UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

JAVIER ANDRES GARCIA CORTES,
[redacted]

Petitioner,

v.

ROBERT GUADIAN, Field Office Director, Denver Field Office, Immigration and Customs Enforcement; JUAN BALTAZAR, Warden of Denver Contract Detention Facility; KRISTI NOEM, Secretary, U.S. Department of Homeland Security,

Respondents.

Case No. 1:26-cv-294

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

INTRODUCTION

1. Petitioner Javier Andres Garcia Cortes ("Mr. Garcia") brings this habeas petition—his second within six months—because the Department of Homeland Security ("DHS") Immigration and Customs Enforcement ("ICE") has re-arrested him, in violation of his due process rights. This is despite the fact that this Court granted his first petition just four months ago after concluding that his detention was unlawful and violated his due process rights. *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025).

2. Mr. Garcia was released from custody in September 2025 after, pursuant to this Court's order, an immigration judge held a bond hearing and ordered Mr. Garcia released from immigration custody upon payment of a $15,000 bond. *See* Exhibit 1, Bond Order. In the order, the immigration judge concluded that Mr. Garcia is not a danger to the community and he is not a flight risk. *Id.* at 3-4. Critically, the immigration judge set no conditions on the bond, other than the monetary amount. *Id.*

3. At an ordered check-in on January 21, 2026, ICE arrested Mr. Garcia. Mr. Garcia received no notice of any alleged violation of his immigration bond. Nor has he missed any hearings in immigration court such that the immigration judge would have revoked the bond; his next immigration court hearing is scheduled for December 2026. *See* Exhibit 2, EOIR Automated Case Information Printout. Further, he has not been arrested for any criminal activity or had any law enforcement encounters since his release from immigration custody.

4. Mr. Garcia is not a flight risk and has a path towards lawful status in the United States. Critically, he has a pending application for adjustment of status that in May 2025 the United States Citizenship and Immigration Service ("USCIS") found to be prima facie approvable. *See* Exhibit 3, Prima Facie Determination Letter.

5. There is no lawful basis for Mr. Garcia's detention at this time. This Court intervention is necessary to grant this petition for a writ of habeas corpus and order his release from immigration custody.

JURISDICTION AND VENUE

6. Upon information and belief, Mr. Garcia is detained at the Denver Contract Detention Facility in Aurora, Colorado, and is therefore in the physical custody of Respondents. *See* Exhibit 4, ICE Detainee Locator (noting that Mr. Garcia has not been processed in the system since his arrest on Wednesday, January 21, 2025).

7. 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. Garcia'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).

8. 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.

9. Venue is proper because he was arrested at the ICE Denver Field Office, thus a "substantial part of the events or omissions giving rise to the claim" occurred in this District. 28 U.S.C. § 1391(e)(1). Furthermore, upon information and belief, Mr. Garcia remains detained in Colorado. Mr. Garcia's believed immediate custodian at Denver Contract Detention Facility is located in this District.

PARTIES

10. Petitioner Javier Andres Garcia Cortes is a native and citizen of Colombia. As of the filing of this Petition, it is believed that ICE is detaining him at the Denver Contract Detention Facility in Aurora, Colorado.

11. Respondent Robert Guadian is the Field Office Director of the ICE Denver Field Office and is responsible for ICE's operations in Colorado where Mr. Garcia was unlawfully arrested and remains detained. He is sued in his official capacity.

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

13. 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. Garcia's detention. Secretary Noem has ultimate custodial authority over Mr. Garcia and is sued in her 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. Garcia 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. Garcia requests that the Court invoke the All Writs Act to prevent a transfer outside the District of Colorado during the pendency of this habeas action. Not only is Mr. Garcia's counsel located in Colorado, but ICE retained Mr. Garcia's identification documents when he was released

from immigration custody in September 2025, which would make it unnecessarily difficult to, upon release, return to the state where he lives and cares for his minor child if he were transferred to a facility outside this state. *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*, -- F. Supp. 3d --, 2025 WL 1310745, at *13 (E.D. Va. May 6, 2025).

EXHAUSTION

20. The failure to exhaust administrative remedies does not bar Mr. Garcia's claim unless Congress specifically mandates exhaustion. *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1181 (D. Colo. 2024). Administrative exhaustion is not required regarding a challenge to custody under 8 U.S.C. § 1226(a). *Id.*

21. Moreover, because detaining Mr. Garcia, who DHS has promised not to remove at this time, despite the immigration judge's order granting bond 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.'").

STATEMENT OF RELEVANT FACTS

22. Mr. Garcia is a native and citizen of Colombia. In April 2018, he traveled to the United States with a B-2 visitor visa and was inspected and admitted by immigration officers. *See* Exhibit 5, I-94.

23. Since his arrival, he has resided continuously in the United States.

24. Mr. Garcia has two sons, ages 15 and 7 years old, both of whom reside in the United States.

25. Shortly after his arrival in the United States, Mr. Garcia met and began dating his now-ex-wife, who is a United States citizen. The couple married in 2019, but divorced in 2021 after she became abusive towards Mr. Garcia.

26. In 2022, Mr. Garcia filed a petition for classification under the self-petitioning provisions of the Violence Against Women Act, and an application for adjustment of status. While his application was pending, USCIS granted his application for and a subsequent renewal of employment authorization.

27. Mr. Garcia obtained advanced parole after he filed his application for adjustment of status, and he was able to visit family in Colombia and return and be allowed into the United States after inspection at the airport, without abandoning his application for adjustment of status. *See* Exhibit 6, Passport.

28. Subsequently, on May 9, 2025, USCIS determined that Mr. Garcia has established a prima facie case for classification under the self-petitioning provisions of the Violence Against Women Act, granting him access to public benefits in the U.S. for one year. *See* Exhibit 2.

29. In August 2025, USCIS again renewed Mr. Garcia's employment authorization. Around that same time, Mr. Garcia appeared for work to paint the building that contains the ICE Denver Field Office. Upon his arrival, he was apprehended by ICE and placed in custody.

30. DHS did not provide a warrant for arrest when they handcuffed and detained Mr. Garcia in August 2025. He was later served with a warrant and also a Notice to Appear, which ICE later amended (contrary to regulations regarding who is authorized to file charges of removal) to charge Mr. Garcia as an "arriving alien" under the theory that he is an applicant for admission who was "seeking admission."

31. On August 26, 2025, Mr. Garcia filed a habeas petition in this Court. *See* Dkt. No. 1:25-cv-2677.

32. On September 16, 2025, the Court granted the petition, ruling that Mr. Garcia's detention was not mandatory as it was not governed by 8 U.S.C. § 1225(b)(2). *Garcia Cortes v. Noem*, 2025 WL 2652880. The Court ruled that Mr. Garcia's detention violated both the Immigration and Nationality Act and his due process rights. *Id.* at *2-4.

33. On September 22, 2025, an immigration judge held a custody redetermination hearing at which DHS bore the burden of proof. The immigration judge declined to retain Mr. Garcia in custody and ordered him released from custody on bond of $15,000. Exhibit 1. The immigration judge's order explicitly found that Mr. Garcia was not a danger to the community and he was not a flight risk. *Id.* The judge's order contained no additional requirements or qualifications, including the imposition of reporting requirements with DHS.

34. On September 23, 2025, Mr. Garcia's obligor paid the bond and Mr. Garcia was released from custody. *See* Exhibit 7, Immigration Bond.

35. On September 23, 2025, ICE provided Mr. Garcia a "call-in letter," directing him to report to ICE Enforcement and Removal Operations office on September 30, 2025 for a "check-in and case review." Exhibit 8, Call-In Letter.

36. At that check-in, ICE imposed additional conditions that were not ordered by the immigration judge. Upon information and belief, ICE included Mr. Garcia in the Intensive Supervision Appearance Program ("ISAP"), requiring monitoring including through an app on his phone. *See Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 68 (D. Mass. 2025) (concluding that ISAP conditions constituted "in custody").Upon information and belief, at some point, the photograph he sent did not properly register as him.

37. When Mr. Garcia reported for a check-in on January 21, 2025, ICE informed him that he had "failed" the photo identification and that he would therefore be re-detained.

38. Upon information and belief, neither Mr. Garcia nor his obligor have received any paperwork detailing a supposed violation of his bond. *See* Exhibit 7 at 4 (discussing bond conditioned upon the delivery of an alien).

LEGAL BACKGROUND

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

39. 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).

40. 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.*

41. 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").

42. 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)).

43. Separately, 8 U.S.C. § 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."

44. 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).

45. 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." This policy has since been vacated pursuant to final judgement in a nationwide class action. *Maldonado Bautista v. Santacruz*, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025).

46. 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. *Id.* at 223-25. The court in *Maldonado Bautista* recognized that, in light of the final judgment in that case, the Board's "interpretation" in *Matter of Yajure Hurtado* "is no longer controlling." *Maldonado Bautista*, 2025 WL 3713987, at *12.

47. Indeed, courts that have reviewed this issue have almost universally rejected Respondents' new reading of the statute. *See, e.g., Flores Marin v. Baltazar*, 2025 WL 3677019 (D. Colo. Dec. 18, 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).

Immigration Bond and Release from Custody

48. This Court has already determined that Mr. Garcia is subject to the detention provisions found in 8 U.S.C. § 1226(a), not § 1225(b)(2). *Garcia Cortes*, 2025 WL 2652880.

49. Detention under 8 U.S.C. § 1226(a) "must be premised on an individualized custody determination based on Petitioner's dangerousness and flight risk." *Campbell v. Almodovar*, 2025 WL 3626099, at *1 (S.D.N.Y. Dec. 15, 2025) (marks and citation omitted). A noncitizen who is neither a danger nor a flight risk may be released on a "bond of at least $1,500 with security approved by, and containing conditions prescribed by [ICE]." 8 U.S.C. § 1226(a); *see N-N- v. McShane*, 2025 WL 3143594, at *2 (E.D. Pa. Nov. 10, 2025).

50. The decision whether to release a noncitizen is an individualized determination first made by ICE. 8 C.F.R. § 236.1(c)(8). If DHS elects to detain a noncitizen, the noncitizen may seek a custody redetermination before an immigration judge. 8 C.F.R. §§ 1003.19(a) 1236.1(c)(8), (d)(1); *Mendoza Gutierrez v. Baltasar*, 2025 WL 2962908, at *7 (D. Colo. Oct. 17, 2025).

51. "If either party is dissatisfied with the immigration judge's custody determination, there are two methods of recourse: (a) appeal the immigration judge's order" to the Board of Immigration Appeals, or "(b) after an initial bond redetermination, a detainee may request a subsequent bond redetermination upon a showing that their 'circumstances have changed materially since the prior bond redetermination." *N-N-*, 2025 WL 3143594, at *3 (quoting 8 C.F.R. §§ 1236.1(d)(3), 1003.19(a), 1003.19(e)); *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 527-28 (2021); *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1179 (D. Colo. 2024).

52. DHS "may not impose additional conditions *after an IJ has ordered release on a bond and set conditions of release*." *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 69 (D. Mass. 2025). This is because "based on ICE's own regulations, an immigration judge and the BIA may determine custody conditions. Permitting ICE to impose additional conditions *after* an immigration judge has ordered release and set conditions renders the administrative adjudicatory process null." *N-N-*, 2025 WL 3143594, at *3.

USCIS's Prima Facie Determination

53. It is often that a noncitizen has a prima facie case for lawful status but administrative processing delays produce a long wait for the noncitizen to realize that benefit. "To ameliorate a harsh and unjust outcome," DHS "may decline to institute proceedings, terminate proceedings, or decline to execute a final order of deportation. This commendable exercise in administrative discretion, developed without express statutory authorization, . . . is known as deferred action." *Reno v. American-Arab Anti-Discrimination Committee ("AADC")*, 525 U.S. 471, 484 (1999) (quotation and citation omitted).

54. A noncitizen who is an abused spouse of a U.S. citizen may "self-petition" to seek adjustment of status to lawful permanent resident. *See* 8 U.S.C. § 1154(a)(1)(B)(ii)(I). USCIS will first review the petition for prima facie eligibility and, if found, will issue a notice that grants the noncitizen certain public benefits in the United States pending full adjudication. 8 C.F.R. § 204.2(c)(6).

55. If USCIS grants the I-360 petition, it will also grant deferred action to the noncitizen, protecting them from removal prior to final adjudication of the application for adjustment of status. 8 U.S.C. §§ 1154(a)(1)(D)(i)(IV), (a)(1)(K).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Substantive Due Process
(Re-Detention)

56. Mr. Garcia realleges and incorporates by reference the paragraphs above.

57. The Substantive Due Process Clause protects a person's freedom from arbitrary confinement. U.S. Const. amend. V; *see generally Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). 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.

58. The "Fifth and Fourteenth Amendments' guarantee of 'due process of law' [] include[s] a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (emphasis in original). In the context of immigration, this interest is usually to ensure an individual's appearance before the immigration court and that he is not a danger to the community. *Gamez Lira v. Noem*, 2025 WL 2581710, at *3 (D.N.M. Sept. 5, 2025).

59. After an individual is released from immigration custody, that noncitizen "has a protected liberty interest in remaining out of custody." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025); *Romero v. Kaiser*, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) (concluding that due process requires a hearing before an immigration judge prior to re-detention); *J.E.H.G. v. Chesnut*, 2025 WL 3523108, at *10 (E.D. Cal. Dec. 9, 2025).

60. As an immigration judge found, Mr. Garcia is neither a flight risk nor a danger to the community. Exhibit 1. Moreover, USCIS found him prima facie eligible for relief from removal. Exhibit 6. Mr. Garcia has a protected liberty interest in remaining free from detention, particularly

while pursuing his prima facie approvable application to adjust status, and Respondents' re-detention violates that due process right. *J.E.H.G.*, 2025 WL 3523108, at *10.

61. Furthermore, the immigration judge's bond order contained no requirements that Mr. Garcia must follow any conditions of release set by ICE; rather, the immigration judge granted his release only upon payment of bond. Exhibit 1; *cf. Khabazha v. United States Immigration and Customs Enforcement*, 2025 WL 3281514, at *2 (S.D.N.Y. Nov. 25, 2025) (noting that he immigration judge's bond order included ICE's discretionary authority to require the petitioner to wear an ankle monitor and attend regular check-ins); *Oliveria v. Albarran*, 2025 WL 3525923, at *1 (E.D. Cal. Dec. 9, 2025) (recognizing that the petitioner's release from custody "conditioned, among other things, on mandated reporting requirements under the Intensive Supervision Appearance Program."). The purpose of that bond was to ensure he will return for proceedings in immigration court. Mr. Garcia has not missed any immigration court proceedings.

62. Mr. Garcia was nevertheless subjected to additional conditions "on the pain of being returned to immigration jail at ICE's election." *Ramirez Ovando v. Noem*, -- F. Supp. 3d --, 2025 WL 3293467, at *11 (D. Colo. Nov. 25, 2025) (precluding ICE from detaining plaintiffs who had been arrested in violation of law "for any period of time or impose conditions that are any more onerous than the present ones"). These additional conditions were a restraint on Mr. Garcia's liberty and violated his due process rights.

63. Because there was no justifiable basis to impose additional restrictions on Mr. Garcia's release and there is no justifiable reason to re-detain Mr. Garcia and now keep him in detention, this Court should conclude that Mr. Garcia's detention violates his due process rights.

COUNT TWO

Violation of Procedural Due Process
(*Accardi* Claim – Re-Detention)

64. Mr. Garcia realleges and incorporates by reference the paragraphs above.

65. The Supreme Court's decision in *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) established the well-settled principle that agency actions in violation of its own procedures offends due process. *Id.* at 267-68 (finding that the agency must exercise its judgment in a habeas case because the agency committed itself by regulation).

66. The *Accardi* doctrine applies with particular force "[w]here the rights of individuals are affected." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). The doctrine's purpose is "to prevent the arbitrariness which is inherently characteristic of an agency's violation of its own procedures." *United States v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969).

67. In order to re-detain a noncitizen after release from custody, there must be an individualized assessment that the noncitizen either presents a danger or is a flight risk. *Campbell*, 2025 WL 3626099, at *1. Without such assessment, detention violates a petitioner's due process rights. *Id.*

68. Mr. Garcia has complied with all conditions of his ordered release: he paid the immigration bond and has not missed an immigration court hearing. *See* Exhibit 1.

69. Furthermore, and notwithstanding the fact that ICE's additional conditions and monitoring were outside the scope of the immigration judge's bond order and a due process violation on their own, Mr. Garcia attended every ICE appointment and sent photos to ICE upon request. "Indeed, it was [his] compliance with routine ICE check-ins – appearing for [his January 22, 2026] check-in – that led to [his] detention." *Kaur v. United States Department of Homeland Security*, -- F. Supp. 3d --, 2025 WL 3706724, at *5 (E.D. Cal. Dec. 22, 2025).

70. ICE has re-detained Mr. Garcia without providing any notice or opportunity to challenge his re-detention before the neutral arbiter that set the conditions of his release. Mr. Garcia's detention without any "prompt individualized hearing before a neutral decisionmaker to ensure the imprisonment serves the government's legitimate goals" constitutes a Constitutional violation. *Padilla v. U.S. Immigration and Customs Enforcement*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023).

71. Nor has ICE provided Mr. Garcia or his obligor any notice regarding any alleged violation of the bond order. Exhibits 1, 7. Thus DHS has not followed its own procedures.

72. DHS's re-detention without following procedures to contest his re-detention has prejudiced Mr. Garcia and violated his due process rights. *N-N-*, 2025 WL 3143594, at *3; *Kaur*, 2025 WL 3706724; *J.E.H.G.*, 2025 WL 3523108, at *10.

COUNT THREE

Violation of Procedural Due Process
***(Matthews v. Eldridge* – Re-Detention)**

73. Mr. Garcia realleges and incorporates by reference the paragraphs above.

74. Separate from an *Accardi* claim challenging the Respondents' failure to follow agency process and procedures, a noncitizen's due process rights are violated if they do not receive notice and an opportunity to challenge detention. *Cardenas v. Almodovar*, 2025 WL 3215573, at *3 (S.D.N.Y. Nov. 18, 2025) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)). Such a procedural due process challenge is governed by a three-factor balancing test weighing: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, or additional or substitute procedural safeguards"; and (3) "the Government's interest." *Mathews*, 424 U.S. at 335. Here, these factors all weigh in Mr. Garcia's favor.

75. Mr. Garcia has a liberty and property interest in his release from custody. *Zadvydas*, 533 U.S. at 690; *Khabazha*, 2025 WL 3281514, at *5 (collecting cases); *Pinchi*, 792 F. Supp. 3d at 1033. Prior to his unlawful detention in August 2025, Mr. Garcia had been living in the United States for years, recently with the additional benefits provided by USCIS's prima facie determination, and he has been lawfully working and caring for his sons. He has no criminal history, and strong community ties. His re-detention compromises his employment and ability to care for his children.

76. The second factor also weighs in favor of Mr. Garcia. Critically, Mr. Garcia is "entitled to some process before being re-detained." *Khabazha*, 2025 WL 3281514, at *5 (collecting cases). Not only were DHS's additional monitoring requirements ultra vires to the bond order, but there was no notice of any alleged violation. The absence of process is a high risk of erroneous deprivation of his liberty interest. *N-N-*, 2025 WL 3143594, at *3; *J.E.H.G.*, 2025 WL 3523108, at *11-12.

77. Finally, the government can identify no interest, as there is no indication that Mr. Garcia is a flight risk or a danger to the community. While Respondents have an interest in Mr. Garcia appearing before his removal proceedings, the immigration judge's grant of bond was sufficient consideration of that interest. Moreover, detention serves no purpose at this time when USCIS has indicated that Mr. Garcia is prima facie eligible for relief but that his application will not be processed until at least May 2026. *See* Exhibit 2. Weighed against the "staggering" "costs to the public of immigration detention[,]" *J.E.H.G.*, 2025 WL 3523108, at *12, there is no justifiable reason to detain Mr. Garcia when he is neither a flight risk nor a danger.

78. Mr. Garcia's detention without providing him notice and opportunity to respond to the basis or reasons for his re-detention therefore violates his procedural due process rights.

COUNT FOUR
Violation of Substantive Due Process
(Imposition of Conditions)

79. Mr. Garcia realleges and incorporates by reference the paragraphs above.

80. 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 v. Davis*, 533 U.S. 678, 690 (2001).

81. The "Fifth and Fourteenth Amendments' guarantee of 'due process of law' [] include[s] a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flóres*, 507 U.S. 292, 301-02 (1993) (emphasis in original). In the context of immigration, this interest is usually to ensure an individual's appearance before the immigration court and that he is not a danger to the community. *Gamez Lira v. Noem*, 2025 WL 2581710, at *3 (D.N.M. Sept. 5, 2025).

82. The immigration judge set specific conditions for Mr. Garcia's release: payment of a monetary bond. Exhibit 1.

83. ICE had no authority to set additional conditions beyond what was set by the immigration judge. *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 69 (D. Mass. 2025) ("Respondents may not impose additional conditions *after an IJ has ordered release on a bond and set conditions of release*[.]"). To allow ICE to override the immigration judge's order "would defeat the purpose of having a knowledgeable, neutral third party review the appropriateness of a noncitizen's detention." *Id.*

84. DHS did not appeal the immigration judge's finding of no flight risk or danger to the community. *N-N-*, 2025 WL 3143594, at *3.

85. Allowing DHS to unilaterally impose additional conditions other than those ordered by the immigration judge violates Mr. Garcia's due process rights. *N-N-*, 2025 WL 3143594, at *3; *Orellana Juarez*, 788 F. Supp. 3d at 69. This is true particularly considering that the immigration judge conducted a bond hearing in response to this Court's habeas order, which was required in lieu of the Court granting outright release for the prior due process violation. To permit DHS to undermine the findings of the neutral arbiter by imposing its own conditions only further erodes any fundamental fairness to which Mr. Garcia is entitled. *N-N-*, 2025 WL 3143594, at *3; *Orellana Juarez*, 788 F. Supp. 3d at 70.

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

86. Mr. Garcia realleges and incorporates by reference the paragraphs above.

87. Respondents have not provided any documentary justification for Mr. Garcia's re-detention.

88. Upon information and belief, Respondents continue to apply 8 U.S.C. § 1225(b)(2) to noncitizens like Mr. Garcia, despite a nationwide class action vacating the policy and undermining the legal authority relied upon by Respondents as well as an overwhelming number of district court decisions disagreeing with Respondents' arguments. Accordingly, notwithstanding the fact that this Court has already precluded Respondents from applying § 1225(b)(2) to Mr. Garcia's detention, *Garcia Cortes*, 2025 WL 2652990 at *5, Mr. Garcia raises this count to preserve any argument should Respondents seek to re-litigate whether Mr. Garcia is subject to detention under 8 U.S.C. § 1225(b)(2).

89. As they have in numerous cases before this court and across the country, including Mr. Garcia's prior petition, *Garcia Cortes v. Noem*, 2025 WL 2652880, Respondents may argue that 8 U.S.C. § 1225(b)(2) permits mandatory detention of individuals who have historically been

understood to be detained under 8 U.S.C. § 1226(a). This contrary reading of the statute has been overwhelmingly rejected in more than fifteen hundred district courts decisions that have ruled on the issue and on a class-wide basis. *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 v. Baltasar*, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Maldonado Bautista*, 2025 WL 3678485; *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).

90. 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. Garcia cannot reasonably be described as "seeking admission" to a country he has resided in for years, after he was allowed to enter the country after inspection at a port of entry. 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").

91. 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).

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

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

94. Thus, should Respondents articulate that they are detaining Mr. Garcia under § 1225(b)(2), this Court must find that to subject Mr. Garcia to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) would be a clear violation of the INA and principles of res judicata.

95. In that case, because Respondents continue to adamantly submit across the country that § 1225(b)(2) is the only statute to authorize detention, and because courts continue to rule that § 1225(b)(2) does not authorize detention for noncitizens like Mr. Garcia, an order of release is the only proper remedy. *See Mateo Francisco v. Dedos*, 2026 WL 145456, at *11 (D.N.M. Jan. 20, 2026).

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

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

(3) Order that Mr. Garcia cannot be transferred outside this district pending resolution of this litigation;

(4) Declare that Mr. Garcia's detention violates DHS's own policies and the immigration judge's bond order;

(5) Declare that Mr. Garcia's detention violates his due process rights;

(6) Order that Mr. Garcia be released from immigration custody with all of his personal belongings, including identification cards, and that the bond order set by the immigration judge be reinstituted without any further conditions on his release from custody other than the monetary bond that he has paid;

(7) Order that Mr. Garcia cannot be redetained without notice and a pre-deprivation hearing before this Court where the government bears the burden of justifying re-detention by clear and convincing evidence, *see Mateo Francisco*, 2026 WL 145456, at *12;

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

Dated: January 24, 2026

Respectfully submitted,

/s/ Jessica A. Dawgert

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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 reviewed documents provided by Petitioner and his family and spoken with Petitioner's family relating to 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: January 24, 2025

Respectfully submitted,

/s/ Jessica A. Dawgert

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