IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DOBIGNA J. FONGOH [redacted]

Petitioner,

v.

KRISTI NOEM, *Secretary of Homeland Security*,

TODD LYONS, *Acting Director, U.S. Immigration and Customs Enforcement*,

JEREMY BACON, *Director, Baltimore ICE Field Office, U.S. Immigration and Customs Enforcement*,

PAMELA BONDI, *Attorney General, U.S. Department of Justice*

Respondents.

Civil Action No. _____

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Dobigna J. Fongoh (A# [redacted] is a citizen of Cameroon. He entered the United States without inspection between ports of entry on the U.S.-Mexico border in 2019 and was arrested by U.S. Immigration and Customs Enforcement ("ICE") shortly after his entry. Following a custody determination, Petitioner was released from custody and regularly reported to ICE on check-ins thereafter. ICE re-arrested Petitioner in February 2026 without forewarning, and has been detaining him ever since. Petitioner is detained by ICE under facts and circumstances that place him squarely within ICE's general detention authority 8 U.S.C. § 1226(a). Under that

[1] Petitioner hereby waives the protections of Local Standing Order 2025-01. Petitioner does not have a final removal order and therefore is not at imminent risk of removal from the United States.

statute, Petitioner is eligible to seek discretionary release on bond from an Immigration Judge ("IJ"). However, due to a new policy announced by ICE in July 2025, and a September 2025 Board of Immigration Appeals (BIA) decision that overturns decades of settled law, Respondents contend that Petitioner is actually detained under 8 U.S.C. § 1225(b)(2). However, while § 1225 requires mandatory detention and does not allow release on bond, it only applies to noncitizens apprehended at the border "seeking admission." Petitioner therefore brings this action for a declaratory judgment from this Court that he is properly detained (if at all) only pursuant to 8 U.S.C. § 1226(a); and seeking an order that Respondents schedule him for a discretionary bond hearing pursuant to § 1226(a) before an IJ within 15 days.

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241 and 28 U.S.C. § 1331, Federal Question Jurisdiction. In addition, the individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

2. This Court also has federal question jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA review of a final agency action may proceed, absent a special statutory review proceeding, by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction." 5 U.S.C. § 703.

3. Venue lies in this District because Petitioner is currently detained in the ICE Baltimore Hold Room within the territorial jurisdiction of this District; and each Respondent is an agency or officer of the United States sued in his or her official capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1).

THE PARTIES

4. Petitioner Dobigna J. Fongoh [redacted] is a citizen and native of Cameroon and is currently detained by Respondents at the ICE Baltimore Hold Room, within the territorial jurisdiction of this Court.

5. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

6. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). He is the head of the federal agency responsible for all immigration enforcement in the United States.

7. Respondent Jeremy Bacon is the Director of the Baltimore ICE Field Office, which includes the ICE Baltimore Hold Room, where Petitioner is presently detained. He is the head of the ICE office that unlawfully arrested each Petitioner, and such arrest took place under his direction and supervision. He is the immediate legal and physical custodian of Petitioner.

8. Respondent Pamela Bondi is the Attorney General of the United States. She is the head of the U.S. Department of Justice, which oversees the Executive Office for Immigration Review, including the Board of Immigration Appeals and the Immigration Court judges, who decide removal cases and applications for bond as her designees.

9. All government Respondents are sued in their official capacities.

LEGAL BACKGROUND

A. Immigration Detention Legal Framework

10. When a noncitizen is alleged to have violated immigration laws, they are generally placed into traditional removal proceedings, during which an immigration judge will determine

whether they are removable and then whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.

11. Detention is authorized for "certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and 1126(c)." *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The statute provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a) generally, or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Discretionary detention under § 1226(a) has been described as the "default" provision for immigration detention for those subject to traditional removal proceedings. *Id.* at 288. Under § 1226(a), "'[e]xcept as provided in subsection (c) of this section,' the Attorney General 'may release' an alien detained under § 1226(a) 'on ...bond' or 'conditional parole.'" *Id.*

12. Alternatively, mandatory detention is authorized for "certain aliens *seeking admission* into the country under §§ 1225(b)(1) and 1225(b)(2)," [emphasis added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and determined to be "applicants for admission" may be subject to mandatory detention under two separate subsections. Applicants for admission include someone:

> "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 and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for the purposes of this chapter to be an applicant for admission."

§ 1225(a)(1).

13. The first subset, under 8 U.S.C. § 1225(b)(1), may be subject to expedited removal and mandatory detention if they are determined to be an "arriving alien," and if they have not been

physically present in the United States continuously for a two-year period immediately prior. Regulations define an "arriving alien" as:

> "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport."

8 C.F.R. § 1.2.

14. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of "applicant for admission" specifically when "the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title," i.e. for traditional removal proceedings [emphasis added].

15. An "arriving alien" or an applicant for admission "seeking admission" may only be released from detention on parole (which is a form of release on recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no bond available to an arriving alien or applicant for admission seeking admission. *Id.* There is no such thing as a "parole bond" – a release must be either parole under § 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*

16. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE's initial custody determination before the IJ (a "custody review hearing"), who has the authority to modify ICE's custody determination and set bond in a case in which ICE has designated no bond, lower bond when ICE has set a cash bond amount, or deny bond completely. 8 C.F.R. § 1003.19.

17. Custody review hearings are separate from hearings in the underlying removal proceedings. 8 C.F.R. § 1003.19(d). If a noncitizen is granted bond by the IJ, she must still appear in immigration court for the IJ to determine her removability and hear any claim for relief from removal. At a custody review hearing, once jurisdiction over bond is established, the IJ's inquiry is limited to whether the detainee is a danger to the community or a flight risk, and bond may only be granted when an IJ has determined that the detainee meets his burden of proof that he is neither. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

18. For decades, it has been Respondents' practice to afford § 1226(a) discretionary bond hearings and custody review hearings to those individuals who have been encountered neither at a point of entry nor seeking admission to the United States. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) ("Respondents' proposed application of § 1226 is also belied by the Department of Homeland Security's 'longstanding practice' of treating noncitizens taken into custody while living in the United States, including those detained and found inadmissible upon inspection and then released into the United States with the government's acquiescence, who have committed no crime after release, as detained under § 1226(a)." citing *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)).

B. New ICE memo reinterpreting 8 U.S.C. § 1225(b)(2)

19. On July 8, 2025, Respondent ICE issued new interim guidance that announced a breathtakingly broad interpretation of 8 U.S.C. § 1225(b)(2). *See* ICE memorandum "Interim

Guidance Regarding Detention Authority for Applications for Admission."[2] This memo concerns the detention of "applicants for admission" as defined by § 1225(a)(1). "Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)]." *Id.* DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id.* ("For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated.")

20. In addition to the announcement re-interpreting § 1225(b)(2), the memo further clarifies that "[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1227], with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)]." *Id.*

21. Moreover, ICE maintains that "DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position." *Id.* ICE fails to clarify under what legal authority, then, those prior releases were effectuated. Rather, ICE signals the resulting lack of "correct" paperwork is nonetheless permissible. *Id.* ("Accordingly, ERO and HIS are not required to 'correct' the release paperwork by issuing INA § 212(d)(5) parole paperwork.")

22. Nationwide implementation of the ICE § 1225(b)(2) mass detention policy ensued.

C. BIA decision *Matter of Yajure Hurtado*

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[2] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

23. On September 5, 2025, the Board of Immigration Appeals (BIA), which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE's re-interpretation of § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

24. The BIA held that the respondent was an "applicant for admission" within the scope of § 1225(b), and therefore subject to mandatory detention.

25. The BIA characterized the issue before it as "one of statutory construction: Does the INA require that *all* applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?" [emphasis added]. *Id.* at 220.

26. The BIA reasoned that individuals "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer." *Id.* at 228.

27. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id.* at 225 n.6 ("We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled '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), reflects that the Immigration and Naturalization Service took the position at that time

that '[d]espite being applicants for admission, aliens 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.'")

28. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229.

29. The BIA decision is binding on all immigration judges nationwide.

30. Respondents' new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at *11 ("It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.")

D. Class Action In *Maldonado Bautista*

31. On November 25, 2025, the court in *Maldonado Bautista* certified a class of individuals who were seeking a bond hearing in the wake of the BIA's *Yajure Hurtado* decision:

> "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 v. Santacruz, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). Previously, the court had partially granted summary judgment in favor of the putative class, rejecting the reasoning in *Yajure Hurtado* and holding that the new ICE policy subjecting the putative class to mandatory detention under 8 U.S.C. § 1225(b)(2) was unlawful. *Maldonado Bautista v. Santacruz*, 2025 WL 3289861 (C.D. Cal. Nov. 20 2025).

32. On December 18, 2025, the court granted the motion to reconsider, in light of the fact that immigration judges nationwide were refusing to follow the court's prior summary judgment decision, and granted a final judgment, ordering declaratory relief and vacating ICE's July 2025 policy. *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025).

FACTS

33. Petitioner is a citizen of Cameroon. He entered the United States without inspection between ports of entry, across the U.S.-Mexico border, on October 14, 2019. Some time after crossing the border, Petitioner encountered immigration officers and was taken into custody.

34. On November 22, 2019, the Department of Homeland Security issued Petitioner a Notice to Appear ("NTA"), initiating removal proceedings against him. *See* Ex. 1, I-862 Notice to Appear.

35. Petitioner was subsequently released from custody on his own recognizance, pursuant to 8 U.S.C. § 1226(a).

36. Petitioner has complied with all immigration requirements, including regular annual check-ins with immigration authorities, which he has attended consistently since his release.

37. In removal proceedings, Petitioner applied for asylum as a form of relief. 8 U.S.C. § 1158(a). His asylum case is currently pending before the Board of Immigration Appeals.

38. Petitioner then established a peaceful life in Maryland, and upon information and belief has no criminal history in this or any other country. Petitioner has not violated any of the terms of his release on recognizance.

39. On February 26, 2026, ICE arrested Petitioner in the parking lot of his home. ICE

took Petitioner into custody for no stated reason, and with no advance warning, nor contemporaneous or subsequent ability to challenge his detention.

40. Petitioner is currently detained at the ICE Baltimore Hold Room, within the territorial jurisdiction of this Court. His removal case remains pending before the Board of Immigration Appeals, and he does not have a final order of removal.

41. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. Accordingly, it would be futile for Petitioner to request a bond from an Immigration Judge. Exhaustion of administrative remedies would therefore be futile.

FIRST CLAIM FOR RELIEF:
No-Bond Detention in Violation of 8 U.S.C. § 1226(a)

42. Petitioner re-alleges and incorporates by reference paragraphs 1-41.

43. Since Petitioner is not an applicant for admission "seeking admission" or "an arriving alien" subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2), and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), he is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

44. Respondents' actions, as set forth herein, violate Petitioner's statutory right to a bond redetermination hearing in front of an immigration judge.

SECOND CLAIM FOR RELIEF:
Detention in violation of the regulations – *Accardi* Doctrine

45. Petitioner re-alleges and incorporates by reference paragraphs 1-41.

46. A release on recognizance is a form of release on conditional parole under 8 U.S.C. § 1226(a)(2)(B). To be sure, that conditional parole can be revoked. However, only specific officials are empowered to authorize the revocation of conditional parole, including: the district

director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge. *See* 8 C.F.R. § 236.1(c)(9).

47. If the conditional parole is revoked, immigration officers may then "rearrest the alien under the original warrant, and detain the alien," [emphasis added]. See 8 U.S.C. § 1226(b).

48. Here, Petitioner's arrest took place without a revocation of his Order of Release on Recognizance, 8 C.F.R. § 236.1(c)(9). Alternatively, if the revocation of Petitioner's Order of Release on Recognizance occurred, it was effectuated by low-level ICE officers during a routine stop at an ICE check point, also a violation of 8 C.F.R. § 236.1(c)(9). This regulation was designed to protect the Fifth Amendment due process rights of noncitizens like Petitioner. Thus, the arrest of Petitioner in contravention of regulations violated Petitioner's Fifth Amendment due process rights.

49. Respondents failed to comply with their own rules when they re-detained Petitioner. In arresting and re-detaining Petitioner, Respondents violated important substantive and procedural rules designed to protect his due process rights, and arrest and the revocation of Petitioner's conditional parole should be deemed void under the *Accardi* doctrine. This violation of required procedures also violated Petitioner's due process rights under the Fifth Amendment to the U.S. Constitution, and the writ of habeas corpus should issue.

THIRD CLAIM FOR RELIEF:
Detention in Violation of Due Process

50. Petitioner re-alleges and incorporates by reference paragraphs 1-41.

51. Immigration detention is civil, not criminal, in nature. There are only two permissible reasons for immigration detention: to avoid flight risk and danger to the community.

52. After entering the United States unlawfully, Petitioner went on to develop ties to the community over the course of several years. Petitioner is therefore a "person" within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution, and has a liberty interest in freedom from physical restraint.

53. Respondents' actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate deprives Petitioner of his rights without due process of law.

REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully requests that the Court enters an order:

a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioner's detention in fact and in law, forthwith;

b) Order Respondents to produce all immigration records relating to Petitioner's prior and current detention, including any I-200 Warrant for arrest, I-286 Notice of Custody Determination, I-220A Order of Release on Recognizance, I-862 Notice to Appear, any bond revocation decision, or any other records relating to Petitioner's past or present custody;

c) Enjoin Petitioner's transfer outside of this judicial district pending this litigation;

d) Enjoin Respondents from holding Petitioner subject to detention under 8 U.S.C. § 1225(b)(2) and denying him a bond hearing on that basis;

e) Enjoin Respondents from re-arresting Petitioner subject to § 1225(b)(2);

f) Order Petitioner's immediate release from custody;

g) Order, in the alternative, Petitioner's immediate release and that Respondents conduct a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a) within 15 days;

h) Grant the writ of habeas corpus and order Respondents to release Petitioner forthwith, upon payment of the bond as ordered by the Immigration Judge;

i) Award Petitioner his costs of suit; and

j) Grant any other relief that this Court deems just and proper.

Respectfully submitted,

Date: March 31, 2026

/s/ Simon Sandoval-Moshenberg
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