IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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| **OSCAR ARTOLA ARAUZ,**<br>Petitioner,<br>v.<br><br>**JUAN BALTAZAR**, in his official capacity as warden of the Aurora Contract Detention Facility,<br><br>**ROBERT GUARDIAN**, in his official capacity as Field Office Director, Denver, U.S. Immigration and Customs Enforcement,<br><br>**KRISTI NOEM**, in her official capacity as Secretary, U.S. Department of Homeland Security;<br><br>**TODD LYONS**, in his official capacity as Acting Director of Immigration and Customs Enforcement,<br><br>**PAMELA BONDI**, in her official capacity as Attorney General of the United States<br><br>Respondents. | Case No.<br><br>**PETITION FOR WRIT OF HABEAS CORPUS** |

## INTRODUCTION

1. Petitioner Oscar Artola Arauz (hereafter Petitioner or Mr. Artola Arauz) is in the physical custody of Respondents at the Aurora Contract Detention Facility in Aurora, CO. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have erroneously concluded Mr. Artola Arauz is subject to mandatory detention.
2. Mr. Artola Arauz is charged with having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i). He did in fact enter without inspection, when he was a child in 1987. He and the majority of his family have resided in Florida since entering.
3. Based on this allegation in Mr. Artola Arauz's removal proceeding, DHS denied him release from immigration custody, consistent with a new DHS policy issued on July 8, 2025. This policy instructs all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under section 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.
4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedential decision, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without inspection. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) as applicants for admission and therefore ineligible to be released on bond. Mr. Artola Arauz sought a custody redetermination hearing before an immigration judge (IJ), but on October 6, 2025, the IJ denied bond. The IJ based this decision on the same legal analysis.

5. The IJ concluded that, notwithstanding Mr. Artola Arauz's approximately 38 years of residing in the United States, he is nevertheless an "applicant for admission" who is "seeking admission" and subject to mandatory detention under section 1225(b)(2)(A).
6. Mr. Artola Arauz's detention on this basis violates the plain language of the Immigration and Nationality Act and its implementing regulations.
7. Section 1225(b)(2)(A) does not apply to individuals like Mr. Artola Arauz who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Mr. Artola Arauz, are charged as inadmissible for having entered the United States without inspection.
8. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying section 1226(a) to people like Petitioner. Respondents' new policies are thus not only contrary to the law, but arbitrary and capricious in violation of the Administrative Procedure Act (APA). They were also adopted without complying with the APA's procedural requirements.
9. Accordingly, Mr. Artola Arauz seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under section 1226(a) within seven days, at which Respondents carry the burden to establish by clear and convincing evidence that Mr. Artola Arauz is a flight risk or a danger to the community.

## JURISDICTION

10. Mr. Artola Arauz is in the physical custody of the Respondents. He is detained at the Aurora ICE Processing Center, a Contract Detention Facility owned and operated by GEO Group, Inc., in Aurora, Colorado.

11. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

**VENUE**

13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Colorado, the judicial district in which Mr. Artola Arauz is currently detained.

14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because at least four of five Respondents are employees, officers, or agencies of the United States, and a substantial part of the events or omissions giving rise to the claims, including those involving the warden of the detention center, occurred in the District of Colorado.

**REQUIREMENTS OF 28 U.S.C. § 2243**

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

16. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "Habeas corpus 'is a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.'" *Kell v. Benzon*, 925 F.3d 448, 463 (10th Cir. 2019); (quoting *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954)).

17. As Mr. Artola Arauz currently finds himself in ongoing unlawful detention, his petition warrants the urgent consideration that *habeas corpus* is designed to provide.

**PARTIES**

18. Petitioner Oscar Artola Arauz is a citizen of Nicaragua who has been in immigration detention since June 11, 2025. After arresting Mr. Artola Arauz in Jacksonville, Florida, ICE did not set bond, and Mr. Artola Arauz requested review of his custody by an IJ. On October 6, 2025, an IJ at the Aurora Immigration Court denied Mr. Artola Arauz bond because the IJ deemed him an "applicant for admission." Mr. Artola Arauz has resided in the United States since 1987.

19. Respondent Juan Baltazar is named in his official capacity as the warden of the Aurora Contract Detention Facility, where Mr. Artola Arauz is detained. Warden Baltazar is an employee of the GEO Group, a private prison company that contracts with ICE to run the Aurora Contract Detention Facility. He has immediate physical custody of Mr. Artola Arauz and is his legal custodian.

20. Respondent Robert Guardian is named in his official capacity as the Acting ICE Denver Field Office Director. The Denver Field Office is responsible for carrying out ICE's immigration detention operations at all of Colorado's detention centers. As such, Robert Guardian is Mr. Artola Arauz's immediate custodian and is responsible for Mr. Artola Arauz's detention and removal.

21. Respondent Kristi Noem is named in her official capacity as the Secretary of the Department of Homeland Security. She is responsible for the administration of U.S. immigration law and is legally responsible for the process of Mr. Artola Arauz's detention and removal. As such, she is his legal custodian.

22. Respondent Todd Lyons is named in his official capacity as Acting Director of ICE. As the head of ICE, he is responsible for the decisions related to the detention and removal of certain noncitizens, including Mr. Artola Arauz. As such he is Mr. Artola Arauz's legal custodian.

23. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

**FACTS**

24. Mr. Artola Arauz was brought into the U.S. without inspection in 1987 when he was nine years old, and he has never left.

25. On June 11, 2025, ICE arrested Mr. Artola Arauz immediately after local law enforcement officials released him from their custody. ICE eventually transferred Mr. Artola Arauz to the Aurora Contract Detention Facility where he is currently held.

26. DHS placed Mr. Artola Arauz in removal proceedings before the Aurora Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Mr. Artola Arauz with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

27. Mr. Artola Arauz and his family have lived in Florida since he was 9 years old, nearly forty years ago. His son, mother, brother, sister, aunts, uncles, cousins, and nieces reside in the United States. He grew up in Miami and has lived in different parts of Florida, mostly determined by employment opportunities. Before he was taken into ICE custody, Mr. Artola Arauz lived in Jacksonville, Florida. Mr. Artola Arauz is eager to get back to work so he can continue to financially support his US citizen mother. Mr. Artola Arauz

has been providing assistance to his mother since she suffered a stroke. He regularly checks in with her and visits her to ensure she is getting the care she needs. The financial strain of making phone calls while in detention has made his communication with her less feasible, and he is entirely unable to visit her.

28. Mr. Artola Arauz is in detention subject to section 1226(a) of title 8 of the United States Code. This means that he is eligible for bond because he has not committed a crime that would place him in mandatory detention under 8 U.S.C. § 1226(c). Mr. Artola Arauz's criminal convictions primarily consist of minor infractions and offenses that reflect personal struggles, rather than being a danger to the community. Mr. Artola Arauz has two convictions for driving under the influence of alcohol. He has expressed remorse for his actions and regrets endangering others by choosing to drive while under the influence of alcohol. He has committed to sobriety and recently joined the Alcoholics Anonymous program at the detention facility. Mr. Artola Arauz has also taken responsibility for his actions resulting in a conviction for resisting-arrest-without-violence by participating in anger management programs.

29. Mr. Artola Arauz has complained of chest pain since entering the detention center, requiring urgent and specialized medical attention. His Left Ventricular Ejection Fraction (LVEF) is operating well below 40%, which indicates heart failure. Mr. Artola Arauz was hospitalized for ten days in July for his heart failure. Mr. Artola Arauz's doctors from the hospital have requested a critical follow-up appointment and indicated multiple times that it was very important that he attend that critical follow-up appointment. Mr. Artola Arauz's doctors prescribed him medication and a low-sodium diet. In his discharge papers, weight gain also necessitates an immediate follow-up appointment.

30. Neither ICE nor the GEO detention facility have followed the doctors' orders. Neither party has facilitated Mr. Artola Arauz getting to this appointment within the requested timeframe, nor otherwise on account of his weight gain, which is nearly 20 pounds since he was hospitalized. Despite filing requests for the recommended diet, Mr. Artola Arauz has not been able to obtain suitable food to meet his medical needs. Neither ICE nor GEO has made arrangements for Mr. Artola Arauz to get the care he so critically needs.
31. Following Mr. Artola Arauz's arrest and transfer to the Aurora Contract Detention Facility, ICE issued a custody determination to continue Mr. Artola Arauz's detention without an opportunity to post bond or be released on other conditions.
32. Mr. Artola Arauz then requested that an IJ redetermine his bond.
33. On October 6, 2025, an IJ at the Aurora Immigration Court concluded she lacked jurisdiction to conduct a bond redetermination hearing. Exhibit 1 (Custody Redetermination Order). The IJ stated she lacked jurisdiction because Mr. Artola Arauz entered without inspection and under *Matter of Yahure* his detention now falls under section 1225(b)(2)(A) as an applicant for admission subject to mandatory detention. However, the IJ agreed that *Matter of Yahure* conflicts with numerous BIA opinions on this same issue.
34. As a result, Mr. Artola Arauz remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community and forced to fight for his ability to stay in the United States while in detention and without immigration counsel.

**EXHAUSTION OF REMEDIES**

35. Petitions under 28 U.S.C. § 2241 are not usually subject to statutory exhaustion requirements in the immigration context. Further, there is no exhaustion requirement

because no administrative agency exists to adjudicate a petitioner's constitutional challenges. *See Matter of C--*, 20 I. & N. Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board [of Immigration Appeals] lack jurisdiction to rule upon the constitutionality of the Act and the regulations."). This Court has ruled that "exhaustion is not required in the immigration context when it would be futile…or when 'the interests of the individual in retaining prompt access to a federal judicial forum outweigh the interest of the agency in protecting its own statutory authority.'" *Quintana Casillas v. Sessions*, No. CV 17-01039-DME-CBS, 2017 WL 3088346 at *9 (D. Colo. July 20, 2017) (citing *Son Vo v. Greene*, 109 F. Supp. 2d 1281, 1282 (D. Colo. 2000)).

36. Although exhaustion is not required, any appeal to the BIA in this case would be futile anyway. DHS issued its new policy "in coordination with DOJ", which oversees the immigration courts. Further, the most recent BIA decision on this issue, *Matter of Yajure,* held that persons like Petitioner are subject to mandatory detention as applicants for admission. Finally, in both the *Rodriguez Vazquez* litigation and the *Maldonado Bautista* litigation, the DOJ has affirmed its position that individuals like Mr. Artola Arauz are applicants for admission and subject to detention under section 1225(b)(2)(A). *See* Def.'s Mot. Dismiss at 27-31, *Rodriguez Vazquez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. June 6, 2025)(No. 3:25-CV-05240-TMC); Ord. on Mot. for Temp. Restraining Ord. at 2, *Maldanado Bautista v. Santacruz*, No. 5:25-cv-01873, 2025 U.S. Dist. LEXIS 171364, at *6 (C.D. Cal. Jul 28, 2025).

**LEGAL FRAMEWORK**

37. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

38. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in section 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

39. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission covered by section 1225(b)(2).

40. Last, the INA also provides for detention of noncitizens who have been ordered removed. *See* 8 U.S.C. § 1231(a)–(b).

41. This case concerns the detention provisions at sections 1226(a) and 1225(b)(2).

42. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under section 1229a, to "decid[e] the inadmissibility or deportability of [a noncitizen]."

43. The text of section 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a).

44. The plain language of section 1226 therefore applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

45. By contrast, section 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8

U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The *Jennings* Court, by contrast, described section 1226 as applying to those "already present in the United States." *Id.* at 303.

46. The detention provisions at sections 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

47. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under section 1225 and that they were instead detained under section 1226(a). *See* 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).

48. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of practice that preceded IIRIRA, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

49. On July 8, 2025, ICE, "in coordination with" the DOJ, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.

50. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under section 1225(b)(2)(A). Immigration Customs Enforcement. Pol'y No. 11005.4, Interim Guidance Regarding Detention Authority for Applicants for Admission (2025). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades. *Id.*

51. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. 29 I. & N. Dec. at 220. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under section 1225(b)(2)(A) and are ineligible for IJ bond hearings. *Id.*

52. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

53. It is estimated that this novel interpretation of the INA would require a person's detention any time that immigration authorities arrest one of the millions of immigrants residing in the United States who entered without inspection and who has not since been admitted or

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

paroled. Maria Sacchetti & Carol D. Leonnig, *ICE declares millions of undocumented immigrants ineligible for bond hearings*, Washington Post (July 14, 2025).[2]

54. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that section 1226(a), not section 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

55. Federal court after federal court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *Garcia Cortes v. Noem*, 2025 WL 2652880, at *7 (D. Colo. Sept. 16, 2025); *Jimenez v. FCI Berlin*, Warden, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Rodriguez-Vazquez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. 2025) (granting preliminary relief); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, *8 (D. Mass. July 7, 2025) (granting individual habeas relief); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.3d ---, 2025 WL 2084238, *9 (D. Mass. July 24, 2025) (denying reconsideration of individual habeas relief); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025) (granting preliminary relief); *Escalante v. Bondi*, No. 25-cv-3051, 2025 WL 2212104 (D. Minn. July 31, 2025) (report and recommendation to grant preliminary relief, adopted sub nom O.E. v. Bondi, 2025 WL 2235056 (D. Minn. Aug. 4, 2025)); *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D. N.Y. Aug. 8, 2025) (granting individual habeas relief); *de Rocha Rosado v. Figueroa*, No. CV 25-02157,

[2] *Available at* https://www.washingtonpost.com/immigration/2025/07/14/ice-trumpundocumented-immigrants-bond-hearings/ [https://perma.cc/5ZTR-EN4B].

2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (report and recommendation to grant habeas relief, adopted without objection at 2025 WL 2349133 (D. Ariz. Aug. 13, 2025)); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (granting habeas relief); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (same); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug 15, 2025) (same); *Romero v. Hyde*, --- F.Supp.3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (same); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428 JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (same); *Benitez v. Noem*, No. 5:25-cv 02190, Doc. 11 (C.D. Cal. Aug. 26, 2025) (granting preliminary relief); *Kostak v. Trump*, No. 3:25-dcv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025) (same); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, Doc. 14 (E.D. Mich. Aug. 29, 2025) (granting habeas relief).

56. Additionally, multiple courts have expressly disagreed with the BIA's statutory interpretation in *Matter of Yajure*. *See e.g., Lepa v. Andrews,* 1:25-cv-01163-KES-SKO (finding *Matter of Yajure* unpersuasive and holding the respondent who entered without inspection is subject to § 1226(a) detention) (E.D. Cal. Sept. 23, 2025); *Chafla v. Scott*, No. 2:25-cv-00437-SDN (D. Me. Sept. 21, 2025) (noting court's disagreement with BIA's analysis in *Matter of Yajure*); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E..D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in *Matter of Yajure*).

57. As discussed in more detail below, the mandatory detention provision of section 1225(b)(2) does not apply to people like Mr. Artola Arauz, who have already entered and were residing in the United States at the time they were apprehended.

**ARGUMENT**

58. By the plain language of section 1226, the principles of statutory construction, the legislative history, longstanding agency practice, and the Board of Immigration Appeals' (BIA) own interpretation of the statute, section 1226(a) governs Mr. Artola Arauz's detention.

59. The plain language of the section explicitly confirms that it applies not only to people who are deportable, but also to those who are inadmissible, such as Mr. Artola Arauz. *See* 8 U.S.C. § 1226(c)(1)(E). Section 1226(c) offers a carve out for specific limited categories of inadmissible noncitizens subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(A)(C). A plain reading of the exceptions implies that the default discretionary bond procedures in section 1226(a) apply to a noncitizen who, like Mr. Artola Arauz, is present without being admitted or paroled but has not been implicated in any crimes as set forth in section 1226(c). *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (recognizing that when Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies.).

60. A substantive amendment to INA Section 236(c)(1)(E) in the Laken Riley Act of 2025 LRA), codified at 8 U.S.C. § 1226(c)(1)(E), further clarifies this plain language reading. LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025). The amendment requires mandatory detention of individuals who entered without inspection and are inadmissible like Mr. Artola Arauz, but only if they were *also* arrested, charged with, or convicted of certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals in 8 U.S.C. § 1226(c), Congress clarified that 8 U.S.C. § 1226(a) governs the detention of people only

subject to inadmissibility under 8 U.S.C. § 1182(a)(6) and who are not "seeking admission" to the country.

61. In contrast, section 1225 is concerned "primarily with those seeking entry. . .at the Nation's borders and ports of entry. . ." *Jennings*, 583 U.S. at 297. Paragraphs (b)(1) and (b)(2) in section 1225 reflect this understanding.

62. Paragraph (b)(1) concerns "expedited removal of inadmissible arriving [noncitizens]." 8 U.S.C. § 1225(b)(1). It only encompasses the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates; and those who are "inadmissible under section [1182](a)(6)(C) or [1182](a)(7)," the sections for fraud and documentation requirements mentioned in section 1225(b)(1)(A)(i). *Id.* The text in Subsection (b)(1) demonstrates that it is focused only on people *arriving* at a port of entry or who have *recently* entered the United States and not those already residing here. *Id.*

63. Paragraph (b)(2) is similarly limited to people "seeking admission" when they *arrive* in the United States or very shortly thereafter. *See Garcia Cortes*, 2025 WL 2652880, at *3 (noting that the noncitizen was not seeking admission at the time of his arrest because he has resided in the country for years). The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission" but who (b)(1) does not address. *Id.* § 235(b)(2), (b)(2)(A). By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like Mr. Artola Arauz who already entered the United States and have been residing here for decades. The related regulation defines "arriving [noncitizen]," in relevant part, as "an applicant for admission coming or attempting to come into the United States at a port-of-entry...." *Jaquez-Estrada v. Barr*, 825 F. App'x 538, 540 (10th Cir. 2020). Moreover, subparagraph (b)(2)(C) addresses "[t]reatment of [noncitizens]

*arriving* from contiguous territory," i.e., those who are "*arriving* on land." 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further underscores Congress' focus in section 1225 on those who are *arriving* in the United States—not those already residing here for years.

64. Two canons of statutory construction support Mr. Artola Arauz's argument. First, statutes should be construed as a whole, giving effect to all their provisions. *Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up) ("[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous"). Second, recent amendments to a statute should be read in harmony with an agency's longstanding construction. *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) (citations omitted) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.").

65. Collapsing sections 1225 and 1226 would violate fundamental principles of statutory construction and render multiple portions of the INA, including the most recent LRA amendments, superfluous. Under the "most basic [of] interpretative canons, . . . '[a] statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.'" *Corley v. United States*, 556 U.S. 303, 314 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)). "This principle . . . applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times." *Bilksi v. Kappos*, 561 U.S. 593, 607–08 (2010).

66. The juxtaposition of the procedural protections in sections 1225 and 1226 clearly suggests that Congress intended they apply to separate sets of individuals. Indeed, the Supreme Court distinguished between the sections in *Jennings*, 583 U.S. at 289, and the

*Maldonado Bautista* Court emphasized the "separate nature" of sections 1225 and 1226 and found "no reason to collapse separate sections of the INA's statutory scheme." No. 5:25-cv-01873 (C.D. Cal. Jul 28, 2025) at 9. Similarly, in *Garcia Cortes* Judge Sweeney stressed the "potentially dispositive" distinction between section 1225's mandatory detention scheme and section 1226's discretionary framework. *Garcia Cortes v. Noem*, 2025 WL 2652880, at *6 (D. Colo. Sept. 16, 2025).

67. As described *supra*, the detention provisions at sections 1226(a) and 1225(b)(2) were enacted as part of IIRIRA. Prior to IIRIRA, noncitizens like Mr. Artola Arauz were not subject to mandatory detention either. *See* INA § 242(a)(1) (1994) (authorizing the Attorney General to arrest noncitizens for deportability proceedings, which applied to all persons within the United States). In enacting IIRIRA, Congress kept the same bond eligibility regime in place. Congress only noted that the new section 236(a) "restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229; *see also* H.R. Rep. No. 104-828, at 210.

68. Had Congress intended to make such a monumental shift in immigration law – thereby subjecting millions of people to mandatory detention – it would have done so clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001) (noting that Congress does not "alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes"); *Cf. Lorillard v. Pons*, 434 U.S. 575, 580 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.").

69. Nearly three decades of agency practice since IIRIRA reflects DHS and EOIR have considered petitioners like Mr. Artola Arauz as detained under section 1226.[3] For decades, and across administrations, DHS has acknowledged that section 1226(a) applies to individuals who entered the United States unlawfully and are later apprehended inside the country long after entry. Nothing in the relevant regulation provides otherwise. 8 C.F.R. § 1003.19(h) (regulating custody and bond). The Executive Office for Immigration Review (EOIR) confirmed that section 1226(a) applies to Mr. Artola Arauz and similarly situated people. 62 Fed. Reg. at 10323 ("Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination*") (emphasis added). As the Supreme Court explained, "[T]he longstanding practice of the government – like any other interpretive aid – can inform [a court's] determination of what the law is." *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 386 (2024); *see also Abramski v. United States*, 573 U.S. 169, 203 (2014) (a longstanding interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable.").

70. Finally, *Yajure* conflicts with various BIA precedent dictating bond jurisdiction over those who entered without inspection. *See, e.g. Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025) (assuming jurisdiction to redetermine custody of a noncitizen who entered without inspection and affirming denial of bond on discretionary consideration); *see also Matter of D-J-*, 23 I. & N. Dec. 572 (2003) (same); *Matter of R-A-V-P-*, 27 I. & N. Dec. 803 (BIA 2020) (same).

[3] Specifically, section 1226(a). Mr. Artola Arauz has criminal convictions but they do not subject him to mandatory detention under section 1226(c).

71. DHS's and DOJ's interpretation defies the plain language of sections 1225 and 1226 under title 8 of the United States Code, legislative history, agency practice, and the BIA's own position. Petitioner is thus detained pursuant to section 1226.

72. Turning to remedial action, the DOJ normally places the burden of proving that he is not a danger to the community and is not a flight risk on the respondent. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). Although it is the district court judge's ultimate decision whether to shift the burden of proof, "[t]he overwhelming majority of courts" have "held that the government must bear the burden by clear and convincing evidence" when there is a due process violation stemming from prolonged detention. *Pedro O. v. Garland*, 543 F. Supp. 3d 733, 742 (D. Minn. June 14, 2021) (citing *German Santos*, 965 F.3d at 213–14) (explaining that the government bears the burden of proof by clear and convincing evidence because the noncitizen's "potential loss of liberty is so severe" in the § 1226 context); *see also Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (granting habeas, ordering bond hearing with shifted burden of proof); *but see de Zarate v. Choate*, 2023 WL 2574370, at *5 (D. Co. March 20, 2023) (finding a due process violation and ordering a bond hearing but declining to place the burden of proof on the government); *Martinez Viguerias v. Ceja*, No. 24-cv-03056-PAB (D. Colo. Dec. 19, 2024) (same).

73. In this district, courts regularly require the burden to be placed on the government. *See, e.g., L.G. v. Choate*, 744 F. Supp. 3d 1172, 1185 (D. Colo. 2024) (noting that under the *Mathews* factors, the government "must bear the burden to justify...detention" under § 1226(a)); *Juarez v. Choate*, 2024 WL 1012912, at *8 (March 8, 2024) (explaining that the government bears the burden of proof by clear and convincing evidence); *Garcia Cortes v. Noem*, 2025 WL 2652880, at *7 (D. Colo. Sept. 16, 2025) (same); *Daley v*

*Choate*, 2023 WL 2336052, at *5 (January 6, 2023) (same) ; *Viruel Arias v. Choate*, 2022 WL 4467245, at *3 (September 26, 2022) (same); *Sheikh*, 2022 WL 17075894, at *4 (July 27, 2022) (same); *Villaescusa-Rios v. Choate*, 2021 WL 269766, at *5 (January 27, 2021) (same); *Singh v. Choate*, 2019 WL 3943960, at *7 (August 21, 2019) (same).

## CLAIMS FOR RELIEF

### COUNT I
### Violation of 8 U.S.C. § 1226(a)
### Unlawful Denial of Release on Bond

74. Mr. Artola Arauz incorporates by reference the allegations of fact set forth in the preceding paragraphs.

75. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under section 1226(a), unless they are subject to sections 1225(b)(1), 1226(c), or 1231.

76. Nonetheless, DHS has adopted a policy and practice of applying section 1225(b)(2) to Mr. Artola Arauz and noncitizens in the same position as Mr. Artola Arauz.

77. The application of section 1225(b)(2) to Mr. Artola Arauz unlawfully mandates his continued detention and violates the INA.

### COUNT II
### Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19
### Unlawful Denial of Release on Bond

78. Mr. Artola Arauz repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

79. In 1997, after Congress amended the INA through IRRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IRRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection *will be eligible for bond and bond redetermination*." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

80. Nonetheless, DHS has adopted a policy and practice of applying section 1225(b)(2) to Mr. Artola Arauz and similarly situated noncitizens.

81. The application of section 1225(b)(2) to Mr. Artola Arauz unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

**COUNT III**
**Violation of the Administrative Procedure Act**
**Contrary to Law and Arbitrary and Capricious Agency Policy**

82. Mr. Artola Arauz repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

83. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have

been residing in the United States prior to being apprehended and placed in removal proceedings by Defendants. Such noncitizens are detained under section 1226(a) and are eligible for release on bond, unless they are subject to sections 1225(b)(1), 1226(c), or 1231.

84. Nonetheless, DHS has a policy and practice of applying section 1225(b)(2) to Bond Eligible noncitizens, including Mr. Artola Arauz.

85. Moreover, Defendants have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

86. The application of section 1225(b)(2) to Mr. Artola Arauz is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

**COUNT IV**
**Violation of the Administrative Procedure Act**
**Failure to Observe Required Procedures**

87. Mr. Artola Arauz repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

88. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D). Specifically, the APA requires agencies to follow public notice-and-comment rulemaking procedures before promulgating new regulations or amending existing regulations. See 5 U.S.C. § 553(b), (c).

89. Defendants failed to comply with the APA by adopting its policy and departing from its regulations without any rulemaking, let alone any notice or meaningful opportunity to

comment. Defendants failed to publish any such new rule despite affecting the substantive rights of thousands of noncitizens under the INA, as required under 5 U.S.C. § 553(d).

90. Had Defendants complied with the advance publication and notice-and-comment rulemaking requirements under the APA, members of the public and organizations that advocate on behalf of noncitizens like Mr. Artola Arauz would have submitted comments opposing the new policies.

91. The APA's notice and comment exceptions related to "foreign affairs function[s] of the United States," *id.* § 553(a)(1), and "good cause," *id.* § 553(d)(3), are inapplicable.

92. Defendants' adoption of their no-bond policies therefore violates the public notice-and-comment rulemaking procedures required under the APA.

**COUNT V**
**Violation of Fifth Amendment Due Process Clause**

93. Mr. Artola Arauz repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

94. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

95. Moreover, "[t]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

96. Mr. Artola Arauz has a fundamental interest in liberty and being free from official restraint.

97. The government's detention of Mr. Artola Arauz without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

**PRAYER FOR RELIEF**

WHEREFORE, Mr. Artola Arauz prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that Respondents release Mr. Artola Arauz or provide Mr. Artola Arauz with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

c. Shift the burden of proof, requiring ICE to establish by clear and convincing evidence that Mr. Artola Arauz is a flight risk or a danger to the community, at the court-ordered bond hearing;

d. Award Mr. Artola Arauz attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

e. Grant any other and further relief that this Court deems just and proper.

DATED this October 15, 2025.

Respectfully submitted,

s/ Elizabeth Jordan

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* *Student Attorney Appearance Forthcoming*

**VERIFICATION**

I, s/ Elizabeth Jordan, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petitioner's Petition for Writ of Habeas Corpus are true and correct.

Dated: October 15, 2025