitioner, in that they are noncitizens who are in immigration detention and being denied access to a bond hearing based on the government's allegation that they entered the United States without admission or inspection. The District Court held that the government's policy is inconsistent with the plain language of the Immigration and Nationality Act ("INA"), and that petitioners are properly subject to detention under § 1226(a) (and thus a bond hearing). See *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). Five days later, on November 25, 2025, the Court certified a nationwide class of individuals who are being subject to the government's new no-bond policy—the Bond Eligible Class—and expressly "extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *Maldonado Bautista v. Santacruz*, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). On December 18, 2025, the District Court issued a declaratory judgment holding, in effect, that the class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2), 2025 WL 3678485, at *1.

27. Thus, as a class Member, Petitioner is entitled to a bond hearing. Nonetheless, Immigration Judges have been instructed to refuse to comply with that grant of declaratory relief.

28. 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

29. Under 8 C.F.R. § 1236.1(c)(8), Petitioner was eligible to be considered for release from custody upon a showing to ICE that he was not a danger to property or persons or a flight risk. ICE did not give Petitioner that opportunity, and did not consider Petitioner for such discretionary release.

30. This constitutes a denial of Petitioner's right to procedural due process.

COUNT TWO: Respondents' classification of Petitioner as being subject to detention under 8 U.S.C. § 1225(b) violates the Immigration and Nationality Act and Petitioner's right to due process.

31. Petitioner entered the US without inspection in 2013, and was detained in 2026. There is no allegation that he is a danger to the community or a flight risk. Respondents take the position that he is detained pursuant to 8 U.S.C. § 1225(b)(2), meaning that he is not eligible for release or for a bond hearing before an immigration judge.

32. As a non-citizen detained by Respondents many years after he entered the US, Petitioner's detention is governed by the INA at 8 U.S.C. § 1226. Under § 1226(a) and its implementing regulations, Petitioner is entitled to a bond redetermination hearing before an Immigration Judge.

33. Respondents' refusal to either release Petitioner from detention or else provide him

with a bond hearing thus violates the INA.

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

34. 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.

35. Petitioner has not been, and will not be, provided with a bond hearing by Respondents as required by law.

36. Petitioner's continuing detention therefore violates his right to due process under the Fifth Amendment.

COUNT FOUR: Violation of Petitioner's rights as a Maldonado Bautista class member

37. In *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the District Court found that Respondent's July 2025 Detention Policy, treating all non-citizens who entered the US without inspection as being subject to mandatory detention without bond regardless of when they were apprehended or detained, was inconsistent with the plain language of the INA. It determined that the petitioners in that case were properly subject to detention under 8 U.S.C. § 1226(a) and thus eligible for release on bond.

38. Five days later, the District Court certified the following class, which it defined as the "Bond Eligible" class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will

not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *Maldonado Bautista*, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

39. On December 18, 2025, the District Court granted final judgment "in favor of Petitioners and members of the Bond Eligible class", declared that "the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2)" and "vacte[d] the Department of Homeland Security policy described in the July 8, 2025, "Interim Guidance Regarding Detention Authority for Applicants for Admission" under the Administrative Procedure Act as not in accordance with law. 5 U.S.C. § 706(2)(A)." *Maldonado Bautista*, 2025 WL 3678485, at *1.

40. Petitioner is plainly a member of the "Bond Eligible" class. He entered the US without inspection, was not apprehended or detained upon entry, and at the time of his initial custody determination, in 2013, he was determined to be detained pursuant to 8 U.S.C. § 1226(a). Accordingly, his rights in this regard – that he is detained under 8 U.S.C. § 1226(a) - have thus been determined by the District Court in California. However, Respondents have refused to abide by the terms of the judgment in that case and continue to refuse to grant bond hearings to non-citizens who have entered the US without inspection.

41. Respondents' refusal to either release Petitioner from custody and restore him to the status quo he had prior to his re-detention, or else grant him a bond hearing, thus violates his rights as a member of the Maldonado Bautista "Bond Eligible" class, and

also deprives him of due process of law.

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 Southern District of New York;

(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: January 28, 2026

/s/ Paul O'Dwyer
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