UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

A.J.,

Petitioner,

-against-

TAMMY MARICH, Acting Director, Buffalo Field Office, U.S. Immigration and Customs Enforcement;
TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, Department of Homeland Security;

Respondents.

Case No.

PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner AJ 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.[1]

2. Petitioner is a native and citizen of Mauritania, who has been physically present in the U.S. since August 2023, when he entered the US by crossing the Mexican border. Upon entry he was encountered by immigration officials who released him after issuing a Notice to Appear ("NTA") requiring him to appear in Immigration Court for removal proceedings. He promptly retained counsel to represent him, filed an application for asylum, and obtained a continuance of his removal proceedings as well as a change in venue to the Immigration Court in Buffalo. His case is currently scheduled for a hearing in November 2027. On February 9, 2026, Petitioner was

[1] This habeas petition contains sensitive personal information about Petitioner and his claim for asylum. Accordingly, he will be filing a motion for leave to proceed using only a pseudonym.

detained by officers from US Immigration and Customs Enforcement (ICE). He is currently being detained by Respondents at the Buffalo Federal Detention Facility in Batavia, New York.

3. Respondents have detained AJ 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 AJ is a citizen of Mauritania, who has resided continually in the U.S. since 2023. He was detained by Respondents on February 9, 20206at 26 Federal Plaza on

February 20, 2026, and is currently in their physical and legal custody at the Buffalo Federal Detention Facility in Batavia NY.

8. Respondent Tammy Marich is Acting Director of the Buffalo Field Office, U.S. Immigration and Customs Enforcement, 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 Petitioner.

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. Petitioner 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 AJ is a native and citizen of Mauritania, who fled his country and came to the US in 2023. He left because of persecution, including arrest, detention and physical abuse by the Mauritanian police on account of [redacted]

20. He entered the US by crossing the US/Mexico border on or about August 23, 2023, and was encountered by immigration officials upon his entry. Petitioner was then released after being issued an NTA, requiring him to appear in Immigration Court for removal proceedings in May 2024. In December 2023, he filed an application for asylum, and retained an attorney to represent him. His attorney sought and obtained a continuance of the removal proceedings, and also a change in venue from the Immigration Court in New York City to Buffalo, NY, after he moved to live in Rochester. His case is currently scheduled for hearing in November 2027.

21. On or about February 9, 20206, Petitioner was detained by Respondents as part of an immigration "sweep", and taken to the Batavia detention facility. Petitioner has never been charged with any criminal offense and has attended any required immigration-related appointments. Nonetheless, Respondents did not make any determination of whether or not he posed a flight risk or a danger to the community, and instead detained him and now take the position that he is detained pursuant to 8 U.S.C. § 1225(b)(2) and thus not eligible for release or even for a bond hearing.

22. Respondents are incorrect, and 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, 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.

25. Petitioner is being irreparably harmed by his ongoing unlawful detention without a bond hearing.

CLAIMS FOR RELIEF

COUNT ONE: 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.

26. Petitioner entered the US without inspection in 2023, 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.

27. As a non-citizen detained by Respondents 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.

28. Respondent cannot justify their detention of Petitioner by reference to *Matter of Yajure Hurtado* , 29 I&N Dec. 216 (BIA 2025). The decision has been vacated by the US District Court for the District of California in *Maldonado Bautista v. Santacruz Jr* et al., No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *10 (C.D. Cal. Feb. 18, 2026).
29. Petitioner thus can only be detained under § 1226(a), and is entitled to a bond hearing.
30. Respondents' refusal to either release Petitioner from detention or else provide him with a bond hearing thus violates the INA.

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

31. 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.
32. Petitioner has not been, and will not be, provided with a bond hearing by Respondents as required by law.
33. Petitioner's continuing detention therefore violates his right to due process under the Fifth Amendment.

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

34. 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.

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

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 Western 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: February 22, 2026

/s/ Paul O'Dwyer
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