IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-4029

VICTOR GARCIA ABANIL

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, VICTOR GARCIA ABANIL, 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. Garcia Abanil 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 impermissibly extends mandatory detention under § 1225(b)(2)(A) to long-term residents like Garcia Abanil, who are not presently applying for admission and entered over 15 years ago.

3. Garcia Abanil first entered the United States in May 2010 and has continuously resided here since that time. *See Notice to Appear, dated July 2, 2025, attached hereto as Attachment A*. Despite his longstanding ties and residence, on September 12, 2025, the Immigration Judge (IJ) denied Garcia Abanil's request for a bond on jurisdictional grounds, holding that § 1225 applied to him. *See Order of the Immigration Judge, dated September 12, 2025, attached hereto as Attachment E.*

4. The Immigration Judge's decision and Respondents continued detention of Garcia Abanil 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, Garcia Abanil 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 five (5) days of the Court's order.

CUSTODY

6. Garcia Abanil has been in the custody of Respondents since July 2, 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 Garcia Abanil 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 and Laws 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 Garcia Abanil is confined in this District, at least one Respondent is in this District, Garcia Abanil'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)).

NOTICE OF RELATED CASES

10. Pursuant to D.C.COLO.LCivR 3.2 and in the interest of judicial economy, Garcia Abanil provides notice that this action is related to numerous habeas petitions recently adjudicated in this District involving the same Respondents, the same detention facility, and the same legal question concerning the scope of mandatory detention under 8 U.S.C. § 1225(b)(2)(A) as applied to long-term residents who are not presently seeking admission.

11. These related cases challenge Respondents' uniform policy and practice of applying § 1225(b)(2)(A) to noncitizens who entered the United States years or decades ago and were apprehended in the interior, rather than at the border, and who are therefore properly detained—if at all—under 8 U.S.C. § 1226(a). *See Espinoza Ruiz v. Baltazar*, No. 1:25-cv-03642-CNS, 2025 WL 3294762 (D. Colo. Nov. 26, 2025); *Arauz v. Baltazar*, No. 1:25-cv-03260-CNS, 2025 WL 3041840 (D. Colo. Oct. 31, 2025); *Nava Hernandez v. Baltazar, et al.*, No. 1:25-CV03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Hernandez Vazquez v. Baltasar, et al.*, No. 1:25-cv-3049-GPG, ECF No. 22 (D. Colo. Oct. 23, 2025); *Loa Caballero v. Baltazar, et al.*, No. 1:25-cv-

3120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Moya Pineda v. Baltasar, et al.*, No. 1:25-cv-2955-GPG, ECF No. 21 (D. Colo. Oct. 20, 2025); *Mendoza Gutierrez v. Baltasar, et al.*, No. 1:25-cv-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); and *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880 (D. Colo. Sept. 16, 2025).

12. Each of these cases involves materially indistinguishable facts and the same core statutory question presented here. Garcia Abanil raises this notice to inform the Court of the overlapping legal issues and recurring parties, and not for any improper purpose.

HABEAS CORPUS

13. 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.*

14. 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).

15. 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

16. Petitioner Victor Garcia Abanil was detained by Respondents on July 2, 2025, and has been detained at the Aurora Contract Detention Facility since that date. He has resided in the

United States for over fifteen years since May 2010. He is in the custody and direct control of Respondents and their agents.

B. Respondents

17. Respondent Juan Baltazar is the Warden of the Aurora Contract Detention Facility. Respondent Baltazar has immediate physical custody of Garcia Abanil and is sued in his official capacity.

18. 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 Garcia Abanil and is sued in his official capacity.

19. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Garcia Abanil and is sued in his official capacity.

20. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. Respondent Noem is a legal custodian of Garcia Abanil and is sued in her official capacity.

21. 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 Garcia Abanil and is sued in her official capacity.

FACTUAL ALLEGATIONS

22. Garcia Abanil has been a longtime Colorado resident of over 15 years after he entered the United States in May 2010. *See Attachment A attached hereto*. Garcia Abanil is the sole financial provider for his common-law U.S. citizen wife, who is diagnosed with and suffering from kidney and heart failure and cannot work, and his ten year-old U.S. citizen son, who is

diagnosed with Autism. *See Application for Non-LPR Cancellation of Removal, dated September 4, 2025, attached hereto as Attachment D.*

23. When DHS detained Garcia Abanil on July 2, 2025, fifteen years after his initial entry, 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.*

24. 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. *See Attachments A, B, and C, attached hereto.*

25. DHS has never alleged that Garcia Abanil is subject to mandatory detention under 8 U.S.C. § 1226(c), and none of the charging documents or custody determinations identify any statutory basis for mandatory detention other than the contested application of 8 U.S.C. § 1225.

26. On September 12, 2025, however, an IJ denied his bond request, holding that the court lacked jurisdiction under INA § 235. There was no alternative ruling in the decision. *See Order of the Immigration Judge, dated September 12, 2025, attached hereto as Attachment E.*

27. Based on the granted Temporary Restraining Order in *Mendoza Gutierrez v. Baltazar, et al.*, No. 1:25-cv-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025), Garcia Abanil moved the Immigration Court again on October 20, 2025, for an individualized custody redetermination.

28. The IJ denied the request on November 6, 2025, finding that the class in *Mendoza Gutierrez* had not been certified yet and therefore did not apply to Garcia Abanil. *See Order of the Immigration Judge, dated November 6, 2025, attached hereto as Attachment F.*

29. The IJ's November 2025, determination that the Immigration Court lacks jurisdiction despite district courts finding and ordering otherwise, confirms that Garcia Abanil has pursued every available administrative avenue. Because Respondents maintain that § 1225 applies, neither the immigration court nor ICE will conduct a custody redetermination, leaving Garcia Abanil without any administrative avenue to challenge his continued detention.

30. Garcia Abanil's case proceeded to an Individual Hearing regarding his Application for Non-LPR Cancellation of Removal, which was denied on October 30, 2025. *See Order of the IJ, dated October 30, 2025, attached hereto as Attachment G.* The Immigration Judge determined that an uncorroborated DHS investigative report that was only introduced into the record improperly as impeachment evidence substantially outweighed all other equities in his case. *See Attachment G, attached hereto.*

31. Garcia Abanil timely appealed the decision of the Immigration Judge to the Board of Immigration Appeals (BIA). *See EOIR-26, Notice of Appeal from a Decision of an IJ, dated November 24, 2025, and BIA, Filing Receipt for Appeal or Motion, dated December 8, 2025, attached hereto as Attachment H.* His case is on direct appeal and remains pending with the BIA. *See Attachment H, attached hereto.*

32. Despite the absence of a final removal order and despite DHS's initial classification of his detention under 8 U.S.C. § 1226(a), Respondents have refused to provide Garcia Abanil with any custody redetermination hearing and continue to treat him as subject to mandatory detention under § 1225(b)(2)(A). Respondents have not provided him any individualized custody determination assessing flight risk or danger to community.

33. As of the filing of this Petition, Garcia Abanil has been detained for over five months without any bond hearing. Without relief from this Court, he faces the prospect of months or even years in immigration custody.

LEGAL FRAMEWORK

34. 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.

35. 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.

36. 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").

37. 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)).

38. 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.

39. 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.

40. 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.*

41. Dozens of federal courts, including in the District Court for the District of Colorado, have rejected Respondents' new interpretation of the INA's detention authorities. The arguments raised here echo identical arguments raised across the country and in this judicial district. *See Espinoza Ruiz v. Baltazar*, No. 1:25-cv-03642-CNS, 2025 WL 3294762 (D. Colo. Nov. 26, 2025); *Arauz v. Baltazar*, No. 1:25-cv-03260-CNS, 2025 WL 3041840 (D. Colo. Oct. 31, 2025); *Nava Hernandez v. Baltazar, et al.*, No. 1:25-CV03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24,

2025); *Hernandez Vazquez v. Baltasar, et al.*, No. 1:25-cv-3049-GPG, ECF No. 22 (D. Colo. Oct. 23, 2025); *Loa Caballero v. Baltazar, et al.*, No. 1:25-cv-3120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Moya Pineda v. Baltasar, et al.*, No. 1:25-cv-2955-GPG, ECF No. 21 (D. Colo. Oct. 20, 2025); *Mendoza Gutierrez v. Baltasar, et al.*, No. 1:25-cv-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Garcia-Arauz v. Noem*, No. 2:25-cv-02117-RFB-EJY, --- F. Supp. 3d ----, 2025 WL 3470902 (D. Nev. Dec. 3, 2025); *Escobar Salgado v. Mattos*, No. 2:25-cv-01872-RFB-EJY, --- F. Supp. 3d ----, 2025 WL 3205356 (D. Nev. Nov. 17, 2025); *Ramos v. Rokosky*, No. 25cv15892 (EP), 2025 WL 3063588 (D.N.J. Nov. 3, 2025); *Godinez-Lopez v. Ladwig*, 2025 WL 3047889 (W.D. Tenn. Oct. 31, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Romero v. Hyde*, Civil Action No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); and *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), --- F.Supp.3d ----, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025).

ARGUMENT

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

42. 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). Garcia Abanil 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.*

43. 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").

44. 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).

45. 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.*

46. 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).

47. Garcia Abanil has been present in the United States since approximately 2010. *See Attachment A, attached hereto*. Therefore, notwithstanding any lack of lawful status, Garcia Abanil 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 GARCIA ABANIL IS DETAINED UNDER 8 U.S.C. § 1226(a).

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

49. 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).

50. 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.

51. 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 Garcia Abanil's interpretation of § 1225.

52. Respondents' treatment of Garcia Abanil also conflicts with their assertion that he is detained pursuant to § 1225.

53. DHS's Notice of Custody Determination (Form I-286) states that Garcia Abanil was being detained "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act." *See Attachment B, attached hereto.*

54. Second, DHS Form I-200, Warrant for Arrest of Alien, similarly stated that the arrest was pursuant to "section 236 of the Immigration and Nationality Act." *See Attachment C, attached hereto.*

55. Lastly, the Notice to Appear issued to Garcia Abanil contains three designation options for Garcia Abanil: 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 Garcia Abanil 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).

56. The NTA also states that Garcia Abanil was being placed in INA § 240 proceedings, as opposed to expedited proceedings. *See Attachment A, attached hereto.*

57. Therefore, the Government's own detention paperwork suggests that Garcia Abanil 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.").

58. In sum, Garcia Abanil 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)

59. Garcia Abanil realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.

60. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Garcia Abanil 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).

61. The application of § 1225(b)(2) to Garcia Abanil 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

62. Garcia Abanil realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.

63. 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).

64. Garcia Abanil has a fundamental interest in liberty and being free from official restraint.

65. The government's detention of Garcia Abanil 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 Garcia Abanil 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 Garcia Abanil's detention is 8 U.S.C. § 1226(a) and that 8 U.S.C. § 1225(b)(2)(A) does not apply to Garcia Abanil;

(3) Issue a writ of habeas corpus requiring that Respondents provide Garcia Abanil with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 5 days; and

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

Dated this 16th day of December 2025.

Respectfully submitted,

/s/ Skylar M. Larson

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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing **Petition for Writ of Habeas Corpus and Attachments A-H** will be effectuated contemporaneously with the Court's issuance of an Order directing service pursuant to Federal Rule of Civil Procedure 4(i), at which time true and correct copies will be mailed via **U.S. Postal Service Priority Mail Express** to the following:

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ATTORNEY FOR PETITIONER