Rasul Tagirov, *pro se*
Cimarron Correctional Facility
3200 S Kings Hwy
Cushing, OK 74023

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Rasul Tagirov

Petitioner,

v.

Pamela Bondi, Attorney General of the United States; Russell Holt, Chicago Field Office Director Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); Joshua Johnson, Dallas Field Office Director 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; Scarlet Grant, Warden of Cimarron Correctional Facility,

Respondents.

Case No.

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Rasul Tagirov is a noncitizen and a 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. Petitioner is presently held at the Cimarron Correctional Facility and is within the class certified in *Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720-RMR (D. Colo. Nov. 21, 2025), in which this Court certified a class under Rule 23(b)(2) for purposes of Petitioners' request for declaratory judgment regarding whether 8 U.S.C. § 1226(a), rather than § 1225(b)(2), governs custody and bond eligibility for similarly-situated individuals.

3. In addition to Counts I, II, III, IV and V, 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 December 18, 2025, the district court entered a final judgment in favor of Petitioners and the certified Bond Eligible Class. The court declared that Bond Eligible Class members are detained pursuant to 8 U.S.C. § 1226(a), are not subject to mandatory detention under § 1225(b)(2) and are entitled to consideration for release on bond by immigration

officers and, if not released, a custody redetermination hearing before an immigration judge. The court further vacated the Department of Homeland Security's July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission" as unlawful under the Administrative Procedure Act. *See Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM, slip op. at 1–2 (C.D. Cal. Dec. 18, 2025).

4. Therefore, Petitioner *also* 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.)

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

6. 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.

7. Petitioner sought a bond redetermination hearing before an immigration judge (IJ) at the Aurora Immigration, but the IJ denied Petitioner bond. The IJ reached an erroneous conclusion and refused to follow both *Mendoza and*

Bautista. See IJ Decision (Dec. 8, 2025).

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

9. 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.

10. 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. Respondents' new policies are thus not only contrary to law, but arbitrary and capricious in violation of the Administrative Procedure Act (APA). They were also adopted without complying with the APA's procedural requirements.

11. 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

preventing Petitioner's transfer out of this district.

JURISDICTION

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

13. 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).

14. 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

15. Venue is proper because Petitioner is in Respondents' custody at the Cimarron Correctional Facility in Cushing, Oklahoma, 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

16. 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.*

17. 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).

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

PARTIES

19. Petitioner is a 37-year-old citizen of Russia. Petitioner is detained at the Cimarron Correctional Facility, in Cushing, Oklahoma, for which Aurora Immigration Court, Colorado maintains administrative control to conduct custody/bond hearings as of the time of the filing of this petition.

20. Respondent Russel Halt is the Field Office Director for the Chicago Field Office, Immigration and Customs Enforcement and Removal Operations ("ICE"). The Chicago 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 Halt is a legal custodian of Petitioner.

21. Respondent Joshua Johnson is the Field Office Director for the Dallas Field Office, Immigration and Customs Enforcement and Removal Operations ("ICE"). The Dallas 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 Johnson is a legal custodian of Petitioner.

22. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement. 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 Scarlet Grant is employed by Cimarron Correctional Facility as Warden of the Cimarron Detention Center, where Petitioner is detained. She has immediate physical custody of Petitioner. She is sued in her 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. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

30. This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. amend. V.

31. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law").

32. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 678.

33. The Supreme Court, thus, "has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana,* 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks,* 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

34. For decades, the immigration system has implemented this balance through a network of three mutually exclusive detention statutes.

35. First, at the border, individuals "seeking admission" who are placed into removal proceedings are subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(2).[1] *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to "borders and ports of entry"). These individuals may request release through humanitarian parole under 8 U.S.C. § 1182(d)(5)(A).

36. Second, individuals arrested inside the United States are generally placed into removal proceedings under 8 U.S.C. § 1229a, during which an Immigration

Judge (an "IJ")—and later potentially the Board of Immigration Appeals (the "BIA") and a U.S. Court of Appeals—will decide whether or not the person should be deported. During these proceedings, a noncitizen may apply for various forms of relief from deportation, such as asylum, withholding of removal, cancellation of removal, and adjustment of status. The IJ usually holds a series of hearings to determine if the person is eligible for deportation and, even if so, whether to grant some form of relief from deportation. This process can take months or even years. While this process is ongoing, the individuals are generally subject to the detention authority of 8 U.S.C. § 1226. *See Jennings*, 583 U.S. at 288-89 (describing § 1226 detention as relating to people "inside the United States" and "present in the country"). Most of these individuals are eligible for release on bond and conditions under § 1226(a), and they are consequently entitled to a custody redetermination (colloquially called a "bond hearing") before an IJ to decide whether they should be detained or released. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). A bond hearing with strong procedural protections is not mere regulatory grace; it is the baseline Due Process requirement for § 1226 detainees. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment). The Supreme Court and First Circuit have recognized only one exception to this constitutional requirement for a bond hearing for § 1226 detainees: In 2003, in *Demore v. Kim*, the Court held that, under 8 U.S.C.

§ 1226(c), there is a narrow category of people who can be held in mandatory detention for a brief period of time, if the person has conceded removability and has been convicted of certain crimes following all of the due process afforded by a criminal adjudication. *See* 538 U.S. 510, 513 (2003).

37. Third, if an individual completes their removal proceedings and all appeals, and is ordered removed, the person is subject to detention under 8 U.S.C. § 1231 while the government attempts to remove them. That statute provides for 90 days of mandatory detention called the "removal period," followed by discretionary detention within certain limits. *See Zadvydas*, 533 U.S. at 699-700 (holding § 1231 detention may not continue if removal is not reasonably foreseeable).

38. This system—in which people arrested inside the United States are generally eligible for a bond hearing and release during immigration proceedings—has existed essentially in its current form since Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, § 3003, 110 Stat. 3009-546, 3009-585 to 3009-587 (codified at 8 U.S.C. § 1226). According to IIRIRA's legislative history, § 1226(a) was intended to "restate[] the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). It also reflected nearly a

century of law in the United States of allowing people inside the country to seek release while the government decided whether or not to deport them. *See* 34 Stat. 904-05, § 20 (1907) (providing for release on bond for noncitizens alleged to have entered the United States unlawfully); 39 Stat. 874, 890-91, §§ 19, 20 (1917) (similar); 66 Stat. 163, §§ 241(a)(2), 242(a) (1952) (last codified at 8 U.S.C. § 1252(a)(1) (1994)) (providing for release on bond, including for noncitizens alleged to have entered the United States without inspection).

39. This eligibility for a bond hearing and potential release has applied to people arrested in the United States, regardless of whether they initially entered the country with permission. Indeed, shortly after IIRIRA's enactment, the former Immigration and Naturalization Service and the Executive Office for Immigration Review ("EOIR," which houses the Immigration Courts and BIA) issued an interim rule to implement the statute that expressly stated: "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." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

40. Thus, for almost 30 years, all participants in the immigration system have understood that people arrested inside the United States generally fall within § 1226 for detention purposes and are therefore required to receive a bond hearing upon request—even if they initially entered the country without permission. *See Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at *4 n.9 (D. Mass. July

24, 2025) (citing the United States Solicitor General's representation to the Supreme Court at oral argument that "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended").

41. Nevertheless, three months later, on July 8, 2025, DHS, "in coordination" with DOJ, DHS's representatives in the Immigration Courts began to request that Immigration Judges nationwide misclassify bond-eligible §1226 detainees as mandatory § 1225(b)(2) detainees and refuse to conduct bond hearings on that basis. Some Immigration Judges agreed. As a result, numerous detainees were illegally denied bond hearings and sought relief in the federal courts. Numerous courts—including many in the District of New Mexico—rejected DHS's newly invented misclassification as illegal and ordered the detainees to receive a prompt bond hearing.

42. As previously noted, the BIA and the Immigration Courts are entities within EOIR, which is part of DOJ. On September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. &. N. Dec. 216 (B.I.A. 2025) ("*Matter of Hurtado*"), the BIA issued a precedential decision that purports to require *all* Immigration Judges to misclassify people in this manner. Although the *Matter of Hurtado* decision is just a few months old, multiple federal courts have already ruled that the BIA's decision is not entitled to any deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024), and have rejected the BIA's decision as contrary to law. *See, e.g.*, *Chogllo Chafla v. Scott*, No. 25-437, 2025 WL

2688541, at *7 (D. Me. Sept. 21, 2025) ("I find *Yajure Hurtado* to be unavailing. . . ."); Order (D.E. 22), *Hilario Rodriguez*, No. 25-12358, at 4 n.4; *Sampiao*, No. 25-11981, 2025 WL 2607924, at *8 n.11 ("[T]he Court disagrees with the BIA for the reasons given herein."); *Pizarro Reyes*, 2025 WL 2609425, at *7 ("[T]he BIA's decision to pivot from three decades of consistent statutory interpretation and call for [petitioner's] detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation.").

43. Nevertheless, DHS and DOJ are continuing to systemically misclassify people and unlawfully deny them access to bond hearings and release on bond and conditions during the pendency of their immigration proceedings.

FACTUAL BACKGROUND

44. Petitioner is a citizen of Russian born on [redacted]

45. On information and belief, Petitioner was harmed in his home country due to being a member of the LGBT community.

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

47. On or about February 8, 2017, Petitioner crossed the border without inspection near San Diego, California to seek asylum.

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

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

50. Petitioner timely applied for asylum with the immigration court.

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

52. On information and belief, on or around November 19, 2025, while driving his vehicle, Petitioner was arrested and placed in DHS custody.

53. DHS then transported Petitioner to the Cimarron Correctional Facility.

54. In December of 2025, Petitioner, through his Counsel, filed a request for bond redetermination.

55. On December 8, 2025, an Immigration Judge at the Aurora Immigration Court declined to conduct an individualized bond hearing for Petitioner based on finding of "no jurisdiction", notwithstanding controlling declaratory rulings holding that bond-eligible noncitizens are governed by 8 U.S.C. § 1226(a) and entitled to individualized custody determinations. *See* Immigration Judge Bond Decision (Dec. 12, 2025).

56. 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.

57. 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 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).

CLAIMS FOR RELIEF

COUNT I

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

58. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

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

60. The final judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members. *See id.*

61. 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."

62. 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 the INA: Request for Relief Pursuant to *Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720-RMR (D. Colo. Nov. 21, 2025)

63. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

64. Petitioner is bond-eligible under the Immigration and Nationality Act and is entitled to consideration for release on bond pursuant to 8 U.S.C. § 1226(a).

65. Respondents have detained Petitioner under 8 U.S.C. § 1225(b)(2)(A) based on the assertion that mandatory detention applies, despite the fact that Petitioner falls within the category of noncitizens who historically and lawfully have been detained, if at all, under § 1226(a).

66. In *Mendoza Gutierrez v. Baltasar*, Civil Action No. 25-CV-2720-RMR (D. Colo.), the United States District Court for the District of Colorado granted partial summary judgment and held that Respondents violate the INA by applying § 1225(b)(2)'s mandatory detention scheme to noncitizens who are properly subject to § 1226(a).

67. In the same action, the Court certified a class and expressly ordered that, when read together with the summary-judgment ruling, the declaratory relief applies class-wide, confirming that such individuals are entitled to bond consideration under § 1226(a) rather than mandatory detention under § 1225(b)(2).

68. Respondents in this case are parties to, or in privity with parties to, the *Mendoza Gutierrez* litigation, and are therefore bound by the Court's declaratory judgment.

69. A declaratory judgment issued pursuant to 28 U.S.C. § 2201(a) has the full "force and effect of a final judgment", and Respondents may not lawfully

disregard it by continuing to apply § 1225(b)(2) to individuals who fall within the bond-eligible category addressed by the Court.

70. The class certified in *Mendoza Gutierrez* expressly includes not only individuals "arrested or detained by Respondents in Colorado," but also individuals who are "otherwise subject to the jurisdiction of an Immigration Court located in Colorado."

71. Although Petitioner is physically detained at Cimarron Correctional Facility in Oklahoma, Petitioner remains subject to the jurisdiction of the Aurora Immigration Court. Accordingly, Petitioner falls within the class definition certified by the District of Colorado.

72. Petitioner falls squarely within the category of noncitizens addressed by the Colorado court's rulings:

a. Petitioner was arrested and detained within the interior of the United States;

b. Petitioner is not an arriving alien apprehended at the border;

c. Petitioner was not paroled at entry pursuant to 8 U.S.C. § 1182(d)(5)(A); and

d. Respondents assert detention authority solely under § 1225(b)(2).

73. By continuing to detain Petitioner under § 1225(b)(2) and denying him bond consideration under § 1226(a), Respondents are acting contrary to the INA and in violation of binding federal declaratory authority.

74. As a result of Respondents' unlawful conduct, Petitioner is suffering ongoing and unlawful deprivation of liberty.

COUNT III

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

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

76. 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.

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

78. 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.

79. 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 Cimarron Correctional Facility. He was apprehended by immigration authorities on or around November 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.

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

COUNT IV

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

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

82. 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.

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

84. 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 V

Violation of Fifth Amendment Right to Due Process

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

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

87. 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.

88. 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.'").

89. Here, there is no reason to justify Petitioner's detention. Petitioner has been living in the United States for 8 years, where he has very strong ties to the community.

90. 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.

91. Here, Petitioner has resided in the United States since February 2017, issued a Notice to Appear, and allowed him to reside in the country pending removal proceedings. For nearly eight years, Petitioner lived openly in the interior with the knowledge and acquiescence of DHS.

92. 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).

93. For example, the Ninth Circuit has long recognized that individuals held in detention under § 1226(a) have the right to a bond hearing in which the

government needs to show by clear and convincing evidence that continued detention is justified. *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

94. Here, Petitioner has been living in the United States for eight 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 for someone who has been in the country for eight years.

95. 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 eight years, and he has been in the U.S. with the knowledge and approval of the Department of Homeland Security.

96. Therefore, because Petitioner's presence in the United States after entering the United States in 2017, and after his Notice to Appear hearing, 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 being a Class Member of both *Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720-RMR (D. Colo. Nov. 21, 2025) and *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), the petition in this case should not be granted.

(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 29, 2025

Jacob Shidaev

Jacob Shidaev
FRIEND FOR PETITIONER Rasul Tagirov (as permitted by *Whitmore v. Arkansas*, 495 U.S. 149 (1990).