UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

BEIBY DE OMAR DIAZ MARQUEZ, Petitioner, v. JUAN BALTASAR, *in his official capacity* as Warden of the GEO Aurora ICE Detention Facility, KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security; PAMELA BONDI, *in her official capacity* as Attorney General of the United States; TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; and JOHN FABBRICATORE, *in his official capacity* as Field Office Director of the Denver Field Office of Enforcement and Removal Operations, U.S. Immigrations and Customs Enforcement, U.S. Department of Homeland Security; Respondents.	Case No. 1:26-cv-00293 PETITION FOR WRIT OF HABEAS CORPUS A # [redacted]

INTRODUCTION

1. Petitioner Beiby de Omar Diaz Marquez is a citizen of El Salvador who has resided in the United States since about April 30, 2005. He has two U.S. citizen children and has worked in construction for approximately 18 years. Since coming to the U.S., he has always

resided in Maryland, and he has lived at his current address for the past four and a half years.

2. On January 14, 2026, as Petitioner was driving to work, Immigration and Customs Enforcement ("ICE") officers arrested him in Preston, Maryland.
3. Upon information and belief, Petitioner currently is detained at the ICE Denver Contract Detention Facility. *See* Exhibit 1.
4. Upon information and belief, Petition has been placed in removal proceedings and served with a Notice to Appear, as he is scheduled for a Master Calendar hearing at the Aurora Immigration Court in Colorado. *See* Exhibit 2.
5. Petitioner initially entered the United States at the southern border without inspection in about April 30, 2005.
6. Petitioner has not been arrested for or committed any crimes in the United States.
7. The Board of Immigration Appeals ("BIA") has issued a precedential decision that unlawfully reinterprets the Immigration and Nationality Act ("INA"), Title 8 of the United States Code. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Prior to this decision, noncitizens who had lived in the United States for years and were apprehended by ICE in the interior of the country were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges. In *Yajure Hurtado*, the BIA held that every noncitizen who entered the country without admission – no matter how many years ago – is categorically ineligible for bond under 8 U.S.C. § 1225(b)(2)(A). The government deems Petitioner to be subject to mandatory detention under § 1225(b)(2)(A).
8. Petitioner's detention pursuant to § 1225(b)(2)(A) violates the plain language of Title 8 of the U.S. Code and its implementing regulations. Petitioner, who has resided in the U.S.

since about May 2009 and was apprehended in the interior of the United States, is not an "applicant for admission" who is "seeking admission" under § 1225(b)(2)(A). Rather, Petitioner's detention is pursuant § 1226(a) and its implementing regulations, which allow for release on bond.

9. Petitioner requests that this Court either order Respondents to release Petitioner from custody or provide him with a bond hearing.

CUSTODY

10. Petitioner is currently in ICE custody at the ICE Denver Contract Detention Facility. *See* ICE Detainee Locator Results, Exhibit 1. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

11. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act, 8 U.S.C. § 1101 *et. seq*.

12. 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).

13. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

14. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless 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.*

15. Petitioner is "in custody" for the purpose of 8 U.S.C. § 2241 because Petitioner was arrested and detained by Respondents.

VENUE

16. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the District of Colorado. Petitioner is under the jurisdiction of ICE's Denver, Colorado Field Office, and he is currently detained in Denver, Colorado at the ICE Denver Contract Detention Facility.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. Administrative exhaustion is unnecessary as it would be futile as the administrative body has predetermined the issue before it. *See McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); *see also Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

18. It would be futile for Petitioner to seek a custody redetermination hearing before an immigration judge because of the BIA decision holding that anyone who has entered the U.S. without inspection is now considered an "applicant for admission" who is "seeking admission" and therefore subject to mandatory detention under § 1225(b)(2)(A). *See*

Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025); *see also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders exhaustion futile).

19. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

20. Petitioner is from El Salvador and has resided in the U.S. since about April 30, 2005. He is detained in the ICE Denver Contract Detention Facility.

21. Respondent Juan Baltasar is the warden of the GEO Aurora Detention Center (aka the ICE Denver Contract Detention Facility). As such, he is the immediate legal and physical custodian of Petitioner for purposes of his federal habeas petition. He is sued in his official capacity only.

22. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

23. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

24. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

25. Respondent John Fabbricatore is sued in his official capacity as Field Office Director, Denver Field Office, Enforcement and Removal Operations, ICE. In his official capacity, Respondent Fabbricatore is a legal and physical custodian of Petitioner.

LEGAL BACKGROUND AND ARGUMENT

26. Title 8 of the United States Code prescribes different forms of detention for noncitizens in removal proceedings.

27. Individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

28. Title 8 also provides for mandatory detention of noncitizens subject to expedited removal under § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

29. Title 8 authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. *See* § 1231(a)–(b).

30. 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, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

31. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("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) ("[A]liens 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").

32. Thus, in the decades that followed, individuals who entered without inspection and were thereafter detained and placed in standard removal proceedings under § 1229a, were considered for release on bond and received bond hearings before an immigration judge, unless their criminal history rendered them ineligible.

33. For several years, long-term residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country had been detained pursuant to § 1226 and entitled to bond hearings before an immigration judge, unless barred from doing so due to their criminal history.

34. In July 2025, DHS changed its interpretation of the mandatory detention provisions of § 1225(b)(2)(A) and began asserting that all individuals who entered without inspection should be considered "seeking admission" and therefore subject to mandatory detention under § 1225(b)(2)(A).

35. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the statutory text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

36. Respondents' new legal interpretation is contrary to the statutory framework and its implementing regulations. For decades, Respondents had applied § 1226(a) to individuals

like Petitioner.

37. Federal district court judges throughout the country have rejected Respondents' new legal interpretation and instead consistently have found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country.

38. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024).

39. The statutory context and structure make clear that § 1226 applies to individuals who have not been admitted and entered without inspection. In 2025, Congress added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted and have been charged, arrested or convicted of certain criminal activity. *See* The Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (§ 1226(c)(1)(E)).

40. By specifically referencing inadmissibility for entry without inspection under § 1182(6)(A) in the Laken Riley Act, Congress made clear that such individuals who have not been charged, arrested or convicted of the indicated criminal activity are otherwise covered by § 1226(a). Thus, § 1226 applies to noncitizens charged as inadmissible, including those present without admission or parole.

41. The Supreme Court has explained that § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 297, 2987 (2018). In contrast, § 1226

"authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphases added).

42. Further, § 1225(b)(2) specifically applies only to those "seeking admission." Noncitizens apprehended in the interior of the United States are not "seeking admission."

43. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner, who entered the U.S. more than 16 years before ICE arrested him.

44. The U.S. District Court for the Central District of California certified a nationwide class defined as "all 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 at the time the Department of Homeland Security makes an initial custody determination." *See* ECF 82, at 15, in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025). Petitioner meets the class definition.

45. On December 18, 2025, the *Maldonado Bautista* court entered a final judgment declaring that members of the class "are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2)" and that they are "entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge." ECF 94, at 2, in *Maldonado Bautista*. Since Petitioner is a class member, he is not subject to mandatory detention under § 1225(b)(2).

46. On January 13, 2026, Chief Immigration Judge Teresa L. Riley issued nationwide guidance instructing all immigration judges that "*Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay or enjoin *Yajure Hurtado*." Exhibit 3, Email from Teresa L. Riley, January 13, 2026. Immigration judges have been instructed to follow the

BIA's decision in *Matter of Yajure Hurtado* as binding precedent.

STATEMENT OF FACTS

47. Petitioner is a citizen of El Salvador.

48. Petitioner has resided in the U.S. since about April 30, 2005.

49. Petitioner was arrested by immigration authorities on January 14, 2026, in Preston, Maryland.

50. Upon information and belief, Petitioner is detained at the ICE Denver Contract Detention Facility. *See* Exhibit 1.

51. Without relief from this Court, Petitioner faces continued detention without a bond hearing.

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

52. Petitioner incorporates by reference all preceding paragraphs.

53. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

54. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

55. Moreover, Petitioner is a *Maldonado-Bautista* class member and is entitled to a bond hearing.

56. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

57. Petitioner's continuing detention is therefore unlawful.

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

58. Petitioner incorporates by reference all preceding paragraphs.

59. In 1997, after Congress amended Title 8 of the U.S. Code 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 noncitizens "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. at 10323. The agencies made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before Immigration Judges under § 1226 and its implementing regulations.

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

COUNT III
Violation of Fifth Amendment Right to Due Process

61. Petitioner incorporates by reference all preceding paragraphs.

62. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

63. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

64. Under the *Mathews v. Eldridge,* 424 U.S. 319 (1976) framework, the balance of interests strongly favors Petitioner's release.

65. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom 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.").

66. The risk of erroneous deprivation is exceptionally high.

67. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

68. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

69. Considering these factors, Petitioner respectfully requests that this Court order his immediate release from custody or provide him with a bond hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner not be transferred outside of this District;

(3) Issue an Order to Show Cause ordering Respondents to show cause why his Petition should not be granted within three days;

(4) Declare that Petitioner's detention is unlawful;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release him from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days;

(6) Award him his attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

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

Respectfully Submitted,

Dated: January 23, 2026

/s/ Brian Scott Green
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VERIFICATION

I represent the Petitioner, Beiby de Omar Diaz Marquez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this 23rd day of January 2026.

/s/ Brian S. Green
BRIAN S. GREEN