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UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Civil Action No. 25-cv-3275

DANIEL ORTIZ ROSALES

Petitioner

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

ROBERT GAUDIAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity,

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

PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

Respondents

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Respondents illegally incarcerate without bond Petitioner Daniel Ortiz Rosales ("Mr. Ortiz") at Immigration and Customs Enforcement's ("ICE") Denver Contract Detention Facility in Aurora, Colorado. Mr. Ortiz is entitled to a writ of *habeas corpus* to end his unlawful loss of liberty.

I. INTRODUCTION

1. ICE charges Petitioner Daniel Ortiz Rosales ("Mr. Ortiz") with having entered the United States without inspection almost twenty years ago. He grew up in Durango, Colorado, attended and graduated from Durango High School, and attended San Juan College. He is deeply involved in his community, works in construction, and lives with and supports his U.S. Citizen common law wife, Alexandria Cambridge. He has no criminal history at all and yet Respondents incarcerate him without the opportunity to request bond.

2. ICE took Mr. Ortiz into custody in October of 2025 and charge him as removable for "entry without inspection" pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). Despite Mr. Ortiz's long-standing ties to his community in the U.S. and the hardship detention inflicts on his U.S. citizen family, Respondents are illegally denying him release on bond while civilly incarcerating him at the ICE Denver Contract Detention Facility in Aurora, Colorado ("Aurora Facility").[1]

[1] This Petition does not refer to the Aurora Facility or Mr. Ortiz's loss of liberty as detention because it does not accurately reflect the conditions at the Aurora Facility. *E.g.*, *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. of Colo. 2024) (citation omitted) (acknowledging that the District of Colorado has already found that the GEO Facility is "more akin to incarceration than civil confinement").

II. PARTIES

Petitioner

3. ICE jails Mr. Ortiz at the Aurora Facility in Aurora, Colorado. Mr. Ortiz has lived in the United States for nearly twenty years. Mr. Ortiz has no criminal contacts that subject him to mandatory detention under 8 U.S.C. § 1226(c).

Respondents

4. Juan Baltazar is the Warden of the Aurora Facility where ICE jails Mr. Ortiz, and is an employee of the GEO Group, the for-profit prison company that operates the facility. Mr. Baltazar is a legal custodian of Mr. Ortiz. He is sued in his official capacity.

5. Robert Guadian is the ICE Field Office Director of the Denver ICE Field Office and is sued in his official capacity. Mr. Guadian is the immediate custodian of Mr. Ortiz and is responsible for Mr. Ortiz's detention and removal.

6. Kristi Noem is the Secretary of the Department of Homeland Security (DHS). Ms. Noem is responsible for the implementation and enforcement of the INA. DHS is the parent agency of ICE, and thus Ms. Noem also oversees ICE, which is responsible for Mr. Ortiz's illegal detention. Ms. Noem has ultimate custodial authority over Mr. Ortiz and is sued in her official capacity.

7. Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE) and is sued in his official capacity. Mr. Lyons is responsible for Mr. Ortiz's illegal detention and has custodial authority over him.

8. Pamela Bondi is the Attorney General of the United States. She is responsible for the actions of the Department of Justice (DOJ). The Executive Office for Immigration Review (EOIR) and the immigration court system it operates are a component agency of DOJ. Ms. Bondi is sued in her official capacity.

III. JURISDICTION AND VENUE

9. Respondents incarcerate Mr. Ortiz at the Aurora Facility in Aurora, Colorado. Mr. Ortiz is currently imprisoned in this District and is under the control of Respondents and their agents.

10. Mr. Ortiz brings this action under 28 U.S.C. § 2241, the INA and its implementing regulations, the Administrative Procedures Act (5 §§ U.S.C. 500-596, 701-706), the All Writs Act (8 U.S.C. § 1651), the Declaratory Judgment Act, 28 U.S.C. § 2201, and the U.S. Constitution. District courts have jurisdiction under 28 U.S.C. § 2241 to hear *habeas corpus* actions by noncitizens challenging the lawfulness and constitutionality of their civil immigration detention.

11. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the U.S.

12. Venue is proper under 28 U.S.C. § 1391 because Respondents imprison Mr. Ortiz in Aurora, Colorado, within the jurisdiction of this Court. Likewise, Mr. Ortiz is a resident of this District, his counsel is in this District, and a substantial part of the events giving rise to the claims in this action took place within this District.

IV. FACTUAL BACKGROUND

A. Legal Authority for Immigration Detention.

13. ICE's authority to jail noncitizens is proscribed by statute. Section 1226(a) of 8 U.S.C. establishes discretionary detention for noncitizens ICE arrests "[o]n a warrant issued by the Attorney General" and then place in 8 U.S.C. § 1229a removal proceedings. 8 U.S.C. § 1226(a). Those noncitizens may then request an immigration judge ("IJ") to redetermine the arresting immigration officer's "initial custody determination" at any time prior to a final order of removal. *Id.*; 8 C.F.R. §§ 236.1(d)(1), 1003.19(a), (b). During the custody redetermination request, i.e., bond hearing, the IJ determines whether the noncitizen establishes by the preponderance of the evidence

if they are a risk of flight or danger to the community. *See generally Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006).

14. Section 1226(c) of 8 U.S.C. establishes mandatory detention for noncitizens with certain criminal legal contacts in § 1229a removal proceedings. 8 U.S.C. § 1226(c). IJs do not have the authority to consider these noncitizens' request for release on bond unless ICE is substantially unlikely to establish that the noncitizen falls within one of § 1226(c)'s mandatory detention provisions. *See generally Matter of Joseph*, 22 I. & N. Dec. 799 (B.I.A. 1999).

15. The statute also provides for mandatory detention of a narrow subset of noncitizens subject to an expedited removal pursuant to § 1225(b) or for other noncitizen "applicants for admission" to the U.S. who are apprehended at the border or port of entry. *See* 8 U.S.C. § 1225(b)(2). Section 1225 focuses on noncitizens "arriv[ing]" "whether or not at a designated port of arrival," and applies to people like those who were "interdicted in international or United States waters" (§ 1225(a)(1)), are "stowaways" (§ 1225(a)(2)), and who are otherwise "applicants for admission" into the U.S. (§ 1225(a)(3)). In contrast to § 1226, § 1225 discusses matters such as "screening" "claims for asylum" (§ 1225(b)(1)(A)(i)-(ii)) at the border, "inspection" by an immigration officer to determine if a noncitizen "is … clearly and beyond a doubt entitled to be admitted" (§ 1225(b)(2) & (d)), and "removal" of "an arriving [noncitizen]" (§ 1225(c)(1)).

16. Finally, the statute provides for detention of noncitizens with final removal orders. 8 U.S.C. § 1231(a), (b).

17. Mr. Ortiz does not have any criminal legal contact rendering him subject to 8 U.S.C. § 1226(c). He is also not subject to § 1231 detention because he does not have a final removal order. Rather, this case concerns the discretionary detention provision at 8 U.S.C. § 1226(a) and Respondents' erroneous assertion that mandatory detention pursuant to § 1225(b) applies.

18. The Supreme Court summarizes the interplay between §§ 1226 and 1225 as follows: "In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission *into* the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Jennings v. Rodriguez*, 582 U.S. 281, 289 (2018) (Alito, J., emphasis added).

19. Both the § 1226 and § 1225 detention provisions 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 in early 2025 by the Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025).

20. Following the enactment of the IIRIRA in 1996, EOIR wrote regulations applicable to proceedings before IJs explaining that, in general, people who entered the country without inspection (also known as "present without admission") were *not* detainable under § 1225 and instead could only be detained under § 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) ("Despite 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").

21. Thus, in the following decades, people who entered without inspection and did not have certain criminal legal contacts received § 1226(a) bond hearings when placed in § 1229a proceedings. That practice was consistent with additional decades of pre-IIRIRA practice, in which noncitizens who were not "arriving" or seeking entry into the United States 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 the new § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

22. This practice – both pre- and post-enactment of the IIRIRA – is consistent with the fact that noncitizens present in the U.S. have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

23. Despite this long-standing practice and the plain text of the statute, the Board of Immigration Appeals (BIA) issued an unpublished decision on May 22, 2025, holding that noncitizens who entered the United States without inspection were subject to § 1225(b)(2) mandatory detention as "applicants for admission."

24. On July 8, 2025, ICE, "in coordination with" the DOJ announced a new policy consistent with the unpublished BIA decision from May 22, 2025. The new ICE/DOJ policy, titled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all noncitizens present within the U.S. who entered without inspection – no matter how long ago, no matter where, and no matter how – are deemed "applicants for admission" under 8 U.S.C. § 1225, and thus subject to mandatory detention under § 1225(b)(2)(A). The new policy applies regardless of when and where a person was apprehended and affects people who have resided in the U.S. for years.

25. On September 5, 2025 the BIA published a precedential decision finding the same. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). IJs across the country are now required to apply Respondents' unlawful detention regime absent federal court intervention.

26. The federal courts have since resoundingly rejected Respondents' position. *See Rodriguez-Vazquez v. Bostock*, No. 779 F.Supp.3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, *8 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.3d ---, 2025 WL 2084238, *9 (D. Mass. July 24, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025); *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); *de Rocha Rosado v. Figueroa*, No. CV 25-02157, 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); *Aquilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug 15, 2025); *Romero v. Hyde*, --- F.Supp.3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, Doc. 20 (D. Md. Aug. 24, 2025); *Benitez v. Noem*, No. 5:25-cv-02190, Doc. 11 (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump*, No. 3:25-dcv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, --- F.Supp.3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, --- F.Supp.3d --- , 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Palma Perez v. Berg*, --- F.Supp.3d --- , 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, No. 25-cv-02180-DMS-MMP,

2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Doe v. Moniz*, No. 1:25-cv-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025).

27. The federal courts' overwhelming rejection of Respondents' position continues unabated after *Matter of Yajure Hurtado*. *See e.g., Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Sampiao v. Hyde*, --- F.Supp.3d ---, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizzaro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256, (E.D. Cal. Sept. 9, 2025); *Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden et al.*, --- F.Supp.3d ---, 2025 WL 2639390 (D.N.H. Sept. 9, 2025) ; *Lopez Santos v. Noem*, 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Kaiser et al.*, No 25-cv-06924-EMC (EMC), 2025 WL 2637503 (N.D. Ca. Sept. 12, 2025); *Velasquez Salazar v. Dedos*, No. 1:25-cv-835, 2025 WL 2676729 (D. N.M. Sept. 17, 2025); *Barrera v. Tindall*, No. 3:25-cv-00541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Chafla et al. v. Scott*, 2:25-cv-00437-SDN, 2025 WL 2688541, at *6 (D. Me. Sept. 21, 2025). *See also Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden et al.*, --- F.Supp.3d ---, 2025 WL 2639390 (D. N.H. Sept. 9, 2025); *Lamidi v. FCI Berlin*, No. 25-cv-297-LM-TSM, ECF 14 (D. N.H. Sept. 15, 2025); *Maldonado Vasquez v. Feeley*, 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2631828 (W.D. Tex. Sept. 22, 2025); *Lepe v. Andrews*, --- F.Supp.3d ----, No. 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Lepe v. Andrews*, --- F.Supp.3d ---, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, --- F.Supp.3d ---, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Lepe v. Andrews*, --- F.Supp.3d ----, No. 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Hernandez*

Lopez v. Hardin, 1:25-cv-830, (M.D. Fla. Sept. 25, 2025); *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923, at *1 (N.D. Cal. Sept. 25, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D. N.J. Sept. 26, 2025); *Savane v. Francis*, 1:25-cv-6666-GHW, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Luna Quispe v. Crawford*, 1:25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *da Silva v.* ICE, 1:25-cv-00284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); Santiago *Helbrum v. Williams*, 4:25-cv-00349, WL (S.D Iowa, Sept. 30, 2025); *Belsai D.S. v. Bondi*, 0:25-cv-3682, 2025 WL 2802947 (D.Min.. Oct. 1, 2025); *Rocha v. Hyde*, 25-cv-12584, 2025 WL 2807692 (D.Mass. Oct. 2, 2025); *Guzman Alfaro v. Wamsley*, 2:25-cv-01706, 2025 WL 2822113 (W.D. Wash. Oct. 2, 2025); *Ayala Casun v. Hyde*, 25-cv-427, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Guerrero Orellana v. Moniz*, 25-cv-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Elias Escobar v. Hyde*, 25-cv-12620-IT, 2025 WL 28233324 (D. Mass. Oct. 3, 2025); *Echevarria v. Bondi*, 25-cv-03252, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Cordero Pelico v. Kaiser*, 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Artiga v. Genalo*, 25-cv-5208, 2025 WL 2829434 (E.D.N.Y Oct. 5, 2025); *S.D.B.B. v. Johnson*, 1:25-cv-882, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Ledesma Gonzalez v. Bostock*, 2:25-cv-01401, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025); *Mena Torres v. Wamsley*, C25-5772-TSZ, 2025 WL 2855739 (W.D. Wash. Oct. 8, 2025); *B.D.V.S. v. Forestal*, 25-cv-01968, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Eliseo A.A. v. Olson et al.*, 25-cv-3381 (JWB/DJF), 2025 WL 2886729 (D.Minn. Oct. 8, 2025); *Eliseo v. Olson*, 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (D. Minn. Oct. 11, 2025).

28. This includes the Western District of Washington's recent grant of summary judgement to a class of incarcerated noncitizens presenting the same arguments Plaintiff does here. *Rodriguez Vazquez v. Bostock*, 3:25-cv-05240, ---F.Supp.3d.---, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). The District of Colorado joined the chorus on September 16, 2025, when Judge Sweeney

explained, *inter alia*, that the Government's argument for § 1225(b)(2) detention must fail when a noncitizen is not "seeking admission" into the United States. *Garcia Cortes v. Noem et al.*, No. 1:25-cv-02677-CNS, 2025 WL 2652880 at *3 (D. of Colo. Sept. 16 2025) ("Because Petitioner is not, nor was he at the time he was arrested, seeking admission, § 1225(b)(2)(A)'s mandatory detention requirement does not apply").

29. As evidenced by the federal court decisions, Respondents' interpretation that § 1225(b) governs detention in this case is wrong. It defies the plain language of the INA, fundamental canons of statutory construction, and the agency's long-extant implementing regulations.

30. Indeed, the statute's plain text demonstrates § 1226(a) – not § 1225(b) – applies to people like Mr. Ortiz. Section 1226(a) is the "default rule" applying to all persons "pending a decision on whether the [noncitizen] is to be removed." *Rodriguez Vazquez*, 779 F.Supp.3d at 1246; *Jennings*, 582 U.S. at 281.

31. Notably, the plain language of § 1226 applies to people charged as inadmissible for entering without inspection. *E.g.*, 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to inadmissible individuals makes clear that, by default, inadmissible individuals not subject to subparagraph (E)(ii) are entitled to a bond hearing under subjection (a). As the *Rodriguez-Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez-Vazquez*, 779 F.Supp.3d at 1256-57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

32. Thus, § 1226 applies to noncitizens like Mr. Ortiz who are present without inspection, face inadmissibility charges in removal proceedings due to their entrance without inspection, and who do not have certain criminal legal contacts.

33. By contrast, § 1225(b) applies to people *arriving at* U.S. ports of entry or who *recently entered* the U.S. and are encountered *at or near the border*. Section 1225's entire framework is premised around inspection at the border of people who are "seeking admission" to the U.S. 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*, 582 U.S. at 287.

34. Accordingly, contrary to Respondents' erroneous interpretation of the statute, the mandatory detention provisions of § 1225(b)(2) do not apply to people like Mr. Ortiz who "arrived" in the country long ago and have resided in Colorado for years before ICE jailed them.

B. Mr. Ortiz's Illegal Detention Without Bond

35. Mr. Ortiz has resided continuously in the United States since approximately 2006. He has spent his life in Durango, Colorado where he is deeply involved in his community. Mr. Ortiz attended and graduated from Durango High School and attended San Juan College. Mr. Ortiz works in construction with his family, and lives with and is the main support for his U.S. Citizen common law wife, Alexandria Cambridge. He has no criminal history at all. As such, Mr. Ortiz is an excellent candidate for release on bond so that he can fight his removal proceedings while at liberty. *E.g.*, *Matter of Guerra*, 24 I. & N. Dec at 40 (listing factors relevant for bond).

36. Nevertheless, ICE jailed Mr. Ortiz and thereafter initiated removal proceedings against him pursuant to 8 U.S.C. § 1229a and charged him as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) for being present without inspection. ICE has incarcerated Mr. Ortiz since October of 2025 without bond and has not filed evidence to meet its clear, unequivocal, and convincing burden to establish Mr. Ortiz's removability. *Woodby v. INS*, 385 US 276, 286 (1966);

Rosa v. Bondi, 144 F.4th 37, 41–42 (1st Cir. 2025); *Ward v. Holder*, 733 F.3d 601, 605 (6th Cir. 2013).

37. After the BIA's decision in *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), IJs across the country are now required to apply Respondents' unlawful detention regime finding him subject to § 1225(b)(2) because of the allegation of his unlawful entry to the United States nearly 20 years ago absent federal court intervention.

V. CLAIMS FOR RELIEF

COUNT I
Respondents Jail Mr. Ortiz in Violation of 8 U.S.C. § 1226(a)

38. Mr. Ortiz incorporates by reference the allegations of fact set forth in the preceding paragraphs.

39. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Mr. Ortiz because he was present and residing in the U.S., has been placed in § 1229a removal proceedings, and charged with inadmissibility pursuant to 8 U.S.C. § 1182. Simply, § 1225 does not apply to people like Mr. Ortiz who previously entered the country and reside in the U.S. prior to being detained and placed in removal proceedings. Such noncitizens may only be detained pursuant to § 1226(a), unless they are subject to mandatory detention provisions irrelevant here. Detention under § 1226(a) requires access to bond.

40. Applying § 1225 to Mr. Ortiz unlawfully mandates his continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).

COUNT II
Respondents are Detaining Mr. Ortiz in Violation of the INA Bond Regulations (8 C.F.R. §§ 236.1, 1236.1 & 1003.19)

41. Mr. Ortiz incorporates by reference the allegations of fact set forth in the preceding paragraphs.

42. Respondent EOIR and the then Immigration and Naturalization Service issued a rule to interpret and apply the IIRIRA under the heading "Apprehension, Custody, and Detention of [Noncitizens]," which explained: "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*." 62 Fed. Reg. at 10323 (emphasis added). Respondents thus long-ago made clear that people like Mr. Ortiz who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and the implementing regulations.

43. Nonetheless, Respondents here deemed Mr. Ortiz subject to mandatory detention under § 1225.

44. Applying § 1225 to Mr. Ortiz instead unlawfully mandates his continued detention under § 1225(b)(2).

45. Respondents' application of § 1225(b)(2) to Mr. Ortiz unlawfully requires his continued detention in violation of 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Respondents are Detaining Mr. Ortiz in Violation of the Administrative Procedures Act (5 U.S.C. § 706(2))

46. Mr. Ortiz incorporates by reference the allegations of fact set forth in the preceding paragraphs.

47. Under the APA, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

48. Respondents' detention of Mr. Ortiz pursuant to § 1225 is arbitrary and capricious, and in violation of the Fifth Amendment of the U.S. Constitution. Respondents do not have statutory authority under § 1225 to detain Mr. Ortiz.

49. Respondents' detention of Mr. Ortiz without access to bond is arbitrary, capricious, an abuse of discretion, violative of the U.S. Constitution, and without statutory authority, all in violation of 5 U.S.C. § 706(2).

COUNT IV

Respondents Detain Mr. Ortiz in Violation of his Fifth Amendment Due Process Rights

50. Mr. Ortiz incorporates by reference the allegations of fact set forth in the preceding paragraphs.

51. 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 [Fifth Amendment's due process] Clause protects." *Zadvydas*, 533 U.S. at 690.

52. Mr. Ortiz has a fundamental interest in liberty and being free from official restraint, such as imprisonment in the Aurora Facility.

53. Respondents' detention of Mr. Ortiz without providing him 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

Mr. Ortiz respectfully asks that this Court take jurisdiction over this matter and grant the following relief:

1. Issue a writ of *habeas corpus* requiring Respondents to either release Mr. Ortiz immediately or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
2. Enjoin respondents from transferring Mr. Ortiz outside the jurisdiction of the District of Colorado pending resolution of this case;
3. Award Mr. Ortiz attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and,
4. Grant any other and further relief that this Court deems just and proper.

Dated: October 16, 2025

/s/ Hans Meyer
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VERIFICATION

I, Georgina Venegas, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.:

/s/ Georgina Venegas
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CERTIFICATE OF SERVICE

I, Daniel Herrera, hereby certify that on October 16, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Georgina Venegas, hereby certify that I will mail a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail on October 17, 2025 or pursuant to any forthcoming Court order requiring something else.

Kevin Traskos
Chief, Civil Division
U.S. Attorney's Office
District of Colorado
1801 California Street, Ste. 1600
Denver, CO 80202

Pam Bondi
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

And to: Kristi Noem and Todd Lyons, DHS/ICE, c/o:

Office of the General Counsel
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave., SE
Washington, D.C. 20528

And to:

Juan Baltazar
GEO Group, Inc.
3130 N. Oakland Street
Aurora, CO 80010

And to:

Robert Gaudian
Denver ICE Field Office
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