UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JUAN ANTONIO DIAZ LOPEZ, ([redacted] *Petitioner* v. KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General; ROBERT HAGAN, Field Director of the Denver Field Office; JUAN BALTAZAR, Warden, Denver Contract Detention Facility; *Respondents*	**Case No. 1: 25-cv-4089** **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner Juan Antonio Diaz Lopez ("Mr. Diaz") is a native and citizen of Mexico who entered the United States in 2012, without inspection. On November 8, 2025, U.S. Immigration and Customs Enforcement ("ICE") detained Mr. Diaz and placed him in immigration custody pending completion of removal proceedings. The Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have concluded that he is subject to mandatory immigration detention under 8 U.S.C. § 1225(b)(2), as an "applicant for admission" who is "seeking admission" to the United States.

2. DHS's interpretation of its detention authority under 8 U.S.C. § 1225(b)(2) marks a complete reversal of the interpretation of the statute that the government has embraced since its inception three decades ago, its prior practice, Supreme Court precedent, and the plain language of the Immigration and Nationality Act ("INA").

3. This Court should therefore intervene and grant Mr. Diaz's petition for a writ of habeas corpus and order his release from immigration custody, or, alternatively, order EOIR to conduct a bond hearing at which 8 U.S.C. § 1225(b)(2) cannot be applied.

4. Separately, Mr. Diaz brings this petition for a writ of habeas corpus to seek *enforcement* of his rights as a member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.).

JURISDICTION AND VENUE

5. Mr. Diaz is detained at the Denver Contract Detention Facility in Aurora, Colorado, and is in physical custody of Respondents. *See* Exhibit 1, ICE Detainee Locator.

6. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-02 (declaratory relief). Mr. Diaz's detention by Respondents is a "severe restraint" on his individual liberty. *See Hensley v. Municipal Court, San Jose-Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973).

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

8. Venue is proper because Mr. Diaz's immediate custodian at Denver Contract Detention Facility is located in this District and a "substantial part of the events or omissions giving rise to the claim" occurred in this District. 28 U.S.C. § 1391(e)(1).

PARTIES

9. Petitioner Juan Antonio Diaz Lopez is a native and citizen of Mexico. As of the filing of this Petition, ICE is detaining him at the Denver Contract Detention Facility in Aurora, Colorado.

10. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is

responsible for Mr. Diaz's detention. Secretary Noem has ultimate custodial authority over Mr. Diaz and is sued in her official capacity.

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

12. Respondent Robert Hagan is the Field Office Director of the ICE Denver Field Office and is responsible for ICE's operations in Colorado where Mr. Diaz is held. He is sued in his official capacity.

13. Respondent Juan Baltazar is the Warden of the Denver Contract Detention Facility and is the immediate custodian of Mr. Diaz. He is sued in his official capacity.

REQUIREMENTS OF 28 U.S.C. § 2243

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

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

16. Mr. Diaz requests the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, in light of the significant restraint on his liberty and clear Constitutional violations in this case.

TRANSFER OUTSIDE THE DISTRICT; ALL WRITS ACT

17. The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

18. Courts in this district have recently invoked the All Writs Act to prevent the transfer of individuals detained within the judicial district. *See Arostegui-Maldonado v. Baltazar*, No. 25-cv-2205-WJM-STV, -- F. Supp. 3d --, 2025 WL 2280357, at *15-16 (D. Colo. Aug. 8, 2025) (listing cases); *see also Guevara Gomez v. Crawford*, No. 1:25-cv-1781-PTG-LRV (E.D. Va. Oct. 16, 2025).

19. Mr. Diaz requests that this Court invoke the All Writs Act to prevent any transfer out of the District of Colorado during the pendency of his habeas action, given the likelihood that he will be ordered to appear at a bond hearing shortly after this Court rules upon the habeas petition. Mr. Diaz lives in Colorado, and his immigration counsel's law firm operates primarily in Colorado. He will need to participate in the preparation for and attend his bond hearing, and he will incur additional, unnecessary expenses and difficulty in returning to his residence in Colorado should he be granted a bond hearing after being transferred elsewhere. *See Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025) (noting that presence in the judicial district where an action is pending "facilitate[s]" the petitioner's "ability to work with [his or] her attorneys, coordinate the appearance of witnesses," and generally present claims related to detention); *Suri v. Trump*, 785 F. Supp. 3d 128, 148 (E.D. Va. May 6, 2025).

EXHAUSTION

20. The failure to exhaust administrative remedies does not bar Mr. Diaz's claim unless "Congress specifically mandates" exhaustion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (1993) (quoting *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992)).

21. Moreover, because detaining Mr. Diaz without a significant likelihood of removal in the reasonably foreseeable future violates his right to due process, administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

22. Although the Court may impose exhaustion requirements as a prudential matter, it should not do so in this case because further administrative exhaustion would be futile. Critically, as part of a recent policy shift, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025), concluding that noncitizens who entered the United States without inspection at any point are forever after considered to be "arriving aliens" who are "seeking admission" and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Even though, as discussed below, this decision is legally erroneous, all immigration judges—including Appellate Immigration Judges at the Board—are obligated to apply published Board precedent. 8 C.F.R. § 103.10(b). Thus, waiting for the resolution of DHS's appeal to the Board with respect to a bond request would be futile because the result is foreclosed.

STATEMENT OF RELEVANT FACTS

23. Mr. Diaz entered the United States in December 2012, without inspection or admission. He was not encountered by immigration officers at that time.

24. On November 7, 2025, he was detained by the police in Greeley, Colorado while intoxicated in the passenger seat of a car. The next day, November 8, 2025, he was transferred to ICE custody at the Denver Contract Detention Facility in Aurora, Colorado.

25. Before his detention, Mr. Diaz lived with his United States citizen girlfriend in Greeley, Colorado.

26. Mr. Diaz has no criminal convictions and is neither a flight risk nor a danger to society.

27. Nonetheless, since November 8, 2025, ICE officers have detained Mr. Diaz without bond.

28. Mr. Diaz now faces prolonged detention and separation from his family without relief from this Court.

LEGAL BACKGROUND

Immigration Detention Authority (8 U.S.C. §§ 1225 and 1226)

29. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, which set forth separates procedures for the removal and detention of arriving or recently arrived noncitizens and those who have entered and established a presence in the United States, even those who have done so in violation of the immigration laws. *Compare* 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"), *with* 8 U.S.C. §§ 1226 ("Apprehension and detention of aliens"), 1229a ("Removal proceedings"). For those individuals with an established presence in the United States, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) "shall be the sole and exclusive procedure from the United States" unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

30. During the pendency of standard removal proceedings under 8 U.S.C. § 1229a, § 1226 provides for the detention of noncitizens already in the United States, even those who entered illegally or without inspection. While § 1226(c) mandates the detention of certain classes of criminal noncitizens, § 1226(a) sets forth the rule for noncitizens subject to discretionary detention under § 1226. Under 8 U.S.C. § 1226(a), a noncitizen "may be arrested and detained pending a decision on whether the alien is to be removed from the United States[.]" 8 U.S.C. § 1226(a). After an arrest, the noncitizen may continue to be detained, released on conditional parole, or released on a bond of at least $1,500. Id.

31. Once a noncitizen is detained, DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have the initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8 C.F.R. § 1236.1(d)(3).

32. As part of IIRIRA, Congress created an expedited removal process to be implemented during inspection at the border for certain "applicants for admission" deemed to be "arriving aliens." 8 U.S.C. § 1225(b). The INA defines an applicant for admission as a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a [noncitizen] who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1). The INA further clarifies that the term "application for admission" has "reference to the application for admission *into* the United States," making clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4) (emphasis added). Notably, individuals subject to expedited removal are not eligible for bond pending completion of their removal hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see id.* at 303

(distinguishing individuals subject to § 1225(b) from those "already present in the United States").

33. Critically, expedited removal proceedings do not apply to all "applicants for admission." Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States for less than two years and have not been admitted or paroled—only become subject to expedited removal if so designated by DHS. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (granting discretionary authority to apply expedited removal to any or all noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II)); *See* Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: noncitizens "determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for if so designated by DHS.").

34. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii). Further, any noncitizen "subject to the procedures under [8 U.S.C. § 1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

35. Finally, § 1225(b)(2) mandates the detention of certain "applicants for admission" not covered by § 1225(b)(1). Yet in keeping with the statute's focus on arriving aliens, the statute does not mandate detention for all applicants for admission. Instead, § 1225(b)(2)(A) only mandates the detention of "an applicant for admission" when "the examining immigration officer determines" that the noncitizen who "seeking admission is not clearly and beyond a doubt entitled to be admitted."

1. Courts and the U.S. Government have consistently taken the position that noncitizens who have entered without inspection and are encountered in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g.*, *Jennings*, 583 U.S. at 303 ("While the language of §§ 1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, § 1226 applies to aliens *already present in the United States*.") (emphasis added); IIRIRA Implementing Regulation, 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."). This is because these individuals are not "seeking admission." *See Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025) (holding that a noncitizens who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025); (rejecting the Government's "novel interpretation" that 1225(b) applies to noncitizens detained while present in the United States).

36. Despite amending the INA numerous times since passing IIRIRA, *see, e.g.*, REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, Congress has never seen fit to clarify or alter this universally accepted interpretation of the statute. And indeed, nearly 30 years of agency

interpretation of the law would have provided Mr. Diaz with an opportunity to seek review of his custody through a hearing before an immigration judge under 8 U.S.C. § 1226(a).

37. Yet in July 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it had embraced when IIRIRA was first enacted and over three decades since. In a complete reversal, "DHS, in coordination with the Department of Justice (DOJ) . . . revisited its legal position on detention and release authorities," and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 "is the applicable immigration detention authority for all applicants for admission." Exhibit 2, ICE Memorandum: Interim Guidance Regarding Detention Authority for Applicants for Admission. This policy has since been vacated. *Maldonado Baustista*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), ECF No. 92, at 6.

38. And in September 2025, the Board of Immigration Appeals adopted DHS's novel statutory reading of 8 U.S.C. § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board found no distinction between the statutory terms "applicant for admission" and "seeking admission," and concluded that § 1225(b)(2) must be read to include all noncitizens who have not been inspected and admitted at any point. *Id.* at 221-22. Further, the Board asserted that legislative history supported its construction, although it did not cite any legislative history addressing the detention statutes.[1] *Id.* at 223-25.

39. In fact, legislative history actually contradicts the Board's analysis. In February 1997, Congressman Lamar Smith, then Chair of the House Subcommittee on Immigration and Claims for the Committee on the Judiciary, wrote to the former Immigration and Naturalization

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[1] This decision represents a complete change in statutory interpretation. In fact, just weeks prior to *Matter of Yajure Hurtado*, the Attorney General designated for publication a decision recognizing that a noncitizen arrested in the interior of the United States and placed into removal proceedings under 8 U.S.C. § 1229a is detained under 8 U.S.C. § 1226(a) and eligible for release on bond. *See Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025).

Service ("INS") in response to the INS's proposed rulemaking to implement the provisions of IIRIRA. *See* Exhibit 3, IIRIRA Legislative History. In his comment on the proposed regulation, he explained the legislative intent behind several provisions of IIRIRA that focused on "prompt apprehension, adjudication, and removal of aliens who are not lawfully present in the United States." *Id.* at 4. Specifically, he discussed expedited removal, the concept of arriving aliens, limitations on relief, changes to proceedings before an immigration judge, and limitations of appeals. *See generally id.*

40. Relevant here, Congressman Smith explained that the definition of "arriving alien" should be limited. He noted that the legislation used the term "arriving alien" "to distinguish aliens at the border of the United States from those who have made a substantial physical entry into the United States." *Id.* at 5-6. Congressman Smith thus recommended that the proposed regulations adopt a temporally limited measure as to who is considered "arriving," because "[c]riteria based on time are preferable . . . [and] would embrace both those who remain close to the border as well as those who escape shortly after having made an entry." *Id.* at 6. Congressman Smith continued, "[b]riefly put, if the alien is caught on the day he or she arrives, the alien is an 'arriving' alien, but not otherwise. This is a common sense approach that should be easy for INS officials to understand and implement." *Id.*

41. Courts that have reviewed this issue have almost universally rejected Respondents' new reading of the statute. *See, e.g., Nava Hernandez v. Baltazar*, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Hernandez Vazquez v. Baltasar*, 1:25-cv-3049 (D. Colo. Oct. 23, 2025); *Loa Caballero v. Baltazar*, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Moya Pineda v. Baltasar*, No. 1:25-cv-2966 (D. Colo. Oct. 20, 2025); *Mendoza Gutierrez*, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Ortiz*

Ventura v. Noem, No. 1:25-cv-01429-MSN-WBP (E.D. Va. Oct. 2, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Galdamez Martinez v. Noem, et al.*, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025).

42. Notwithstanding the resounding rejection of DHS and DOJ's policy, Respondents continue to defend the policy. Yet this policy deprives Mr. Diaz of any process by subjecting him—with limited criminal history and with many years residence in the United States—to the same mandatory detention provisions as applicants at the border seeking to initially enter the United States.

<u>*Maldonado Bautista Class Membership*</u>

43. On November 25, 2025, a district court in the Central District of California certified a class of which Mr. Diaz is a member. *See Maldonado Bautista,* --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (certifying a "bond eligible class" of "noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231" when DHS made an initial custody determination). 0

44. In a separate order, the court in *Maldonado Bautista* also held unlawful the Department of Homeland Security's policy of treating all inadmissible noncitizens arrested inside the United States as "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Maldonado Bautista*, -- F. Supp. 3d --, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). On December 18, 2025, the *Maldonado Bautista* court granted a motion for

reconsideration, entering final judgement. *See Maldonado Bautista*, No. 5:25-cv-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92.

45. In its order, the *Maldonado Bautista* court vacated the Department of Homeland Security Immigration and Customs Enforcement July 8, 2025 memorandum and policy, and ruled that *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) "is no longer controlling; the legal conclusion underlying the decision is no longer tenable." *Id.* at 6. Accordingly, the Respondents' reliance on the July 8, 2025 Memo and *Matter of Yajure Hurtado* are not proper in this case, and the Court should grant the petition for a writ of habeas corpus.

46. Mr. Diaz 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 Denver Contract Detention Facility. He was apprehended by immigration authorities on November 8, 2025;

    b. entered the United States without inspection nearly 13 years ago and was not apprehended upon arrival, *cf. id.*; and

    c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

47. After apprehending Mr. Diaz on November 8, 2025, DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged him as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

48. Respondents are bound by the judgment in *Maldonado Bautista*, as it is now a final judgment.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Substantive Due Process
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

49. Mr. Diaz realleges and incorporates by reference the paragraphs above.

50. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause

protects." *Zadvydas*, 533 U.S. at 690. Indeed, the liberty interest in freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

51. Mr. Diaz has a fundamental interest in liberty and being free from official restraint, and the government's new, erroneous classification of Mr. Diaz as an "arriving alien" who is "seeking admission" to the United States and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) without any avenue to challenge that detention violates his substantive right to due process.

52. Respondents' insistence that Mr. Diaz remain in immigration custody pursuant to these policies is a violation of his due process rights.

53. Mr. Diaz has a fundamental interest in liberty and being free from official restraint, and the government's new, erroneous classification of him as an "arriving alien" who is "seeking admission" to the United States and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) without any avenue to challenge that detention violates his substantive right to due process.

COUNT TWO
Violation of Procedural Due Process
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

54. Mr. Diaz realleges and incorporates by reference the paragraphs above.

55. The Supreme Court has been clear that for noncitizens "*on the threshold of initial entry* . . . [w]hatever the procedure authorized by Congress is, it is due process." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (emphasis added). However, Mr. Diaz—after more than a decade in the United States—is clearly not on the threshold of initial entry. Indeed, it is well established that noncitizens like Mr. Diaz who "once passed through our gates, even illegally" are entitled to greater constitutional protections. *Id.*; *see also Zadvydas*, 553 U.S. at

693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders."). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Because Mr. Diaz is not properly detained under § 1225(b)(2), his detention does not comply with due process.

56. Mr. Diaz has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed that even for noncitizens, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. And the Supreme Court, recognizing the strong private interest in remaining free from detention, has held "that detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (cleaned up).

57. While the government has an interest in ensuring Mr. Diaz appearance at his removal proceedings and protecting the community, the government cannot plausibly justify denying a bond hearing based on "administrative burdens" when it has, for the past three decades, consistently provided bond hearings to noncitizens like Mr. Diaz who have established a presence in the United States after previously entering without inspection.

58. Finally, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to detain noncitizens like Mr. Diaz without any opportunity to challenge his detention before the administrative agency. Without an order from this Court, there is a high

probability that Mr. Diaz would be detained even though his continued detention serves no non-punitive purpose as it is unnecessary to protect the community or to ensure his appearance at his removal proceedings.

59. In Respondents' contrasting version of the INA, as espoused in *Matter of Yajure Hurtado*, Mr. Diaz may be stripped of any mechanism to require the government to justify his detention. Such a lack of *any* process, necessarily leading to an erroneous deprivation of liberty, cannot be supported by the Constitution.

COUNT THREE
Violation of the Immigration and Nationality Act
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

60. Mr. Diaz realleges and incorporates by reference the paragraphs above.

61. This Court should rule that Mr. Diaz is subject to detention under § 1226(a). Respondents' contrary reading of the statute has been overwhelmingly rejected in more than two hundred district courts decisions that have ruled on the issue and on a class-wide basis. *See* supra ¶¶ 39, 41-43; *see also Morales Rodriguez v. Arnott*, No. 6:25-cv-836-MDH (W.D. Mo. Nov. 18, 2025); *Singh v. Lyons*, No. 1:25-cv-1606, 2025 WL 2932635 (E.D. Va. Oct. 14, 2025); *S.D.B.B. v. Johnson*, No. 1:25-cv-882 (M.D.N.C. Oct. 7, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Sampiao v. Hyde*, -- F. Supp. 3d --, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Gomes v. Hyde*, -- F. Supp. 3d --, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

62. As the Supreme Court recognized in *Jennings*, § 1225(b) focuses on individuals arriving at the border and ports of entry and thus are in the process of "seeking admission." *Jennings*, 583 U.S. at 297, 303; *see also* 8 C.F.R. § 1.2 (addressing noncitizens who are geographically

"coming or attempting to come into the United States."). Conversely, § 1226(a) focuses on individuals who are in the United States and the Government is seeking to remove through removal proceedings. *Id.* at 303. The INA further clarifies that the term "application for admission" has "reference to the application for admission into the United States," making clear that the term applies to those applying to enter into the United States physically. 8 U.S.C. § 1101(a)(4). Mr. Diaz cannot reasonably be described as "seeking admission" to a country he has resided in for four years.

63. The titles of the two statutory sections make this distinction clear. *Compare* 8 U.S.C. § 1225 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"), *with* 8 U.S.C. § 1226 ("Apprehension and detention of aliens").

64. Furthermore, equating the term "applicant for admission" with "seeking admission," as EOIR has concluded in *Matter of Yajure Hurtado*, would render the phrase "seeking admission" superfluous because it violates principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings." *Lopez Benitez*, 795 F. Supp. 3d at 489; *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant."); *accord Mendoza Gutierrez*, 2025 WL 2962908, at *7. Section 1225's mandatory detention regime applies to noncitizens who meet three criteria; first, the noncitizen must be "an 'applicant for admission' (a 'term of art' in the INA that includes noncitizens who 'arrive[] in the United States,' as well as those already 'present in the United States who ha[ve] not been admitted," second, the noncitizen must be "actively 'seeking admission' to the country," and third, the noncitizen must be "one whom an examining immigration officer

determines 'is not clearly and beyond a doubt entitled to be admitted.'" *Lopez Benitez*, 795 F. Supp. 3d at 488 (quoting *Martinez*, 792 F. Supp. 3d at 214).

65. In addition, "Respondents' reading of § 1225(b)(2)(A) 'negates the plain meaning of the text.'" *Id.* (quoting *Martinez*, 792 F. Supp. 3d at 218)

66. The phrase "seeking admission," is in the present tense, connoting a current action. Yet, Mr. Diaz was not actively seeking admission when DHS apprehended him and placed him in custody; he "ha[d] already 'entered' the country (albeit unlawfully)." *Id.*

67. Similarly, the ordinary meaning of the terms "seeking" and "admission" do not apply to noncitizens, like Mr. Diaz, who are not actively seeking inspection to enter the United States but instead have been residing in the country for many years. *Jose Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025).

68. Additionally, applying § 1225(b)(2) to all noncitizens except those who have been admitted could not have been Congress's intent because it would render other mandatory detention provisions, such as § 1226(c)(1)(E), unnecessary. *Sampiao*, 2025 WL 2607924, at *8; *Rodriguez Vasquez*, 779 F. Supp. 3d at 1259; *Gomes*, 2025 WL 1869299, at *7. Section 1225(c) requires mandatory detention for individuals who are present in the United States without being admitted or paroled and who are subject to specific criminal conduct criteria. *Sampiao*, 2025 WL 2607924, at *8. If all noncitizens who are inadmissible are subject to mandatory detention, there would be no reason for Congress to have enumerated which inadmissible noncitizens are subject to mandatory detention under § 1226(c). *Id.* If Congress intended § 1225(b) detention to extend to all noncitizens who have not been admitted, the recent amendments would be surplusage. *Sampiao*, 2025 WL 2607924, at *8 (citing *Marx v. Gen. Revenue Corp.*, 568 U.S.

371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

69. For these reasons, the plain language of § 1225(b)(2)(A) demonstrate that an individual, such as Mr. Diaz, is not an "applicant for admission" who is "seeking admission" to the United States.

70. Thus, this Court must find that to subject Mr. Diaz to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) would be a clear violation of the INA.

COUNT FOUR
Violation of the Immigration and Nationality Act
Request for Relief Pursuant to Maldonado Bautista

71. Mr. Diaz realleges and incorporates by reference the paragraphs above.

72. As a member of the Bond Eligible Class, Mr. Diaz is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

73. 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.

74. 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."

75. On December 18, 2025, the court entered final judgment, applying its summary judgment holding to the entire class of individuals, which includes Mr. Diaz.

76. Therefore, under the ruling from the Central District of California, Mr. Diaz should be granted a bond hearing under 8 U.S.C. § 1226(a).

PRAYER FOR RELIEF

Based on the foregoing, Mr. Diaz requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Order *under* the All Writs Act that Mr. Diaz not be removed from this District while this petition is pending;

(3) Issue an order requiring Respondents to show cause why this Petition should not be granted within three days;

(4) Declare that 8 U.S.C. § 1226(a) governs Mr. Diaz detention by U.S. immigration authorities;

(5) Order that Mr. Diaz be released from immigration custody with all of his personal belongings;

(6) Alternatively, order a bond hearing as authorized under 8 U.S.C. § 1226(a) at which 8 U.S.C. § 1225(b)(2)(A) cannot be applied, DHS bears the burden of proof, and the immigration judge considers Mr. Diaz's ability to pay bond as part of the factors in setting bond; and

(7) Grant any other and further relief this Court deems just and proper.

(8) Grant attorneys' fees and costs of this suit under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2), et seq.;

(9) Grant any further relief this Court deems just and proper.

Dated: December 19, 2025

Respectfully submitted,

/s/ Sarah L. Vuong
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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with Petitioner and his family the events described in this Petition. Based on those discussions and documents Petitioner's family has provided to me, I hereby verify that the statements made in this Petition for a Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 19, 2025

Respectfully submitted,

/s/ Sarah L. Vuong
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