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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

PABLO JAVIER CONCHA-GONZALEZ,

Petitioner,

vs.

Case No.:

KRISTI NOEM, Secretary, U.S. Department
of Homeland Security
C/O Office of the General Counsel
2707 Martin Luther King Jr. Ave, Se
Washington, Dc 20528-0485;

TODD LYONS Acting Director of U.S.
Immigration and Customs Enforcement (ICE),
the relevant address is 500 12th Street SW,
Washington, DC 20536

PAM BONDI, U.S. Attorney General
950 Pennsylvania Avenue NW
Washington DC 20530

Respondents.

**PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241
AND REQUEST FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This habeas corpus action challenges the unlawful civil immigration detention of
Petitioner, Pablo Javier Concha-Gonzalez ("Petitioner"), a Cuban national who has a properly

1 filed and pending Application to Register Permanent Residence or Adjust Status (Form I-485)
2 under the Cuban Adjustment Act (CAA).

3 2. Under DHS/USCIS regulations and longstanding agency policy, the filing and pendency
4 of a bona fide I-485 places the applicant in a period of "authorized stay" while the application is
5 adjudicated. During this authorized-stay period, DHS lacks lawful authority to detain the
6 applicant absent individualized findings consistent with 8 U.S.C. § 1226(a) and due process,
7 which DHS has not made here.
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9 3. Petitioner respectfully seeks an order requiring his immediate release from custody. In
10 the alternative, Petitioner requests that this Court order the immigration court to conduct a prompt
11 and meaningful bond hearing pursuant to 8 U.S.C. § 1226(a) and 8 C.F.R. §§ 1236.1(d), 1003.19,
12 within seven (7) days, at which the Government must bear the burden of justifying continued
13 detention by clear and convincing evidence, and the Immigration Judge must consider Petitioner's
14 ability to pay and the availability of less restrictive alternatives to detention.
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16 4. Petitioner further seeks declaratory relief confirming that the pendency of his I-485 under
17 the CAA places him in a period of authorized stay and that DHS's re-arrest and continued
18 detention are unlawful in light of this authorized-stay posture and governing law.
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20 **JURISDICTION AND VENUE**

21 5. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal
22 custody and challenges the legality of his detention. Jurisdiction also exists under 28 U.S.C. §
23 1331 because this action arises under the laws and Constitution of the United States, and under
24 the Suspension Clause, U.S. CONST. art. I, § 9, cl. 2.
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1 6. Venue is proper in the District of Colorado because Petitioner is detained within this
2 District at DENVER CONTRACT DETENTION FACILITY, which is located within this
3 District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 442–43 (2004).

4 7. No statute precludes habeas review of the lawfulness of civil immigration detention. See,
5 e.g., *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018)
6 (recognizing habeas jurisdiction to challenge the statutory authority and constitutional application
7 of detention).
8

9 **PARTIES**

10 8. Petitioner, Pablo Javier Concha-Gonzalez, is a native and citizen of Cuba (Alien
11 Registration Number ) who is detained by ICE within the District of Colorado.

12 9. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security.
13 She is sued solely in her official capacity.
14

15 10. Respondent Todd M. Lyons is the Senior Official Performing the Duties of the Director
16 of U.S. Immigration and Customs Enforcement (ICE), the most senior official at ICE, responsible
17 for ICE detention operations nationwide. He is sued solely in his official capacity.
18

19 11. Respondent Pam Bondi is the Attorney General of the United States, the chief law
20 enforcement officer of the federal government. She is sued solely in her official capacity.
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22 **EXHAUSTION AND FUTILITY**


23 12. Petitioner has not requested a custody redetermination (bond hearing) before the
24 Immigration Court because such a request would be futile. Immigration Judges (IJs) have
25 indicated they lack jurisdiction to consider bond under INA § 236(a) in circumstances like
26 Petitioner's based on their adherence to Board of Immigration Appeals (BIA) precedents,
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1 including *Matter of Q. Li* and *Matter of Yajure Hurtado*, which they consider binding despite the
2 decisions' conflict with statutory and regulatory text.

3 13. Courts routinely excuse exhaustion when resort to administrative remedies would be
4 futile, cause irreparable injury, or when the petitioner raises substantial constitutional questions.
5 Habeas relief is especially appropriate where agency precedent forecloses relief absent judicial
6 intervention.
7

8 FACTUAL ALLEGATIONS

9 14. Petitioner arrived in the United States on March 19, 2022 at or near Eagle Pass, Texas.
10 Upon arrival, he presented himself to U.S. authorities, was briefly detained, and subsequently
11 released on his own recognizance.
12

13 15. Seeking to regularize his status, after about a year of continuous presence in the United
14 States, Petitioner submitted a Form I-485 under the Cuban Adjustment Act (Receipt
15 #  on May 8, 2023. Petitioner's case is still pending with USCIS.
16

17 16. Under longstanding DHS/USCIS policy and regulatory interpretation, the filing and
18 pendency of a bona fide adjustment application places the applicant in a period of authorized stay
19 while the application is being adjudicated. See, e.g., 8 U.S.C. § 1255; 8 C.F.R. § 245.2; USCIS
20 policy materials regarding authorized stay during the pendency of adjustment of status
21 applications.
22

23 17. Despite Petitioner's authorized-stay posture, ICE re-arrested Petitioner on or about
24 December 10, 2025 and detained him at Denver Contract Detention Facility, where he remains in
25 custody.
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27 18. Petitioner has no disqualifying criminal history, is not a danger to the community, and is
28 not a flight risk. He has strong community ties in Miami, FL, and is represented by counsel.

1 19. Petitioner has not requested a bond hearing before the Immigration Court because doing
2 so would be futile: IJs have stated they are bound by BIA precedents, including *Matter of Q. Li*
3 and *Matter of Yajure Hurtado*, and thus would decline jurisdiction over bond under § 1226(a) in
4 these circumstances notwithstanding contrary statutory and regulatory language and recent
5 federal district court decisions.
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7 LEGAL FRAMEWORK

8 A. Authorized Stay During a Pending I-485

9 20. The Immigration and Nationality Act (INA) and DHS/USCIS regulations make clear that
10 the filing of a bona fide adjustment-of-status application places the applicant in a period of
11 authorized stay. See 8 U.S.C. § 1255(a) (providing the statutory basis for adjustment of status)
12 and 8 C.F.R. § 245.2(a)(4)(ii) (providing that unlawful presence does not accrue during the
13 pendency of an adjustment application). DHS has long interpreted this regulatory framework to
14 mean that a pending I-485—particularly under the Cuban Adjustment Act (CAA)—constitutes a
15 period of DHS-authorized stay for the duration of the adjudication. USCIS has repeatedly
16 reaffirmed that adjustment applicants are considered to be lawfully present for purposes of accrual
17 of unlawful presence and removal. Because DHS itself has determined that such applicants are in
18 authorized stay, detaining an I-485 applicant contradicts DHS’s own regulatory structure and
19 longstanding practice. Moreover, under the *Accardi* doctrine, an administrative agency is
20 prohibited from disregarding its own regulations or established procedures. See *United States ex*
21 *rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). When DHS promulgates regulations and
22 administers immigration benefits in a manner recognizing that I-485 applicants are in authorized
23 stay, the agency may not simultaneously treat such applicants as unlawfully present for detention
24 purposes; this inconsistency violates *Accardi* and renders detention *ultra vires*.
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1 21. Consistent with this framework, 8 C.F.R. § 1226 does not authorize DHS to detain a
2 noncitizen who is in a period of DHS-recognized authorized stay due to a pending I-485. Section
3 1226(a) governs pre-final-order detention of individuals pending a decision on removal, but it
4 presupposes that detention is legally permissible in the first instance. It nowhere grants DHS
5 discretion to detain applicants whom DHS itself has placed in an authorized-stay category,
6 because authorized stay is fundamentally inconsistent with the premise of § 1226(a) detention
7 authority. Where the INA and USCIS regulations classify an individual as being in authorized
8 presence, DHS lacks a statutory basis to deem the person detainable as though they were
9 unlawfully present or removable for custodial purposes. Because DHS has no statutory or
10 regulatory authority to detain an applicant for adjustment of status who is in authorized stay,
11 continued detention is unlawful, and any requirement that Petitioner post a bond is equally
12 unlawful. Bond is a mechanism designed to mitigate risk only in cases where the Government has
13 lawful detention authority under § 1226(a) or § 1226(c). Where detention itself is ultra vires—as
14 here—Petitioner cannot be required to secure release by posting a monetary bond; the
15 Government must release the individual without requiring financial security.
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19 **B. Custody Authority Under INA § 236(a)**

20 22. INA § 236(a), 8 U.S.C. § 1226(a), governs arrest, detention, and release of noncitizens
21 pending a decision on removal and authorizes release on bond or conditional parole where the
22 individual is neither a danger nor a flight risk. Regulations grant Immigration Judges authority to
23 conduct custody redetermination hearings. See 8 C.F.R. §§ 1236.1(d), 1003.19. The Supreme
24 Court has recognized that detention under § 1226(a) is discretionary and subject to constitutional
25 limits. See *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); *Demore v. Kim*, 538 U.S. 510 (2003).
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28 **C. BIA Precedents Contrary to Statute and Regulation**

1 23. The BIA’s decisions in *Matter of Q. Li* and *Matter of Yajure Hurtado* purport to restrict
2 IJ jurisdiction over custody determinations in ways that conflict with the text of INA § 236(a) and
3 the regulations at 8 C.F.R. §§ 1236.1(d), 1003.19. Numerous federal district courts have rejected
4 similar reasoning and ordered either release or meaningful bond hearings notwithstanding those
5 decisions.
6

7 24. Reliance on these BIA precedents to categorically deny bond jurisdiction violates the
8 statute, the regulations, and due process, and results in unlawful, prolonged detention without
9 individualized assessment.
10

11 **CLAIMS FOR RELIEF**

12 **Count I: Unlawful Detention Contrary to Statute and Regulation (8 U.S.C. § 1226(a); 8**

13 **C.F.R. §§ 1236.1(d), 1003.19; 8 C.F.R. § 245.2)**

14 25. Petitioner’s detention during the pendency of his Form I-485 under the Cuban
15 Adjustment Act (“CAA”)—a filing that places him in a period of authorized stay—is unlawful
16 because it exceeds DHS’s statutory authority under 8 U.S.C. § 1226(a) and constitutes arbitrary
17 and capricious agency action in violation of the INA and the Administrative Procedure Act
18 (“APA”), 5 U.S.C. § 706. Under 8 U.S.C. § 1226(a), DHS may arrest and detain a noncitizen
19 pending a decision on removability, but Congress expressly conditioned this authority on the
20 exercise of discretion and the availability of release on bond or conditional parole. The statute
21 authorizes detention only while DHS determines “whether the alien is to be removed,” and even
22 then, DHS “may release the alien on bond” or on other conditions.. Congress.gov similarly
23 confirms that § 1226(a) detention is discretionary and requires DHS to consider bond or
24 conditional parole when detention is not mandatory.
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1 26. Crucially, applicants for adjustment of status—such as Petitioner—are not in
2 unauthorized presence during the pendency of the I-485. USCIS policy makes clear that
3 adjustment under the CAA is a discretionary benefit, but one that requires affirmative adjudication
4 by USCIS; during that adjudication, the applicant remains in a period of authorized stay. See
5 USCIS Policy Manual, Vol. 7, Pt. A, Ch. 10 (Adjustment of status under the CAA is a
6 discretionary form of relief that requires a lawful adjudication process, during which the applicant
7 bears the burden of proof but is permitted to remain while adjudication is pending).. Because
8 Petitioner is in authorized stay, he is not an individual unlawfully present awaiting removal, which
9 is the category § 1226(a) was designed to address.
10
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12 27. DHS’s detention of Petitioner—despite his authorized stay and without individualized
13 findings demonstrating danger or flight risk—is therefore not only contrary to the structure of
14 § 1226(a) but arbitrary and capricious under the APA. The agency’s conduct is arbitrary because
15 it fails to consider relevant factors (including Petitioner’s lawful presence, equities, and pending
16 adjudication) and relies on impermissible factors (treating Petitioner as if he were removable or
17 in unlawful presence when he is not). This violates well-established APA standards requiring
18 agencies to articulate a rational connection between the facts found and the decision made.
19 Courts have reiterated that § 1226(a) applies to persons actually awaiting removal decisions, not
20 individuals pursuing lawful immigration benefits such as adjustment of status. Upheld
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23 **Count II: Violation of Due Process (U.S. CONST. amend. V)**

24 28. Petitioner realleges and incorporates by reference paragraphs 1–28.

25 29. Continued civil detention without a prompt, meaningful custody redetermination violates
26 due process. The Government must bear the burden of proving by clear and convincing evidence
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1 that Petitioner’s continued detention is necessary due to danger or flight risk, and the IJ must
2 consider Petitioner’s ability to pay and alternatives to detention.

3 **Count III: Declaratory Relief (28 U.S.C. §§ 2201–2202)**

4 30. Petitioner realleges and incorporates by reference paragraphs 1–30.

5
6 31. An actual and justiciable controversy exists regarding Petitioner’s authorized-stay status
7 and DHS’s detention authority. Declaratory judgment is warranted that Petitioner’s pending I-
8 485 under the CAA places him in authorized stay and that his continued detention is unlawful.

9 **PRAAYER FOR RELIEF**

10 WHEREFORE, Petitioner respectfully requests that this Court:

11
12 A. Issue a writ of habeas corpus ordering Petitioner’s immediate release from DHS/ICE
13 custody on reasonable conditions of supervision, recognizing his authorized stay during the
14 pendency of his I-485 under the Cuban Adjustment Act;

15
16 B. In the alternative, order the Immigration Court to conduct a bond hearing under 8 U.S.C.
17 § 1226(a) within seven (7) days, at which: (i) the Government must prove by clear and convincing
18 evidence that Petitioner is a danger to the community or a flight risk; (ii) the Immigration Judge
19 must consider Petitioner’s ability to pay and alternatives to detention; and (iii) if the Government
20 fails to meet its burden, Petitioner must be released forthwith on the least restrictive conditions;

21
22 C. Declare that Petitioner’s pending I-485 under the CAA places him in a period of authorized
23 stay, and that DHS’s detention is unlawful;

24
25 D. Enjoin Respondents from re-arresting or detaining Petitioner absent new, individualized,
26 lawful findings consistent with § 1226(a) and due process;

27 E. Award reasonable attorney’s fees and costs as permitted by law; and

28 F. Grant such other and further relief as this Court deems just and proper.

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2 Date: January 1, 2026

3 Respectfully submitted,
4

5 /s/ Marcelo Gondim

6 _____
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14 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

15 I represent Petitioner, Pablo Javier Concha-Gonzalez, and submit this verification on his
16 behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of
17 Habeas Corpus are true and correct to the best of my knowledge.

18 January 1, 2026.

19 /s/ Marcelo Gondim

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