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UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

Antonio Alejandro Garcia Morao,  
  
Petitioner

v.

KRISTI NOEM, in her official capacity as  
Secretary of the Department of Homeland  
Security,

TODD LYONS, in his official capacity as  
Acting Director of Immigration and Customs  
Enforcement,

MICHAEL V. BERNACKE, in his official  
capacity as ICE Field Officer Director,

ANDY COPP, in his official capacity as the  
warden of the Evanston, Wyoming Detention  
Facility,

PAMALA BONDI, in her official capacity as  
the United States Attorney General,

United States Immigration and Customs  
Enforcement.

Respondents

Civil No.: **2:25-cv-838**

AMENDED VERIFIED PETITION FOR  
HABEAS CORPUS

IMMIGRATION HABEAS CASE

**INTRODUCTION**<sup>1</sup>

1  
2 1. Antonio Alejandro Garcia Morao (Petitioner), by and through his undersigned counsel,  
3 hereby files this petition for a writ of habeas corpus. Petitioner entered the United States on May 23,  
4 2023 after having been admitted under the Venezuelan Humanitarian Parole Program. Ex. 1.

5  
6 2. Petitioner is married to a United States' Citizen and, upon information and belief, has a  
7 pending application for adjustment of status through that marriage. Upon information and belief,  
8 Petitioner filed his application for adjustment of status prior to the expiration of his parole.

9  
10 3. On September 18, 2025, a domestic disagreement resulted in the police being called and  
11 Petitioner being arrested. Petitioner was charged with 76-5-102(2) + (3A), Assault – Class B  
12 Misdemeanor; 76-6-106(2B) + (3DIV), Criminal Mischief – Loss < \$500 – Class B Misdemeanor; 76-  
13 9-110, Public Intoxication – Class C Misdemeanor; and 76-5-114(2D), Domestic Violence in the  
14 Presence of Child – Class B Misdemeanor. Ex. 2. Petitioner's spouse informed the police that she did  
15 not intend to seek charges against Petitioner. To date, Petitioner has no criminal convictions.

16  
17 4. Petitioner was released from the county's custody presumably on Monday, September 22, at  
18 5pm, and was transferred to ICE custody on September 23, 2025. Petitioner remains in ICE custody in  
19 Salt Lake City, Utah. Based on information given by ICE, Petitioner is detained under charges under  
20 INA §212(a)(6)(A)(i) and §212(a)(7). The first charge is for an alien present without having been  
21 admitted or paroled, and the second is for an alien who was not in possession of a valid entry permit or  
22 visa when applying for admission. As Petitioner was granted parole and had a valid entry permit when  
23 he presented himself at the border, neither charge would apply to him.

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28 <sup>1</sup> The following information is based on information and belief as counsel has not had the opportunity to speak directly  
with the petitioner.

1 5. It is current policy of the Department of Homeland Security and the Department of Justice  
2 to not allow individuals to seek bond if they were not admitted into the United States.<sup>2</sup> As Petitioner  
3 was paroled and not admitted into the United States, he would be subject to this policy change,  
4 rendering him detained indefinitely until his removability can be proven.

5  
6 6. Pursuant to 8 U.S.C. 1226(b), the Attorney General shall take into custody any alien who is  
7 inadmissible for having committed any offense found under 8 U.S.C. 1182(a)(2), or any alien who is  
8 deportable for having committed any offense found under 8 U.S.C. 1227(a)(2)(A)(iii), (A)(iii), (B),  
9 (C), or (D). Petitioner's criminal charges do not constitute an offense listed under any of these sections.  
10 Petitioner's charges are not crimes involving moral turpitude under 8 U.S.C. 1182(a)(2), and, his  
11 charges cannot qualify under 8 U.S.C. 1227(a)(2)(A)(iii), (A)(iii), (B), (C), or (D) because petitioner  
12 has not been convicted of any crime.

13  
14 7. Under 8 U.S.C. 1226(a) an alien may be arrested on a warrant issued by the Attorney General  
15 pending a decision on whether the alien can be removed. To date, the Attorney General has not issued  
16 an arrest warrant against the Petitioner. Therefore, Petitioner's detention violates the Immigration and  
17 Nationality Act.

### 18 JURISDICTION AND VENUE

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20 8. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general  
21 federal question jurisdiction; 5 U.S.C. §§ 701 et seq., and the Due Process Clause of the Fifth  
22 Amendment of the U.S. Constitution and the INA. This Court may grant relief under the habeas corpus  
23 statutes, 28 U.S.C. § 2241 et. seq. and the All Writs Act, 28 U.S.C. § 1651.  
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<sup>2</sup> See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission, AILA Doc. No. 25071607 (July 8, 2025), <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> [<https://perma.cc/5GKM-JYGX>].

1 9. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the  
2 lawfulness or constitutionality of DHS conduct. Federal courts are not stripped of jurisdiction under 8  
3 U.S.C. § 1252. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

4 10. Venue is proper pursuant to 28 U.S.C. § 1391(e) because Respondents are agencies of the  
5 United States or officers or employees thereof acting in their official capacity or under color of legal  
6 authority; Petitioner is in the custody of the presumptive Salt Lake City Office of the Immigration and  
7 Customs Enforcement, which is in the jurisdiction of the Utah District; and there is no real property  
8 involved in this action.

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10 11. There is no requirement for exhaustion of administrative remedies in the present case as  
11 neither the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INS require petitioners to  
12 exhaust administrative remedies before filing petitions for habeas corpus  
13

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

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

19  
20 13. Courts have long recognized the significance of the habeas statute in protecting individuals  
21 from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ  
22 known to the constitutional law of England, affording as it does a swift and imperative remedy in all  
23 cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

24  
25 14. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is arrested and  
26 detained by Respondents.  
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**PARTIES**

**PETITIONER**

15. Petitioner is a Venezuelan citizen, who is currently in the presumptive custody of the Department of Homeland Security in Salt Lake County.

**RESPONDENTS**

16. Respondent Kristi Noem (Secretary Noem) is the Secretary of the Department of Homeland Security, the parent agency of Immigration and Customs Enforcement which is currently detaining the Petitioner. Respondent Kristi Noem is sued in her official capacity as an agent of the United States Government.

17. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

18. Respondent Michael V. Bernacke is the Field Office Director of Immigration and Customs Enforcement. He is in charge of the custody of all Immigration and Customs Enforcement Detainees in the State of Utah. Respondent Michael V. Bernacke is sued in his official capacity as an agent of the United States Government.

19. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

20. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

**LEGAL FRAMEWORK**

1  
2 21. The Constitution prohibits the government from depriving any person of liberty without due  
3 process of law. The Fifth Amendment provides that “[n]o person shall... be deprived of life, liberty, or  
4 property, without due process of law.” U.S. Const. amend. V. This protection extends to all persons  
5 within the United States, regardless of immigration status. *See Zadvydas v. Davis*, 533 U.S. 678, 693  
6 (2001) (“The Due Process Clause applies to all ‘persons’ within the United States, including aliens,  
7 whether their presence here is lawful, unlawful, temporary, or permanent.”).

9 22. Detention implicates the core liberty interests protected by the Due Process Clause. *See*  
10 *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (holding that “[f]reedom from bodily restraint has always  
11 been at the core of the liberty protected by the Due Process Clause”). As the Supreme Court has made  
12 clear, any deprivation of liberty must be narrowly tailored to serve a legitimate government purpose  
13 and cannot be arbitrary or indefinite. *See Zadvydas*, 533 U.S. at 690–92.

15 25. Under the Immigration and Nationality Act (INA), Congress has defined specific  
16 circumstances in which the Department of Homeland Security (DHS) may detain noncitizens.  
17 Mandatory detention applies only to aliens who are inadmissible under certain criminal grounds, 8  
18 U.S.C. § 1182(a)(2), or deportable under specified criminal grounds, 8 U.S.C. § 1227(a)(2)(A)(iii), (B),  
19 (C), or (D). 8 U.S.C. § 1226(b). Deportable offenses require convictions trigger mandatory detention.  
20 8 U.S.C. 1227(a)(2)(A)(iii), (A)(iii), (B), (C), or (D).

22 24. For all other noncitizens, detention is discretionary under 8 U.S.C. § 1226(a). DHS may  
23 arrest and detain an alien only *pursuant to a warrant issued by the Attorney General* pending a decision  
24 on removability. Here, no such warrant has been issued.  
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1           25. DHS’s detention authority is therefore limited and contingent on compliance with statutory  
2 prerequisites. Detention outside these boundaries constitutes an arbitrary deprivation of liberty in  
3 violation of the Fifth Amendment.

4           26. A crime involving moral turpitude would mandate mandatory detention. 8 U.S.C. 1226(b).  
5 While the INA does not define what a crime involving moral turpitude is, courts have stated that a  
6 crime involving moral turpitude (CIMT) involves “conduct which is inherently base, vile, or depraved,  
7 contrary to accepted rules of morality.” *Efagene v. Holder*, 642 F.3d 918, 921 (10th Cir. 2011). “Moral  
8 turpitude reaches conduct that is inherently wrong, or *malum in se*, rather than conduct deemed wrong  
9 only because of a statutory proscription, *malum prohibitum*.” *Flores-Molina v. Sessions*, 850 F.3d  
10 1150, 1159 (10th Cir. 2017) (quoting *Efagene*, 642 F.3d at 921). A CIMT involves reprehensible  
11 conduct and “a form of ‘scienter,’ such as specific intent, knowledge, willfulness, or recklessness.”  
12 *Matter of Leal*, 26 I&N Dec. 20, 21 (BIA 2012). A statutory offense is morally turpitudinous when  
13 “the specific intent to accomplish a base act is an element of the offense.” *Matter of Solon*, 24 I&N  
14 Dec. 239 (BIA 2007).

15           27. Noncitizens who were paroled into the United States—though not technically “admitted”  
16 under the Immigration and Nationality Act—may nonetheless adjust status if they are otherwise  
17 eligible. Under 8 U.S.C. § 1255(a), the Attorney General may adjust the status of an alien *who was*  
18 *inspected and admitted or paroled into the United States* to that of a lawful permanent resident,  
19 provided the alien meets all other statutory requirements. Courts have consistently recognized that  
20 parole constitutes lawful entry for purposes of adjustment, even though it is not considered an  
21 “admission” under 8 U.S.C. § 1101(a)(13)(A). See *Matter of Arrabally and Yerrabelly*, 25 I. & N. Dec.  
22 771, 774 (BIA 2012) (holding that parolees are eligible to adjust status through a U.S. citizen spouse  
23 under INA § 245(a)). Thus, a noncitizen who entered the United States on parole retains the ability to  
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1 seek lawful permanent residence through marriage to a U.S. citizen, provided all other eligibility  
2 requirements are satisfied.

3 28. Under the Immigration and Nationality Act (INA), an individual who is present in the  
4 United States without being admitted or paroled, or who remains beyond the period of stay authorized  
5 by the Secretary of Homeland Security, is considered to be unlawfully present. This accrual of unlawful  
6 presence can have significant immigration consequences, including triggering bars to reentry.  
7

8 29. However, the U.S. Citizenship and Immigration Services (USCIS) Policy Manual clarifies  
9 that if a noncitizen files a timely application for extension or change of status before their current status  
10 expires, they are not considered to be unlawfully present during the pendency of that application. This  
11 provision is crucial for individuals seeking to adjust their status, as it prevents the accrual of unlawful  
12 presence while their application is under review.  
13

14 Specifically, the USCIS Policy Manual states:

15 If an applicant's nonimmigrant status expires before he or she files an application to  
16 extend or change status, the application is not timely filed. USCIS has discretion to  
17 excuse the untimely filing and approve an EOS or COS application if the applicant can  
18 demonstrate that: ... If the application is timely filed, unlawful presence does not accrue  
19 during the pendency of the application.  
20

21 USCIS Policy Manual, V. 7, Part B, E.3.

22 32. Therefore, a noncitizen who submits a timely application for extension or change of status  
23 before their current status expires is not accruing unlawful presence while that application is pending.  
24 This policy underscores the importance of maintaining lawful status and adhering to filing timelines to  
25 avoid potential immigration penalties.  
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1 **PROCEDURAL AND FACTUAL BACKGROUND**

2 30. Petitioner entered the United States on May 23, 2023 under the Venezuelan Humanitarian  
3 Parole Program. Ex. 1. Petitioner’s parole was valid until May 21, 2025. *Id.* Petitioner soon after  
4 married his U.S. Citizen wife and began the process of adjustment of status through his U.S. Citizen  
5 spouse. Upon belief and knowledge, Petitioner submitted his application for adjustment of status prior  
6 to the expiration of his parole.  
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8 31. Petitioner was arrested on September 18, 2025 in the city of Ogden and charged with 76-  
9 5-102(2) + (3A), Assault – Class B Misdemeanor; 76-6-106(2B) + (3DIV), Criminal Mischief – Loss  
10 < \$500 – Class B Misdemeanor; 76-9-110, Public Intoxication – Class C Misdemeanor; and 76-5-  
11 114(2D), Domestic Violence in the Presence of Child – Class B Misdemeanor. Ex. 2. Petitioner has  
12 no criminal convictions. Petitioner was held in the custody of Weber County at the Weber County Jail  
13 until the afternoon of September 22, 2025. On September 24, 2025, Petitioner was moved to the custody  
14 of DHS and remains in their custody.  
15

16 32. To date, ICE has not issued a notice to appear with a court or an arrest warrant. Based on  
17 information given by DHS, Petitioner is held on INA 212 charges of being physically present without  
18 having been admitted or paroled, or someone who presented themselves without a lawful entry permit.  
19 INA §212(a)(2)(A)(i), (a)(7). An individual granted parole prior to presenting themselves for inspection  
20 would not fit under either category.  
21

22 **CAUSES OF ACTION**

23 **1. FIRST CAUSE OF ACTION:**  
24 **Violation of Fifth Amendment Right Due Process**

25 33. Petitioner incorporates and realleges the allegations above.  
26

27 34. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the  
28 federal government from depriving any person of “life, liberty, or property, without due process of

1 law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including  
2 [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*,  
3 533 U.S. at 693.57.

4 35. The Department of Homeland Security’s and Department of Justice’s interim policy  
5 directing the detention of individuals who are applying for admission, regardless of individualized  
6 circumstances, violates these fundamental due process protections. See DHS, *Interim Guidance*  
7 *Regarding Civil Immigration Detention and Parole for Applicants for Admission* (Nov. 2021). By  
8 treating all parole applicants as categorically subject to detention without the constitutionally required  
9 individualized assessment of risk or necessity, the policy impermissibly presumes detention rather than  
10 liberty. This blanket presumption of detention disregards the Supreme Court’s repeated instruction that  
11 “[f]reedom from imprisonment ... lies at the heart of the liberty that Clause protects,” *Zadvydas v.*  
12 *Davis*, 533 U.S. 678, 690 (2001), and therefore contravenes the Fifth Amendment’s guarantee of due  
13 process for all persons in the United States.

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16 **2. SECOND CAUSE OF ACTION:**  
17 **Violation of the Immigration and Nationality Act**

18 36. Petitioner incorporates and realleges the allegations above.

19 37. The immigration and nationality act provides two grounds for which a non-citizen can be  
20 detained by DHS. First, under discretionary detention upon a warrant by the Attorney General until  
21 the alien’s removability can be established, and second, under mandatory detention for aliens that  
22 have committed certain criminal offenses. 8 U.S.C. 1226(b), 8 U.S.C. 1226(a).<sup>3</sup>

23  
24 38. To date, DHS has not issued an arrest warrant for Petitioner, therefore, Petitioner cannot be  
25 detained under 8 U.S.C. 1226(a). Further, Petitioner has not committed an offense found under 8 U.S.C.  
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28 <sup>3</sup> As Petitioner was not an arriving alien, he is not subject to mandatory detention as an arriving alien. 8 U.S.C. §  
1225(b)(1)(B)(iv)

1 1182(a)(2). The only possible offense that Petitioner’s charges may qualify under are crimes involving  
2 moral turpitude. For a charge of a crime involving moral turpitude to render an alien inadmissible, the  
3 alien must admit to the elements of the crime on the record. 8 U.S.C. 1182(a)(2)(A)(I)(i). Here,  
4 Petitioner has not admitted to the essential elements of any of the crimes for which he is charged,  
5 therefore, he cannot be subject to mandatory detention based on those crimes.  
6

7 39. However, assuming, *arguendo*, that Petitioner did admit to the essential elements of his  
8 charges, none of his charges constitute a crime involving moral turpitude.

9 40. First, Petitioner’s charge of class b misdemeanor assault does not constitute a crime  
10 involving moral turpitude. Subsection (1)(a) of the statute, which involves an attempt to do bodily  
11 injury to another, implies that no injury occurred but that there was a risk of bodily injury. Under Utah  
12 Code section 76-1-601(4), “[b]odily injury” is defined as “physical pain, illness, or any impairment of  
13 physical condition.” “Bodily injury” under Utah law is more than mere “offensive touching.” *See, e.g.,*  
14 *Cervantes-Aguilar v. Barr*, 819 Fed. App’x 573, 576–78 (10th Cir. 2020). However, the level of  
15 (potential) harm appears to be minimal, as in any other simple assault/battery offense, and is therefore  
16 likely insufficient for a conviction of a class B misdemeanor under this statute to be a conviction for a  
17 CIMT. *See, e.g., Birhanu v. Wilkinson*, 990 F.3d 1242, 1255 (10th Cir. 2021) (noting that in an  
18 unpublished case, “this court recognized that an offense that ‘categorically permits a conviction based  
19 only on “recklessly” assaulting a person, without a further requirement of the infliction of “serious  
20 bodily injury”’ would ‘likely not constitute a CIMT’” (quoting *Garcia v. Lynch*, 668 F. App’x 843,  
21 844 (10th Cir. 2016))).  
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25 41. Second, Petitioner’s charge of Criminal Mischief does not require harm to an individual,  
26 but to an infrastructure, thus it, in and of itself, would not constitute a crime involving moral turpitude.  
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1 42. Third, Petitioner's charge of public intoxication does not require any scientor and therefore  
2 could not be a crime involving moral turpitude.

3 43. Finally, the final charge of domestic violence in the presence of a child is not a crime  
4 involving moral turpitude. A crime of domestic violence is categorized assault, but on a cohabitant.  
5 Utah Code 77-36-1. As assault is not a crime involving moral turpitude, neither is domestic violence.  
6

7 44. As none of Petitioner's offenses constitute a crime involving moral turpitude, Petitioner is  
8 not subject to mandatory detention.

9 45. Petitioner is also not accruing unlawful status, as he entered the United States under parole,  
10 married a U.S. Citizen, and submitted a lawful application for adjustment of status prior to his parole  
11 expiring. Therefore, there are no grounds that would render Petitioner removable at this time.  
12

13 46. It is clear that Petitioner is currently detained in violation of the Immigration and Nationality  
14 Act and should be released from detention.

15 47. ICE officials have stated that Petitioner is detained under INA § 212(a)(2)(A)(i) and §  
16 212(a)(7).<sup>4</sup> However, those provisions govern the grounds of inadmissibility for individuals seeking  
17 entry into the United States. They do not apply to individuals who have already been inspected and  
18 paroled into the country. By statute and binding precedent, parole does not constitute an "admission,"  
19 but it does confer lawful a lawful entry and presence. INA § 212(a)(2)(A)(i); *see also Matter of*  
20 *Castillo-Padilla*, 25 I&N Dec. 257, 260 (BIA 2010); *Leng May Ma v. Barber*, 357 U.S. 185, 188–89  
21 (1958).  
22

23 48. Here, Petitioner was paroled into the United States with a valid entry document. He was  
24 not an "arriving alien" attempting entry without authorization, nor was he seeking admission after a  
25 prior removal. Accordingly, DHS cannot lawfully rely on INA § 212(a)(2)(A)(i) or § 212(a)(7) as a  
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<sup>4</sup> This information is based on a conversation counsel had on the phone with the ICE office on September 24, 2025.

1 basis for detention, because those provisions do not govern the custody of individuals already paroled  
2 and present in the country. Therefore, DHS has no lawful basis for detaining Petitioner.

3 **RESERVATION OF RIGHTS**

4 Petitioner reserves the right to add additional allegations of agency error and related causes  
5 of action upon receiving the certified administrative record.  
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioner requests that this Court grant the following relief:  
9

- 10 A. Assume jurisdiction over the matter.
- 11 B. Declare Petitioner's detention unlawful pursuant to the due process clause and the Immigration  
12 and Nationality Act.
- 13 C. Order Petitioner's immediate release from detention.
- 14 D. Award Petitioner costs of suit and attorney's fees under the Equal Access to Justice Act, 42  
15 U.S.C. § 1988 and any other applicable law;
- 16 E. Enter all necessary relief, injunctions, and orders as justice and equity as appropriate to  
17 remedy the harms to Petitioner;
- 18 F. Grant such further relief as this Court deems just and proper.  
19

20 DATED: September 23, 2025  
21

22 Respectfully submitted,

23  
24 **/S/ ALEC S. BRACKEN**  
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