UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division

Jose Luis Arita Pena (A# [redacted] *Petitioner*, v. Kristi Noem, *Secretary of Homeland Security, U.S. Department of Homeland Security*, Todd Lyons, *Acting Director, U.S. Immigration and Customs Enforcement*, Vernon Liggins, *Director, Baltimore 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 Jose Luis Arita Pena (A# [redacted] is a native and citizen of Honduras. He entered the United States in or about 2021 at the age of seventeen. Upon entry, he was taken into custody and processed as an unaccompanied minor child and placed in the custody of the Office of Refugee Resettlement ("ORR"). Petitioner was detained in ORR custody as an unaccompanied minor child and was thereafter released on recognizance to his sister, who served as his legal custodian. Petitioner was later granted deferred action.

Upon information and belief, or about February 28, 2026, Petitioner was arrested by ICE, under facts and circumstances that place him squarely within ICE's general detention authority 8

U.S.C. § 1226(a). Under that 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 detained under 8 U.S.C. § 1225(b)(2). While § 1225(b) 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 to enjoin Respondents from subjecting him to mandatory detention under 8 U.S.C. § 1225(b)(2) and seeking an order to release Petitioner from custody, or in the alternative that Respondents provide him a discretionary bond hearing pursuant to § 1226(a) before an IJ within 7 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 within the territorial jurisdiction of this division 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 Jose Luis Arita Pena (A# [redacted] is a citizen and native of Honduras and is currently detained by Respondents Baltimore ERO-ICE Field Office Hold Room, in Baltimore, MD within the territorial jurisdiction of this Court.

5. Respondent Kristi Noem is the Secretary of the U.S. 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 Vernon Liggins is the Acting Director of the Baltimore ICE ERO Field Office, where Petitioner is unlawfully detained. As the local ICE official overseeing enforcement operations in the region, he is responsible for Petitioner's continued detention and any actions related to their removals. He is therefore the Petitioner's immediate legal and physical custodian for the purpose of habeas jurisdiction.

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. Unaccompanied Minors

10. A child who arrives in the United States without a parent or guardian is defined as an "unaccompanied" minor and afforded special protections under U.S. immigration law. An unaccompanied minor is a child who: (A) has no lawful immigration status in the United

States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody. 6 U.S.C. § 279(g)(2).

11. Under the U.S. Department of Health and Human Services ("HHS"), ORR is charged with the care of unaccompanied minors "who are in Federal custody by reason of their immigration status." 6 U.S.C. § 279(a), (b)(1)(A). *See also* 8 U.S.C. § 1232(b)(1). This means ORR has authority over all placement decisions for unaccompanied minors. *See id.* § 279(b)(1)(C), (D). ORR also has authority over any release of an unaccompanied minor to the care and custody of a suitable adult. *Id.*

12. Unaccompanied minors "shall be promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). The least restrictive means often means release from ORR custody to a suitable adult, subject to safety and suitability assessments. 8 U.S.C. § 1232(c)(3). These assessments include "at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individuals has not engaged in any activity that would indicate a potential risk to the child," and may also include home studies. *Id.* §§ 1232(c)(3)(A), (B).

13. If the government seeks to remove an unaccompanied minor, it must place the unaccompanied minor in traditional removal proceedings under 8 U.S.C. § 1229a; consider eligibility for relief under 8 U.S.C. § 1229c at no cost to the child; and provided access to counsel. 8 U.S.C. § 1232 (a)(5)(D). Unaccompanied minors cannot be subjected to expedited removal proceedings under 8 U.S.C. § 1225(b). 8 U.S.C. §§ 1232(a)(2)(B), (a)(3), (a)(5)(D).

14. If an unaccompanied minor is not released prior to their 18th birthday, he may be transferred to the custody of DHS. 8 U.S.C. § 1232(c)(2)(B). However, even in DHS custody, "the Secretary shall consider placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight." *Id.* This includes consideration for "alternative to detention programs" and "placement of the alien with an individual or an organizational sponsor," outside of traditional ICE custody. *Id.*

B. Immigration Detention Legal Framework

15. 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.

16. 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.*

17. 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."

8 U.S.C. § 1225(a)(1).

18. 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.

19. 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].

20. 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.*

21. 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.

22. 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, he must still appear in immigration court for the IJ to his 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).

23. 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)).

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

24. 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."[1] 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.")

25. 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.*

26. 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 §

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

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.")

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

D. Recent BIA decision *Matter of Yajure Hurtado*

28. 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).

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

30. 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.

31. 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.

32. 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.'")

33. 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.

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

35. 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.")

E. Class Action In *Maldonado Bautista*

36. On November 25, 2025, in a challenge to ICE's recent policy change, the U.S. District Court for the Central District of California certified "Bond Eligible Class" of:

> "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."

Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). The court had previously granted summary judgment in favor of the putative class in *Maldonado Bautista*, holding that ICE's July 2025 policy was unlawful. *Maldonado Bautista v. Santacruz*, --- F.Supp.3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20 2025). at *10 ("Thus, Respondents' expansive interpretation of 'applicants for admission' would effectively nullify a portion of the INA through the DHS's legislative or interpretive exercise of power. Neither is appropriate under the separation of powers.").

37. 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. *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). "A notice of appeal was then filed by the *Bautista* defendants on December 18, 2025, ECF No. 95." *Engonga v. Noem*, No. 5:25-CV-03479-FWS-MAA, 2025 WL 3764077, at *3 (C.D. Cal. Dec. 23, 2025). "However, the Ninth Circuit has held the filing of an appeal does not suspend the preclusive effect of a lower court judgment." *Osuna v. Casey*, No. 25CV3668-LL-MMP, 2026 WL 50755, at *1 (S.D. Cal. Jan. 7, 2026) citing *Hawkins v. Risley*, 984 F.2d 321, 324 (9th Cir. 1993

38. On January 13, 2026, Chief Immigration Judge ("CIJ") Teresa L. Riley issued nationwide guidance instructing all immigration judges that: "*Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay or enjoin *Yajure Hurtado.*" *See* American Immigration Lawyers Association Practice Alert "EOIR Issues Nationwide Guidance

on *Maldonado Bautista*."[2] CIJ Riley then instructed immigration judges to continuing to apply *Yahure Hurtado*, on the guidance that declaratory judgments are not binding or preclusive. *Id.*

FACTS

39. Petitioner is a native and citizen of Honduras. He entered the United States in or about 2021, at the age of seventeen, without inspection and between ports of entry along the U.S.–Mexico border. Upon entry, he was apprehended and processed as an unaccompanied minor child and placed in the custody of the Office of Refugee Resettlement ("ORR"). He was thereafter released on recognizance to his sister, who served as his legal custodian. He was not paroled into the United States.

40. Petitioner thereafter relocated to the Maryland area and currently resides in Baltimore, Maryland, with his asylum-seeker sister.

41. Petitioner filed a Form I-360 Petition for Special Immigrant Juvenile ("SIJ") classification, which was approved on May 23, 2024. On that same date, Petitioner was granted Deferred Action. Petitioner's SIJ classification remains approved. *See* Ex. 1, Form I-360, Approval Notice.

42. Upon information and belief, on February 28, 2026, Petitioner was detained by Immigration and Customs Enforcement, without forewarning.

43. Petitioner is currently detained at the Baltimore ERO-ICE Field Office Hold Room.

44. Petitioner has no pending Removal Proceedings and he is not subject to a final order of removal. See EOIR Automated Case Information, available at https://acis.eoir.justice.gov/en/caseInformation (last visited on March 3, 2026)):

[2] *Available at*: https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-Bautista.

45. Petitioner was also a significant financial contributor to the household. His detention compromises his sister's ability to cover basic household and living expenses. In addition to the financial strain, the Petitioner's detention has caused his sister substantial emotional distress.

46. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). *See Yajure Hurtado*, 29 I. & N. Dec. 216. Accordingly, it would be futile for Petitioner to request a bond hearing before 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)

47. Petitioner re-alleges and incorporates by reference paragraphs 1-46.

48. 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). As an unaccompanied minor who has aged out of ORR custody, section 1232(c)(2)(B) nonetheless requires his placement in the least restrictive setting, with consideration of "the alien's danger to self, danger to the community, and risk of flight," —all factors duly considered within a traditional § 1226(a) bond hearing.

49. 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 Due Process

50. Petitioner re-alleges and incorporates by reference paragraphs 1-46.

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

52. After entering the United States unlawfully, Petitioner went on to develop ties to the community of the course of seven 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.

THIRD CLAIM FOR RELIEF:
Detention in Violation of Deferred Action

54. Petitioner re-alleges and incorporates by reference paragraphs 1-46.

55. Petitioner has a valid grant of deferred action, and therefore may not be subject to ICE detention.

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

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

d) Order Petitioner's immediate release from custody;

e) Order, in the alternative, that Respondents conduct a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a) within 7 days;

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

g) Award Petitioner his costs of suit; and

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

Certification Pursuant to Local Standing Order 2025-01

I, the undersigned, hereby certify pursuant to Fed. R. Civ. P. 11, as follows: (1) I understand the Petitioner to be presently detained in Maryland, based on a check of the ICE Detainee Locator shortly before filing this Petition; (2) emergency relief is necessary, because Petitioner has a valid grant of deferred action, which means that he may not lawfully be deported; 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 and unlawful removal.

Respectfully submitted,

Date: March 3, 2026

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, 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 furthermore will send a copy by certified U.S. mail, return receipt requested, to:

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Date: March 3, 2026

Respectfully submitted,

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