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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

Batraz Totrov

Petitioner,

v.

Stephen Kurzdorfer, Buffalo Field  
Office Director Immigration and  
Customs Enforcement and Removal  
Operations (“ICE/ERO”); Todd  
Lyons, Acting Director of  
Immigration Customs Enforcement  
(“ICE”) U.S. Immigration and  
Customs Enforcement; Kristi Noem,  
Secretary of the Department of  
Homeland Security (“DHS”); U.S.  
Department of Homeland Security;  
Joseph Freden, Deputy Field Office  
Director of the Buffalo Federal Detention  
Facility; and Pamela Bondi,  
Attorney General of the United States;

Respondents.

Case No.

**Petition For Writ of Habeas  
Corpus Pursuant to**

**28 U.S.C. § 2241**

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## INTRODUCTION

1. Petitioner Batraz Totrov is a noncitizen and resident of the United States who is harmed by Respondents' new, draconian policy reinterpreting the immigration detention statutes to preclude Petitioner from eligibility for bond under the Immigration and Nationality Act (INA), 8 U.S.C. § 1226(a), and for bond hearings under 8 C.F.R. §§ 1003.19(a), 1236.1(d). Instead, pursuant to this new policy, Respondents now consider Petitioner as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), without the opportunity for release on bond during the pendency of his lengthy removal proceedings.

2. This Court has issued orders in four separate cases commenced pursuant to 28 U.S.C. § 2241 (*Quituzaca Quituisaca v. Bondi*, 25-cv-6527; *Najeem v. Freden*, 25-cv-6584; *Mendoza v. Bondi*, 25-cv-954; and *Martinez v. Bondi*, 25-cv-6508) finding that noncitizens who are present in the United States without having been admitted or paroled are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) but instead are subject to detention under section 1226.

3. Additionally, Petitioner is a class member of the *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.), a nationwide class action. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class.

*Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at \*11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at \*9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

4. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at \*11.

5. Therefore, *in addition* to the Counts I, II, III, and IV of this petition, Petitioner brings this petition for a writ of habeas corpus to seek enforcement of his rights as members of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.).

6. Petitioner is charged with having entered the United States without inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

7. Based on this allegation in Petitioner's removal proceedings, DHS denied his release from immigration custody. That denial was consistent with a new DHS policy issued on July 8, 2025, instructing all ICE employees to consider

anyone alleged to be inadmissible under §1182(a)(6)(A)(i) --i.e., those who entered the United States without inspection--to be subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A) and therefore eligible for release only on parole.

8. Petitioner sought a bond redetermination hearing before an immigration judge (IJ) at the Batavia Immigration Court, but on December 10, 2025, the IJs denied Petitioner bond. *See Ex. A.* The IJs reached this conclusion by reasoning that, notwithstanding the years that Petitioner has lived in the United States, Petitioner is nevertheless an "arriving alien" who is "seeking admission" and subject to mandatory detention under § 1225(b)(2)(A). *See id.*

9. Petitioner's detention on this basis violates the plain language of the INA and its implementing regulations.

10. Subparagraph 1225(b)(2)(A) applies to individuals who are apprehended on arrival in the United States. It states that an "applicant for admission" who is "seeking admission" shall be detained for a removal proceeding. *Id.* It does not apply to individuals like Petitioner, who are arrested and detained by ICE after having entered and begun 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 Petitioner who is charged as inadmissible for having entered the United States without inspection.

11. Respondents' new legal interpretation is plainly contrary to the statutory

framework and its implementing regulations. Indeed, for decades, Respondents have applied §1226(a) to people like Petitioner.

12. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents' attempts to detain and deport Petitioner are arbitrary and capricious and in violation of the law, and to immediately issue an order requiring the Batavia Immigration Court to conduct a bond hearing and an order preventing Petitioner's transfer out of this district.

### **JURISDICTION**

13. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

14. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

15. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

### **VENUE**

16. Venue is proper because Petitioner is in Respondents' custody at the Buffalo Federal Detention Facility in Batavia, New York, and Venue is further

proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).


**ORDER TO SHOW CAUSE: REQUIREMENTS OF 28 U.S.C. §§  
2241, 2243**

17. 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 OSC 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.*

18. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

19. Petitioner is "in custody" for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

**PARTIES**

20. Petitioner is a 32-year-old citizen of Russia born on  Petitioner is detained at the Buffalo Federal Detention Facility, in Batavia, New York.

21. Respondent Stephen Kurzdorfer is the Field Office Director for the Buffalo Field Office, Immigration and Customs Enforcement and Removal Operations (“ICE”). The Buffalo Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens.

Respondent Kurzdorfer is a legal custodian of Petitioner.

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

23. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.

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

25. Respondent Joseph Freden, Deputy Field Office Director of the Buffalo Federal Detention Facility, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

26. Respondent U.S. Immigration Customs Enforcement is the federal agency

responsible for custody decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens.

27. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

28. This action is commenced against all Respondents in their official capacities.

### **LEGAL FRAMEWORK**

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

30. 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 § 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 until their removal proceedings are concluded, *see* 8 U.S.C. § 1226(c).

31. 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" referred to under § 1225(b)(2).

32. Last, the INA also provides for detention of noncitizens who have received a final order of removal from the United States, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b).

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

34. 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. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

35. 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").

36. For decades, this interpretation has governed the administration of custody. Noncitizens who were not deemed "arriving aliens" at the time of inspection, or who were released into the United States after inspection and issuance of an NTA, were treated as detained under § 1226. *See* H.R. Rep. No.

104-469, pt. 1, at 229 (1996) (explaining that § 1226(a) “restates” the detention authority previously codified at 8 U.S.C. § 1252(a) (1994)).

37. In recent weeks, Respondents have adopted an entirely new interpretation of the statute. On May 22, 2025, the Board of Immigration Appeals (BIA), issued an unpublished decision holding that all noncitizens who entered the United States without admission or parole are considered applicants for admission, and are therefore ineligible for IJ bond hearings under 8 U.S.C. § 1225(b)(2)(A).

38. On July 8, 2025, ICE, "in coordination with the Department of Justice (DOJ)," announced a corresponding policy that rejected the well-established understanding of the statutory and regulatory framework and reversed decades of practice.

39. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be deemed subject to mandatory detention under § 1225(b)(2)(A). *Id.* 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.

40. 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 paroled.<sup>1</sup>

41. Nationwide, pursuant to its July 8, 2025, policy, Respondents are now asserting that all persons who entered without inspection are subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A).

42. While some IJs in other immigration courts have continued to grant bond to people like Petitioner, consistent with its new policy, DHS also has begun filing Form EOIR-43, Notice of Service Intent to Appeal Custody Redetermination. This notice not only appeals any IJ decision granting bond but also triggers an automatic stay of the bond decision during the appeal. *See* 8 C.F.R. § 1003.19(i)(2).

43. The "auto-stay" provision of 8 C.F.R. § 1003.19(i)(2) prevents noncitizens from posting bond and being released even in jurisdictions where IJs have rejected DHS's unlawful reinterpretation of §1225(b)(2) and have granted bond.

44. ICE and DOJ have adopted this new and unprecedented position on bond even though federal courts have rejected this exact conclusion. For example, in the Tacoma, Washington, immigration court, IJs previously stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, reasoning such people are subject to mandatory detention under § 1225(b)(2)(A). There, in granting preliminary injunctive

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<sup>1</sup> Maria Sacchetti & Carol D. Leonnig, *ICE declares millions of undocumented immigrants ineligible for bond hearings*, Washington Post (July 14, 2025), <https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/> [https://perma.cc/5ZTR-EN4B].

relief, the U.S. District Court for the Western District of Washington found that such a reading of the INA is likely unlawful and that §1226(a), not §1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion); *Diaz Martínez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ---- 2025 WL 2084238, at \*9 (D. Mass. July 24, 2025) (ordering release where noncitizen was redetained based on ICE's assertion of detention authority under §1225(b)).

45. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court and other courts explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

46. 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 § 1229a, to "decid[ e] the inadmissibility or deportability of a[ ] [ noncitizen ]."

47. The text of §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). Just this year, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from § 1226(a)'s default bond provision. Subparagraph (E)'s reference to persons



inadmissible under § 1182(6)(A), i.e., persons inadmissible for entering without inspection, makes clear that, by default, such people are afforded a bond hearing under subsection (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*, 2025 WL 1193850, at \*12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

48. By contrast, §1225(b) applies to people arriving at U.S. ports of entry or who very 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); *see also Diaz Martinez*, 2025 WL 2084238, at \*8 ("[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission ... and those who are within the United States after an entry, irrespective of its legality." (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). 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).

49. Accordingly, the mandatory detention provision of §1225(b)(2) does not apply to Petitioner, who has already entered and has been residing in the United States at the time he was apprehended

### FACTUAL BACKGROUND

50. Petitioner is a citizen and national of Russia.

51. Petitioner was threatened by   


52. Fearing for his life, he sought protection in the United States.

53. On or about January of 2023, Petitioner crossed the border near California to seek asylum.

54. Soon after, Respondents initiated removal proceedings against Petitioner under 8 U.S.C. § 1229a and filed his Notice to Appear.

55. Respondents alleged that Petitioner was inadmissible to the United States under 8 U.S.C. § 1182(a)(7)(A)(i)(I).

56. Petitioner applied for asylum before the Chicago Immigration Court.

57. Respondents issued Petitioner an Employment Authorization Document and scheduled him to appear at the Chicago Immigration Court for his Master Hearing.

58. On or around November 25, 2025, while staying in a hotel in Niagara Falls, NY Petitioner was arrested and placed in DHS custody.

59. DHS then transported Petitioner to the Buffalo Federal Detention Facility.

60. On December 2, 2025, Petitioner, through his Counsel, filed a request for bond redetermination.

61. On December 10, 2025, IJ sitting at the Batavia Immigration Court stated that the immigration court lacked jurisdiction to conduct a bond redetermination hearing, because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

62. As a result, Petitioner 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.

63. Any appeal to the BIA is futile. DHS's new policy was issued "in coordination with" DOJ. EOIR--the immigration court system--is a component agency of DOJ. Further, as noted, a recent unpublished BIA decision held that persons like Petitioner are subject to mandatory detention as applicants for admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are subject to detention under § 1225(b)(2)(A). *See, e.g.*, Mot. 19 to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. 20 June 6, 2025), Dkt. 49 at 27-30.

#### **CLAIMS FOR RELIEF**

**COUNT I**

**Violation of the INA: Request for Relief Pursuant to *Maldonado Bautista***

64. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
65. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).
66. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.
67. The order granting class certification in *Maldonado Bautista* further orders that “[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.”
68. Respondents are parties to *Maldonado Bautista* and bound by the Court’s declaratory judgment, which has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a).

**COUNT II**

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

69. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

70. 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 Petitioner who previously entered the country and has been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such a noncitizen is detained under § 1226(a) and is eligible for release on bond, unless he is subject to § 1225(b)(1), § 1226(c), or § 1231.

71. Nonetheless, Respondents have adopted a policy and practice of applying § 1225(b)(2) to Petitioner.

72. The Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

73. Petitioner is a member of the Bond Eligible Class, as he:

- a. does not have lawful status in the United States and is currently detained at the Buffalo Federal Detention Facility. He was apprehended by immigration authorities on or around November 25th of 2025.
- b. entered the United States without inspection over 2 years ago and was not apprehended upon arrival; and
- c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

74. The unlawful application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

### **COUNT III**

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

75. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

76. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. 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.

77. Nonetheless, Respondents adopted a policy and practice of applying §1225(b)(2) to Petitioner.

78. The application of §1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

**COUNT IV**

**Violation of Fifth Amendment Right to Due Process**

79. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

80. Petitioner's detention by DHS violates his rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

81. Immigration detention violates due process if it is not reasonably related to the purpose of ensuring a noncitizen's removal from the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92, 699-700 (2001); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Where removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and is unlawful. *See id.* at 699-700.

82. The Supreme Court has also established that noncitizens in deportation or removal proceedings are just as entitled to due process protections as anyone else. *See Zadvydas*, 533 U.S. at 690 (2001) (“A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment’s Due Process Clause forbids the Government to ‘depriv[e]’ any ‘person . . . of . . . liberty . . . without due process of law.’”).

83. Here, there is no reason to justify Petitioner's detention. Petitioner has been living in the United States for 3 years, where he has very strong ties to the community.

84. Petitioner has also been unable to have a bond hearing before an Immigration Court, because the Court previously denied jurisdiction to hear his custody redetermination request. Therefore, Petitioner is being held in custody without the possibility of having his case reviewed by an Immigration Judge – despite not being subject to mandatory detention.

85. Here, Petitioner has resided in the United States since January 2023 and allowed him to reside in the country pending removal proceedings. For nearly two years, Petitioner lived openly in the interior with the knowledge and acquiescence of DHS.

86. In *Jennings v. Rodriguez*, the Supreme Court makes a clear distinction between noncitizens who are detained while entering the country and noncitizens who are already present in the United States. *Jennings v. Rodriguez*, 804 F. 3d 106. The opinion of the Supreme Court recognizes that “§ 1226 applies to aliens already present in the United States. . . .” and that “§ 1226(a) authorizes the Attorney General to arrest and detain an alien ‘pending a decision on whether the alien is to be removed from the United States.’” § 1226(a). As long as the detained alien is not covered by § 1226(c), the Attorney General “may release” the alien on “bond . . . or conditional parole.” § 1226(a). Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention. See 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1).

87. Here, Petitioner has been living in the United States for over two years prior to his detention, and the reason for his current detention is not related to his first detention as an “applicant for admission.” In the present case, there is not the issue of a continued detention of someone who is trying to enter the country, but rather a new detention – on a new warrant – for someone who has been in the country for three years.

88. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231. *See Rocha Rosado v. Figueroa*, 2025 WL 2349133, (D. Ariz. Aug. 13, 2025).

89. Petitioner was placed in removal proceedings pursuant to 8 U.S.C. § 1229 by a Notice to Appear in January of 2023. Because Petitioner was placed into removal proceedings pursuant to § 1229, an alternative process to that stated in § 1225, his release in 2023 and his current detention are pursuant to § 1226, not § 1225.

90. The only exception permitting the release of aliens detained under § 1225(b) is the parole authority provided by § 1182(d)(5)(A). Parole into the United States employs a legal fiction whereby noncitizens are physically permitted to enter the country but are nonetheless “treated,” for legal purposes, “as if stopped at the border.” *Department of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020), quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953).

91. Noncitizens paroled into the United States are in a fundamentally different and less protected position than “those who are within the United States after an entry, irrespective of its legality.” *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). Individuals detained as inadmissible upon inspection at

the border can only be paroled into the United States “for urgent humanitarian reasons or significant public benefit.” *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018), *quoting* 8 U.S.C. § 1182(d)(5)(A). Because there is no evidence that Petitioner was released into the United States for urgent humanitarian reasons or significant public benefits, his “discretionary” release must be construed as conditional parole, or release on recognizance.

92. Release on recognizance is not a form of “parole into the United States” based on “humanitarian” grounds or “public benefit,” but rather a form of “conditional parole” from detention upon a charge of removability, authorized by 8 U.S.C. 1226(a)(2)(B). See *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) (holding a non-citizen released on an “Order of Release on Recognizance” must necessarily have been detained and released under § 1226, *inter alia* because they were not an “arriving alien” under the regulations governing § 1225); *Rocha Rosado v. Figueroa*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025).

93. Parole “into the United States” under § 1182(d)(5)(A), permits a non-citizen to physically enter the country, subject to a reservation of rights by the government that it may continue to treat the non-citizen “as if stopped at the border.” *Thuraissigiam*, 591 U.S. at 139.

94. Conditional parole provides a mechanism of release on recognizance, without payment of a bond, at the discretion of the government. See *Rivera v. Holder*, 307 F.R.D. 539, 553 (W.D. Wash. 2015).

95. The record regarding Petitioner's lack of detention during his removal proceedings beginning in 2023, after inspection at the border, through August of 2025, can only be construed as demonstrating that he was conditionally paroled into the United States. See *Matter of Cabrera-Fernandez*, 28 I.&N. Dec. 747, 749 (B.I.A. 2023) (holding an immigration judge erred in treating release on recognizance of noncitizens “detained soon after their unlawful entry” as constructive humanitarian parole where the government had not followed the “procedures for parole under [section 1182(d)(5)]”). See also *Martinez v. Hyde*, \_\_\_ F. Supp. 3d \_\_\_, No. CV 25-11613, 2025 WL 2084238, at \*3-4 (D. Mass. July 24, 2025).

96. Given the fact Petitioner was “present in the United States” long before he was taken into custody in 2025, it would make no sense to talk about admitting him into the United States or allowing him to “enter” the United States in 2025. Petitioner was already in the U.S. for three years, and he has been in the U.S. with the knowledge and approval of the Department of Homeland Security.

97. Therefore, because Petitioner's presence in the United States after his inspection and release into the United States in 2023, and after his Notice to Appear hearing, has been on a conditional parole pursuant to § 1226, the IJ's 2025 determination that he was without jurisdiction to reconsider Petitioner's detention, and Petitioner's detention itself in the absence of a bond hearing to

determine if he poses a danger to community or a flight risk, violated his Fifth Amendment Due Process rights under the Constitution.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause why, in light of this Court's decisions, the petition in this case should not be granted to the extent it seeks a bond hearing, and the Court should not order that Petitioner receive a bond hearing at which the government bears the burden to demonstrate, by clear and convincing evidence, that Petitioner is a danger to the community or a flight risk and at which the immigration judge must consider non-bond alternatives to detention or, if setting a bond, Petitioner's ability to pay.
- (3) Declare that Petitioner's re-detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody within seven days;
- (5) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;
- (6) Grant any further relief this Court deems just and proper.

Dated: December 10, 2025

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