IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-3592

HECTOR JIMENEZ FACIO

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Aurora Contract Detention Facility; ROBERT HAGAN, in his official capacity as Field Office Director, Denver Field Office of U.S. Immigration and Customs Enforcement; TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of U.S. Department of Homeland Security; and PAMELA BONDI, in her official capacity as Attorney General of the United States.

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, HECTOR JIMENEZ FACIO, by and through undersigned counsel, respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging his unlawful detention by Respondents under 8 U.S.C. § 1225(b)(2)(A).

2. Jimenez Facio is presently detained at the Aurora Contract Detention Facility in Aurora, Colorado, under the custody and control of Respondents. His detention arises from a misapplication of the Immigration and Nationality Act (INA) and is based on a recently adopted policy that impermissible extends mandatory detention under § 1225(b)(2)(A) to long-term

residents like Jimenez Facio, who are not presently applying for admission and entered almost 30 years ago.

3. Jimenez Facio first entered the United States in April 1997 and has continuously resided here since that time. *See Notice to Appear, dated June 28, 2025, attached hereto as Attachment A*. Despite his longstanding ties and residence, on July 18, 2025, the Immigration Judge denied Jimenez Facio's request for a bond on jurisdictional grounds, holding that § 235 applied to him. *See Order of the Immigration Judge, dated July 18, 2025, attached hereto as Attachment D.*

4. The Immigration Judge's decision and Respondents continued detention of Jimenez Facio contradicts the plain language of the INA and decades of agency and judicial interpretation. INA § 235(b)(2)(A) does not apply to individuals who have long resided in the United States and are not presently "seeking admission."

5. Accordingly, Jimenez Facio seeks relief in the form of a writ of habeas corpus directing Respondents to provide him with a bond hearing under INA § 236(a) within seven (7) days of the Court's order.

CUSTODY

6. Jimenez Facio has been in the custody of Respondents since June 28, 2025. He is currently detained at the Aurora Contract Detention Facility in Aurora, Colorado. He remains under Respondents' direct control and supervision.

JURISDICTION AND VENUE

7. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. § § 2201-02 (declaratory relief), and Article I, section 9, clause 2 of the U.S. Constitution (Suspension Clause), as Jimenez

Facio is presently in custody under or by color of the authority of the United States, and he challenges his custody in violation of the Constitution, laws, or treaties of the United States.

8. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by individuals challenging the lawfulness of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 678 (2001).

9. Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because Jimenez Facio is confined in this District, at least one Respondent is in this District, Jimenez Facio's immediate physical custodian is in this District, and a substantial part of the events giving rise to the claims in this action occurred in this District. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1005–06 (2025) (per curiam) ("For core habeas petitions, jurisdiction lies in only one district: the district of confinement" (internal quotation marks and citation omitted)).

HABEAS CORPUS

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

11. The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Challenges to immigration detention are properly brought directly through habeas. *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004).

12. A petitioner is entitled to habeas relief if he demonstrates that his detention violates the United States Constitution or laws or treaties of the United States. 28 U.S.C. § 2241(c)(3).

PARTIES

A. Petitioner

13. Petitioner Hector Jimenez Facio was detained by Respondents on June 28, 2025, and has been detained at the Aurora Contract Detention Facility since that date. He has resided in the United States for almost thirty years since 1997. He is in the custody and direct control of Respondents and their agents.

B. Respondents

14. Respondent Juan Baltazar is the Warden of the Aurora Contract Detention Facility. Respondent Baltazar has immediate physical custody of Jimenez Facio and is sued in his official capacity.

15. Respondent Robert Hagan is the Field Office Director of the U.S. Immigration and Customs Enforcement Denver Field Office. Respondent Hagan has immediate physical custody of Jimenez Facio and is sued in his official capacity.

16. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons has immediate physical custody of Jimenez Facio and is sued in his official capacity.

17. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. Respondent Noem is a legal custodian of Jimenez Facio and is sued in her official capacity.

18. Respondent Pamela Bondi is the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). Respondent Bondi is a legal custodian of Jimenez Facio and is sued in her official capacity.

FACTUAL ALLEGATIONS

19. Jimenez Facio has been a longtime Colorado resident of almost 30 years after he entered the United States in April 1997. *See Attachment A attached hereto.* Jimenez Facio is married and has 4 daughters—3 of whom are United States Citizens (USC). *See application for Non-LPR Cancellation of Removal, dated July 16, 2025, attached hereto as Attachment G.* Jimenez Facio owns his own stucco business that is incorporated and registered in the State of Colorado. *See Attachment G attached hereto.* He and his wife have paid taxes since 2005. *See Attachment G attached hereto.*

20. When DHS detained Jimenez Facio almost 30 years after his entry, on June 28, 2025, he was issued a Notice to Appear, *attached hereto as Attachment A*, DHS Form I-286, Notice of Custody Determination, *attached hereto as Attachment B*, and DHS Form I-200, Warrant for Arrest of Alien, *attached hereto as Attachment C.*

21. All 3 documents identified INA § 236(a) as the authority for his detention—confirming that DHS initially recognized that he was subject to discretionary, not mandatory, detention.

22. On July 18, 2025, however, an IJ denied his bond hearing, holding that the court lacked jurisdiction under INA § 235. There was no alternative ruling in the decision. *See Attachment D attached hereto.*

23. Subsequently, Jimenez Facio's removal proceedings continued. Unfortunately, due to ineffective assistance of counsel, Jimenez Facio was ordered removed on August 14, 2025. *See Order of the Immigration Judge, dated August 21, 2025, attached hereto as Attachment E.*

24. Jimenez Facio appealed the decision to the Board of Immigration Appeals (Board).

25. Thereafter, through new counsel (undersigned), Jimenez Facio requested remand with the Board due to the ineffective assistance of counsel he received. On November 5, 2025, DHS joined his Motion to Remand based on his substantial compliance with *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). *See Joint Motion to Remand, dated November 5, 2025, attached hereto as Attachment F.*

26. That Joint Motion remains pending before the Board. Because no final administrative decision has issued, the operative detention authority remains 8 U.S.C. § 1226(a). Nevertheless, Respondents continue to detain Jimenez Facio without a bond as if § 1225(b)(2)(A) applied—contrary to law and precedent.

27. As a result, Jimenez Facio remains in detention. Without relief from this Court, he faces the prospect of months or even years in immigration custody.

LEGAL FRAMEWORK

28. The relevant detention statutes at issue here are 8 U.S.C. § 1225(b)(2), which requires mandatory detention "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted," and 8 U.S.C. § 1226(a), which states that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § § 1225, 1226.

29. The detention provisions at § 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.

30. 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 § 1225 and that they were instead 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").

31. Thus, in the decades that followed their enactment in 1996, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered eligible for release on bond and received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, 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)).

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

33. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A). 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.

34. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the

United States without admission or parole are considered applicants for admission who are seeking admission and are ineligible for IJ bond hearings. *Id.*

35. Dozens of federal courts, including this Court, have rejected Respondents' new interpretation of the INA's detention authorities. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Los Caballero v. Baltazar,* No. 25-cv-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Mendoza Gutierrez v. Baltazar,* No. 25-cv-2720-Case RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Nava Hernandez v. Baltazar,* No. 25-cv-03094-CNS (D. Colo. Oct. 24, 2025); and *Moya Pineda v. Baltazar, et al.*, 1:25-cv-02955-GPGTPO (D. Colo. Oct. 20, 2025), ECF 21.

ARGUMENT

I. THE PLAIN TEXT OF 8 U.S.C. § 1225(b)(2) AND 8 U.S.C. § 1226(a) DEMONSTRATE JIMENEZ FACIO IS DETAINED UNDER 8 U.S.C. § 1226(a), NOT 8 U.S.C. § 1225(b).

36. Respondents have taken the position that a noncitizen who entered the country without inspection is always an 'applicant for admission' and subject to mandatory detention under § 1225, no matter how long the noncitizen has been present in the country. *See Loa Caballero v. Baltazar,* No. 25-cv-03120-NYW, 2025 WL 2977650, at *10-11 (D. Colo. Oct. 22, 2025). Jimenez Facio asserts that the definition of "applicant for admission" found in § 1225(b)(a)(1) "does not control for § 1225(b)(2), which does not apply to all applicants for admission, but only those actively 'seeking admission' at the border." *Id.*

37. The District Court of Colorado has found that Respondents' interpretation of the statute is contrary to its plain language. *See Loa Caballero v. Baltazar,* No. 25-cv-03120-NYW, 2025 WL 2977650, at *12 (D. Colo. Oct. 22, 2025); *Mendoza Gutierrez v. Baltazar*, No. 25-cv-

2720-Case RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Nava Hernandez v. Baltazar*, No. 25-cv-03094-CNS (D. Colo. Oct. 24, 2025); *Moya Pineda v. Baltazar, et al.*, 1:25-cv-02955-GPGTPO (D. Colo. Oct. 20, 2025), ECF 21 at 2, 3 (determining that petitioner, who has lived in the United States for "nearly twenty years" and "was not detained while attempting to enter the country ... is not subject to § 1225(b)(2)(A)'s mandatory detention provision").

38. The weight of authority interpreting § 1225 has recognized that for § 1225(b)(2)(A) to apply, several conditions must be met—in particular, an "examining immigration officer" must determine that the individual is: 1) an applicant for admission; 2) seeking admission; and 3) not clearly and beyond a doubt entitled to be admitted. *Loa Caballero v. Baltazar,* No. 25-cv-03120-NYW, 2025 WL 2977650, at *12 (D. Colo. Oct. 22, 2025) (*citing Martinez v. Hyde*, No. 25-cv-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025).

39. The plain meaning of the phrase "seeking admission" requires that an applicant be presently and actively seeking lawful entry into the United States. *Loa Caballero v. Baltazar,* No. 25-cv-03120-NYW, 2025 WL 2977650, at *12-13 (D. Colo. Oct. 22, 2025). The use of the present participle in § 1225(b)(2)(A) "implies action—something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." *Id.* at *13 (*citing Lopez-Campos v. Raycraft*, F. Supp. 3d, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025). Simply put, "noncitizens who are just present in the country...,who have been here for years upon years and never proceeded to obtain any form of citizenship...are not 'seeking admission' under § 1225(b)(2)(A)." *Id.*

40. As § 1225(b)(2)(A) applies only to those noncitizens who are actively 'seeking admission' to the United States, it cannot, according to its ordinary meaning, apply to persons who

have already been residing in the United States for several years. *Id.* (*citing Lopez-Benitez v. Francis*, F. Supp. 3d, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025).

41. Jimenez Facio has been present in the United States since approximately 1997. Therefore, notwithstanding any lack of lawful status, Jimenez Facio was not seeking lawful entry into the United States at the time he was detained—he was already here. He was thus not "seeking admission" and is not subject to § 1225(b)(2)(A)'s mandatory detention provision. *See Loa Caballero v. Baltazar,* No. 25-cv-03120-NYW, 2025 WL 2977650, at *16 (D. Colo. Oct. 22, 2025) (*citing Lepe v. Andrews*, F. Supp. 3d, 2025 WL 2716910, at *5 (E.D. Cal. Sept. 23, 2025) ("[P]etitioner is not actively 'seeking' 'lawful entry' because he already entered the United States—thirty-two years ago. If anything, petitioner is seeking to *remain* in the United States.").

II. OTHER FACTORS DEMONSTRATE JIMENEZ FACIO IS DETAINED UNDER 8 U.S.C. § 1226(a).

42. Although the plain text of the statute demonstrates that Jimenez Facio is not detained under § 1225, there are other factors present to demonstrate that Jimenez Facio is detained under § 1226(a).

43. Aside from being inconsistent with the statute's plain language, Respondents' interpretation is inconsistent with the related implementing regulations. Though not binding, "interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024).

44. The implementing regulations state that "any arriving alien who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings pursuant to section 240 of the Act shall be detained in accordance with section 235(b) of the Act." 8 C.F.R.

§ 235.3(c)(1). The regulations define "arriving alien" as "an applicant for admission coming or attempting to come into the United States." *Id.* § 1.2.

45. The regulations appear "to contemplate that applicants seeking admission are a subset of applicants 'roughly interchangeable' with 'arriving aliens,'" *Cordero Pelico v. Kaiser*, No. 25-cv-07286-EMC, 2025 WL 2822876, at *11 (N.D. Cal. Oct. 3, 2025) (quoting *Martinez*, 2025 WL 2084238, at *6), and underscore Jimenez Facio's interpretation of § 1225.

46. Respondents' treatment of Jimenez Facio also conflicts with their assertion that he is detained pursuant to § 1225. DHS's Notice of Custody Determination (Form I-286) states that Jimenez Facio was being detained "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act." *See Attachment B, attached hereto.* INA § 236(a) is codified at 8 U.S.C. § 1226. Therefore, the Government's own detention paperwork suggests that Jimenez Facio is detained under § 1226, not § 1225. *Lopez Benitez*, 2025 WL 2371588, at *4 ("Respondents' own exhibits unequivocally establish that Mr. Lopez Benitez was detained pursuant to Respondents' discretionary authority under § 1226(a). The warrants for Mr. Lopez Benitez's respective arrests in 2023 and 2025 explicitly authorized those arrests pursuant to 'section 236 of the Immigration and Nationality Act'—i.e. § 1226.").

47. Second, the warrant for his arrest (DHS Form I-200) similarly stated that the arrest was pursuant to "section 236 of the Immigration and Nationality Act." *See Attachment C, attached hereto.*

48. Lastly, the Notice to Appear issued to Jimenez Facio contains three designation options for Jimenez Facio: 1) "an arriving alien"; 2) "an alien present in the United States who has not been admitted or paroled"; and 3) a person "admitted to the United States, but ... is removable." *See Attachment A, attached hereto.* The issuing DHS officer did not designate Jimenez Facio as

"an arriving alien," which, as explained above, "is the active language used to define the scope of section 1225(b)(2)(A) in its implementing regulation." See 8 C.F.R. § 235.3(c)(1). It also states that he is being placed in INA § 240 proceedings.

49. In sum, Jimenez Facio is subject to the discretionary framework of § 1226(a) and his continued detention without a bond hearing is unlawful.

CLAIMS FOR RELIEF

Count One
Violation of 8 U.S.C. § 1226(a), INA § 236(a)

50. Jimenez Facio realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.

51. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Jimenez Facio who previously entered the country and has been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. He is subject to discretionary detention under § 1226(a).

52. The application of § 1225(b)(2) to Jimenez Facio unlawfully mandates his continued detention and violates the INA.

Count Two
Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution – Substantive Due Process

53. Jimenez Facio realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.

54. The government may not deprive a person of life, liberty, or property without due process of laws. Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

55. Jimenez Facio has a fundamental interest in liberty and being free from official restraint.

56. The government's detention of Jimenez Facio 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

Petitioner Jimenez Facio prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Issue a writ of habeas corpus clarifying that the statutory basis for Jimenez Facio's detention is 8 U.S.C. § 1226(a) and that 8 U.S.C. § 1225(b)(2)(A) does not apply to Jimenez Facio;

(3) Issue a writ of habeas corpus requiring that Respondents provide Jimenez Facio with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days;

(4) Award Petitioner reasonable attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

(5) Grant any further relief the Court deems just and proper.

Dated this 10th day of November 2025.

Respectfully submitted,

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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2025, I served a true and correct copy of the foregoing **Petition for Writ of Habeas Corpus and Attachments A-G** via **U.S. Postal Service Priority Mail Express** upon the following:

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