Conor T. Gleason
Hans Meyer
THE MEYER LAW OFFICE
1547 Gaylord Street
Denver, CO 80206
Tel: (303) 831-0817
conor@themeyerlawoffice.com
hans@themeyerlawoffice.com
Counsel for Petitioner

UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-00296

SERGIO MARTINEZ ESCOBAR,

Petitioner

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

ROBERT HAGAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity,

TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity,

PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

Respondents

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Respondents illegally incarcerate without bond Petitioner Sergio Martinez Escobar ("Petitioner") at Immigration and Customs Enforcement's ("ICE") Denver Contract Detention Facility in Aurora, Colorado. Petitioner is entitled to a writ of *habeas corpus* to end his unlawful loss of liberty. The issue here are not new. Judges in this District have unanimously found Respondents' novel and unprecedented interpretation of the statute subjecting millions of people like Petitioner to mandatory detention illegal. *E.g.*, *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, *4 (D. Colo. Jan. 15, 2026), ECF 16 (attached as Exh. 1).

I. INTRODUCTION

1. ICE charges Petitioner with having entered the United States without inspection. He has spent almost twenty years in the United States. He was previously married to a United States Citizen and helped raise four U.S. Citizen children. He is now remarried, and is the primary source of emotional, logistical, and financial support for his new family. He is also a business owner. Together, he and his new wife raise Petitioner's U.S. citizen stepchild, in addition to supporting his two adult stepchildren and U.S. citizen grandchildren. Petitioner has been the family's primary breadwinner and caregiver, and his incarceration has placed the family under severe financial and emotional strain. Petitioner has no criminal history that subjects him to mandatory detention. His only contact with the criminal legal system was a charge of Harassment, under C.R.S. § 18-9-111(1)(a), which was dismissed in 2022, and minor traffic violations. Respondents nonetheless incarcerate him without the opportunity to request bond at the ICE Denver Contract Detention Facility in Aurora, Colorado ("Aurora Facility").[1]

[1] This Petition does not refer to the Aurora Facility or Petitioner's loss of liberty as detention because it does not accurately reflect the conditions at the Aurora Facility. *E.g.*, *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. of Colo. 2024) (citation omitted) (acknowledging that the District of Colorado found that the GEO Facility is "more akin to incarceration than civil confinement").

II. PARTIES

Petitioner

2. ICE jails Petitioner at the Aurora Facility in Aurora, Colorado. Petitioner has lived in the United States for almost twenty years. Petitioner has no criminal contacts that subject him to mandatory detention under 8 U.S.C. § 1226(c).

Respondents

3. Juan Baltazar is the Warden of the Aurora Facility where ICE jails Petitioner, and is an employee of the GEO Group, the for-profit prison company that operates the facility. Mr. Baltazar is a legal custodian of Petitioner. He is sued in his official capacity.

4. Robert Hagan is the ICE Field Office Director of the Denver ICE Field Office and is sued in his official capacity. Mr. Hagan is the immediate custodian of Petitioner and is responsible for Petitioner's detention and removal.

5. Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). Ms. Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA"). DHS is the parent agency of ICE, and thus Ms. Noem also oversees ICE, which is responsible for Petitioner's illegal detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

6. Todd M. Lyons is the Acting Director of U.S. ICE and is sued in his official capacity. Mr. Lyons is responsible for Petitioner's illegal detention and has custodial authority over him.

7. Pamela Bondi is the Attorney General of the United States. She is responsible for the actions of the Department of Justice ("DOJ"). The Executive Office for Immigration Review

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Indeed, the conditions in the Aurora Facility are "abhorrent." *Arostegui-Maldonado v. Baltazar*, 794 F.supp.3d 926, 940 (D. Colo. 2025).

("EOIR") and the immigration court system it operates are a component agency of DOJ. Ms. Bondi is sued in her official capacity.

III. JURISDICTION AND VENUE

8. Respondents incarcerate Petitioner at the Aurora Facility in Aurora, Colorado. Petitioner is currently imprisoned in this District and is under the control of Respondents and their agents.

9. Petitioner brings this action under 28 U.S.C. § 2241, the INA and its implementing regulations, the Administrative Procedures Act (5 §§ U.S.C. 500-596, 701-706), the All-Writs Act (8 U.S.C. § 1651), the Declaratory Judgment Act, 28 U.S.C. § 2201, and the U.S. Constitution. District courts have jurisdiction under 28 U.S.C. § 2241 to hear *habeas corpus* actions by noncitizens challenging the lawfulness and constitutionality of their civil immigration detention.

10. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the U.S.

11. Venue is proper under 28 U.S.C. § 1391 because Respondents imprison Petitioner in Aurora, Colorado, within the jurisdiction of this Court. Likewise, Petitioner is a resident of this District, his counsel is in this District, and a substantial part of the events giving rise to the claims in this action took place within this District.

IV. FACTUAL BACKGROUND

A. Legal Authority for Immigration Detention.

12. ICE's authority to jail noncitizens is prescribed by statute. Section 1226(a) of 8 U.S.C. establishes discretionary detention for noncitizens ICE arrests "[o]n a warrant issued by the Attorney General" and then place in 8 U.S.C. § 1229a removal proceedings. 8 U.S.C. § 1226(a). Those noncitizens may then move an immigration judge for a custody hearing at any time prior to a final order of removal. *Id.*; 8 C.F.R. §§ 236.1(d)(1), 1003.19(a), (b). During the custody hearing,

i.e., bond hearing, the IJ determines whether the noncitizen establishes by the preponderance of the evidence if they are a risk of flight or danger to the community. *See generally Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006). The statute does not require ICE to conduct an initial custody determination before the noncitizen has the right to seek a custody hearing before the IJ. 8 U.S.C. § 1226(a).

13. Section 1226(c) of 8 U.S.C. establishes mandatory detention for noncitizens with certain criminal legal contacts in § 1229a removal proceedings. 8 U.S.C. § 1226(c). IJs do not have the authority to consider these noncitizens' request for release on bond unless ICE is substantially unlikely to establish that the noncitizen falls within one of § 1226(c)'s mandatory detention provisions. *See generally Matter of Joseph*, 22 I. & N. Dec. 799 (B.I.A. 1999).

14. The statute also provides for mandatory detention of a narrow subset of noncitizens subject to an expedited removal pursuant to § 1225(b) or for other noncitizen "applicants for admission" to the U.S. who are apprehended at the border or port of entry. *See* 8 U.S.C. § 1225(b)(2). Section 1225 focuses on noncitizens "arriv[ing]" "whether or not at a designated port of arrival," and applies to people like those who were "interdicted in international or United States waters" (§ 1225(a)(1)), are "stowaways" (§ 1225(a)(2)), and who are otherwise "applicants for admission" into the U.S. (§ 1225(a)(3)). In contrast to § 1226, § 1225 discusses matters such as "screening" "claims for asylum" (§ 1225(b)(1)(A)(i)-(ii)) at the border, "inspection" by an immigration officer to determine if a noncitizen "is … clearly and beyond a doubt entitled to be admitted" (§ 1225(b)(2) & (d)), and "removal" of "an arriving [noncitizen]" (§ 1225(c)(1)).

15. Finally, the statute provides for detention of noncitizens with final removal orders. 8 U.S.C. § 1231(a), (b).

16. Petitioner does not have any criminal legal contact rendering him subject to 8 U.S.C. § 1226(c). He is also not subject to § 1231 detention because he does not have a final removal order. Rather, this case concerns the discretionary detention provision at 8 U.S.C. § 1226(a) and Respondents' erroneous assertion that mandatory detention pursuant to § 1225(b) applies.

17. The Supreme Court summarizes the interplay between §§ 1226 and 1225 as follows: "In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission *into* the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Jennings v. Rodriguez*, 582 U.S. 281, 289 (2018) (Alito, J., emphasis added). The Court has since reiterated this statutory scheme. *E.g.*, *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (Noncitizens "who are arrested and detained may generally apply for release on bond" pursuant to § 1226(a)); *Nielsen v. Preap*, 586 U.S. 392, 395 & 397 (2019) (§ 1226 is the "general rule regarding [noncitizens] arrest and detention" and permits " release . . . on bond").

18. Both the § 1226 and § 1225 detention provisions 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, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently amended in early 2025 by the Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025), with new provisions specifically enacted to jail individuals who entered the United States without inspection and who have certain criminal legal contacts. 8 U.S.C. § 1226(c)(1)(E).

19. Following the enactment of the IIRIRA in 1996, EOIR wrote regulations applicable to proceedings before IJs explaining that, in general, people who entered the country without inspection (also known as "present without admission") were *not* detainable under § 1225 and instead could only be 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) ("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").

20. Thus, in the following decades, people who entered without inspection and did not have certain criminal legal contacts received § 1226(a) bond hearings when placed in § 1229a proceedings. That practice was consistent with additional decades of pre-IIRIRA practice, in which noncitizens who were not "arriving" or seeking entry into the United States were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting the new § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

21. This practice – both pre- and post-enactment of the IIRIRA – is consistent with the fact that noncitizens present in the U.S. have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

22. Despite this long-standing practice and the plain text of the statute, the Board of Immigration Appeals ("BIA") issued an unpublished decision on May 22, 2025, holding that noncitizens who entered the United States without inspection were subject to § 1225(b)(2) mandatory detention as "applicants for admission."

23. On July 8, 2025, ICE, "in coordination with" the DOJ announced a new policy consistent with the unpublished BIA decision from May 22, 2025. The new ICE/DOJ policy, titled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all noncitizens present within the U.S. who entered without inspection – no matter how long ago, no

matter where, and no matter how – are deemed "applicants for admission" under 8 U.S.C. § 1225, and thus subject to mandatory detention under § 1225(b)(2)(A). The new policy applies regardless of when and where a person was apprehended and affects people who reside in the U.S. for years.

24. The federal courts resoundingly rejected Respondents' position almost immediately. *See Rodriguez-Vazquez v. Bostock*, No. 779 F.Supp.3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, *8 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.3d ---, 2025 WL 2084238, *9 (D. Mass. July 24, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025); *Escalante v. Bondi*, No. 25-cv-3051, 2025 WL 2212104 (D. Minn. July 31, 2025) (report and recommendation to grant preliminary relief, adopted *sub nom O.E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025)); *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D. N.Y. Aug. 8, 2025); *de Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (report and recommendation to grant *habeas* relief, adopted without objection at 2025 WL 2349133 (D. Ariz. Aug. 13, 2025)); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Aquilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug 15, 2025); *Romero v. Hyde*, --- F.Supp.3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, Doc. 20 (D. Md. Aug. 24, 2025); *Benitez v. Noem*, No. 5:25-cv-02190, Doc. 11 (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump*, No. 3:25-dcv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, --- F.Supp.3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, --- F.Supp.3d --- , 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Palma Perez v. Berg*, --- F.Supp.3d --- , 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, No. 8:25-cv-506, 2025

WL 2531539 (D. Neb. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Doe v. Moniz*, No. 1:25-cv-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025).

25. Nevertheless, on September 5, 2025, the BIA published a precedential decision finding that people who entered without inspection are subject to § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). IJs across the country are now required to apply Respondents' unlawful detention regime absent federal court intervention.

26. Since *Yajure Hurtado*, the federal courts have continued to overwhelmingly reject the Respondents' position. *See e.g., Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Sampiao v. Hyde*, --- F.Supp.3d ---, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizzaro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256, (E.D. Cal. Sept. 9, 2025); *Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden et al.*, --- F.Supp.3d ---, 2025 WL 2639390 (D.N.H. Sept. 9, 2025) ; *Lopez Santos v. Noem*, 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Kaiser et al.*, No 25-cv-06924-EMC (EMC), 2025 WL 2637503 (N.D. Ca. Sept. 12, 2025); *Velasquez Salazar v. Dedos*, No. 1:25-cv-835, 2025 WL 2676729 (D. N.M. Sept. 17, 2025); *Barrera v. Tindall*, No. 3:25-cv-00541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Chafla et al. v. Scott*, 2:25-cv-00437-SDN, 2025 WL 2688541, at *6 (D. Me. Sept. 21, 2025). *See also Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden et al.*, --- F.Supp.3d ---, 2025 WL

2639390 (D. N.H. Sept. 9, 2025); *Lamidi v. FCI Berlin*, No. 25-cv-297-LM-TSM, ECF 14 (D. N.H. Sept. 15, 2025); *Maldonado Vasquez v. Feeley*, 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2631828 (W.D. Tex. Sept. 22, 2025); *Lepe v. Andrews*, --- F.Supp.3d ----, No. 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Lepe v. Andrews*, --- F.Supp.3d ---, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, --- F.Supp.3d ---, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Lepe v. Andrews*, --- F.Supp.3d ----, No. 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Hernandez Lopez v. Hardin*, 1:25-cv-830, (M.D. Fla. Sept. 25, 2025); *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923, at *1 (N.D. Cal. Sept. 25, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D. N.J. Sept. 26, 2025); *Savane v. Francis*, 1:25-cv-6666-GHW, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Luna Quispe v. Crawford*, 1:25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *da Silva v.* ICE, 1:25-cv-00284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); Santiago *Helbrum v. Williams*, 4:25-cv-00349, WL (S.D Iowa, Sept. 30, 2025); *Belsai D.S. v. Bondi*, 0:25-cv-3682, 2025 WL 2802947 (D.Min.. Oct. 1, 2025); *Rocha v. Hyde*, 25-cv-12584, 2025 WL 2807692 (D.Mass. Oct. 2, 2025); *Guzman Alfaro v. Wamsley*, 2:25-cv-01706, 2025 WL 2822113 (W.D. Wash. Oct. 2, 2025); *Ayala Casun v. Hyde*, 25-cv-427, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Guerrero Orellana v. Moniz*, 802 F.Supp.3d 297 (D. Mass. 2025); *Elias Escobar v. Hyde*, 25-cv-12620-IT, 2025 WL 28233324 (D. Mass. Oct. 3, 2025); *Echevarria v. Bondi*, 25-cv-03252, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Cordero Pelico v. Kaiser*, 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Artiga v. Genalo*, 25-cv-5208, 2025 WL 2829434 (E.D.N.Y Oct. 5, 2025); *S.D.B.B. v. Johnson*, 1:25-cv-882, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Ledesma Gonzalez v. Bostock*, 2:25-cv-01401, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025); *Mena Torres v. Wamsley*, C25-5772-TSZ, 2025 WL 2855739 (W.D. Wash. Oct. 8, 2025);

B.D.V.S. v. Forestal, 25-cv-01968, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Eliseo A.A. v. Olson et al.*, 25-cv-3381 (JWB/DJF), 2025 WL 2886729 (D.Minn. Oct. 8, 2025); *Eliseo v. Olson*, 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (D. Minn. Oct. 11, 2025); *Gomez Mejia v. Woosley*, 4:25-cv-82-RGJ, 2025 WL 2933852 (W.D. Ky. Oct. 15, 2025); *Hernandez Hernandez v. Crawford*, 1:25-cv-01565-AJT-WBP, 2025 WL 2940702 (E.D. Va. Oct. 16, 2025); *Polo v. Chestnut et al.*, 1:25-cv-01342 JLT HBK, 2025 WL 2959346 (E.D. Ca. Oct. 17, 2025); *Sanchez Alvarez v. Noem et al.*, 1:25-cv-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025) *Gonzalez v. Joyce*, 25-cv-8250 (AT), 2025 WL 2961626 (W.D.N.Y. Oct. 19, 2025); *Chavez v. Director of Detroit Field Office et al.*, 4:25-cv-02061-SL, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025); *HGVU v. Smith et al.*, 25-cv-10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2025); *Da Silva v. Bondi*, No. 25-cv-12672-DJC, 2025 WL 269163 (D. Mass. Oct. 21, 2025); *Buestan v. Chu*, No. 25-16034 (MEF), 2025 WL 2972252 (D. N.J. Oct. 21, 2025); *Maldonado v. Baker*, No. 25-3084-TDC (D. Md. Oct. 21, 2025); *Gonzalez Martinez v. Noem*, EP-25-cv- 430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Miguel v. Noem*, 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025); *Loa Caballero v. Baltazar et al.*, 25-cv-03120 2025, WL 2977650 (D. Colo. Oct. 22, 2025); *Lopez Lopez v. Soto*, 2:25-cv-16303, 2025 WL 2987485 (D.N.J. Oct. 23, 2025); *Nava Hernandez v. Baltazar et al.*, 1:25-cv-03094, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Castellanos Lopez v. Warden Otay Mesa Det. Ctr.*, 25-cv-2527, 2025 WL 3005346 (S.D. Cal. Oct. 27, 2025); *Ramirez Valverde v. Olson*, 25-CV-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025); *L.A.E. v. WAMSLEY*, 3:25-CV-01975, 2025 WL 3037856 (D. Or. Oct. 30, 2025); *Rosales Ponce v. Olson*, 25-cv-13037, 2025 WL 3049785 (N.D. Ill. Oct. 31, 2025); *J.A.M. v. Streeval*, 25-cv-342, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *Flores v. Olson*, 25-cv-12916, 2025 WL 3063540 (N.D. Ill. Nov. 3, 2025);

Hernandez-Alonso v. Tindall, 3:25-CV-652-DJH, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025); *Reyes Arizmendi v. Noem*, 25-cv-13041, 2025 WL 3089107 (N.D. Ill. Nov. 5, 2025).

27. This includes the Western District of Washington and the District of Massachusetts' grants of summary judgement to a class of incarcerated noncitizens presenting the same arguments Petitioner does here. *Rodriguez Vazquez v. Bostock*, 3:25-cv-05240, 802 F.Supp.3d 1297 (W.D. Wash. 2025); *Guerrero Orellana v. Moniz*, 802 F.Supp.3d 297 (D. Mass. 2025).

28. The District of Colorado joined the chorus on September 16, 2025, when Judge Sweeney explained, *inter alia*, that the Government's argument for § 1225(b)(2) detention must fail when a noncitizen is not "seeking admission" into the United States. *Garcia Cortes v. Noem et al.*, No. 1:25-cv-02677-CNS, 2025 WL 2652880 at *3 (D. of Colo. Sept. 16, 2025) ("Because Petitioner is not, nor was he at the time he was arrested, seeking admission, § 1225(b)(2)(A)'s mandatory detention requirement does not apply"). The chorus continues unanimously and unabated in this district. *E.g.*, *Mendoza Gutierrez v. Baltasar et al.,* 1:25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Moya Pineda v. Baltasar et al.*, 1:25-cv-2966, 2025 WL 3516291 (D. Colo. Oct. 20, 2025); *Loa Caballero v. Baltazar et al.*, 25-cv-03120, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Hernandez Vazquez v. Baltasar et al.,* 1:25-cv-3049 (D. Colo. Oct. 23, 2025); *Nava Hernandez v. Baltazar et al.*, 1:25-cv-03094, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Artola Aruaz v. Baltazar, et al.*, 1:25-cv-03260-CNS, 2025 WL 3041840 (D. Colo. Oct. 31, 2025), ECF 16; *Cervantes Arredondo v. Baltazar, et al.*, 1:25-cv-03040-RBJ (D. Colo. Oct. 31, 2025), ECF 21; *De Domingo Campos v. Baltazar*, 25-cv-3062 (D. Colo. Nov. 13, 2025), ECF 33; *Ortiz Rosales v. Baltazar, et al.*, 25-cv-03275-GPG (D. Colo. Nov. 16, 2025), ECF 25; *Espinoza Ruiz v. Baltazar, et al.*, 1:25-cv-03642-CNS, 2025 WL 3294762 (D. Colo. Nov. 26, 2025), ECF 18; *Velasquez de Leon v. Baltazar et al.*, 1:25-cv-03805-RBJ, *5 n.4 (D. Colo. Dec. 22, 2025), ECF 19 (collecting

cases); *Navas Medina v. Batazar et al.*, 1:25-cv-03919-RMR (D. Colo. Dec. 29, 2025), ECF 17; *Rodriguez Rodriguez v. Baltasar et al.*, 1:25-cv-03961-GPG (D. Colo. Dec. 30, 2025), ECF 20; *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, *4 (D. Colo. Jan. 15, 2026), ECF 16 (collecting cases and acknowledging the District's unanimity).

29. On November 20, 2025, the Central District of California granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

30. The declaratory judgement held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

31. On December 18, 2025, the *Maldonado Bautista* court issued another order, explicitly vacating DHS' policy of applying § 1225(b) nationwide to members of the class. *Maldonado Bautista v. Santacruz*, ---F.Supp.3.---, 2025 WL 3713987, *22 (C.D. Cal. Dec. 18, 2025) ("[B]ecause the Court declares the DHS policy unlawful, the Court must set aside the DHS policy. As such, the Court VACATES the DHS Policy under the APA") (emphasis in original).

32. The class is defined as "[a]ll 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 DHS makes an initial custody determination." *Maldonado Bautista*, --- F. Supp. 3d ----, 2025 WL 3713987, *2.

33. Petitioner is a member of the class and yet Respondents' lawlessness prevents him from its benefits. Respondents' lawlessness now includes IJs refusing to conduct custody hearings because ICE claims that it never considered the necessity of Petitioner's incarceration in an initial custody determination.

34. As evidenced by hundreds of federal court decisions, Respondents' interpretation that § 1225(b) governs detention in this case is wrong. It defies the plain language of the INA, fundamental canons of statutory construction, and the agency's longstanding regulations.

35. Indeed, the statute's plain text demonstrates § 1226(a) – not § 1225(b) – applies to people like Petitioner. Section 1226(a) is the "default rule" applying to all persons "pending a decision on whether the [noncitizen] is to be removed." *Rodriguez Vazquez*, 779 F.Supp.3d at 1246; *Jennings*, 582 U.S. at 281.

36. Notably, the plain language of § 1226 applies to people charged as inadmissible for entering without inspection. *E.g.*, 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to inadmissible individuals makes clear that, by default, inadmissible individuals not subject to subparagraph (E)(ii) are entitled to a bond hearing under subjection (a). As the *Rodriguez-Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez-Vazquez*, 802 F.Supp.3d at 1323 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

37. Thus, § 1226 applies to noncitizens like Petitioner who are present without inspection, face inadmissibility charges in removal proceedings due to their entrance without inspection, and who do not have certain criminal legal contacts.

38. By contrast, § 1225(b) applies to people *arriving at* U.S. ports of entry or who *recently entered* the U.S. and are encountered *at or near the border*. Section 1225's entire framework is premised around inspection at the border of people who are "seeking admission" to the U.S. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "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*, 582 U.S. at 287.

39. Accordingly, contrary to Respondents' erroneous interpretation of the statute, the mandatory detention provisions of § 1225(b)(2) do not apply to people like Petitioner who "arrived" in the country long ago and have resided in Colorado for years before ICE jailed them.

B. Petitioner's Illegal Detention Without Bond

40. Petitioner has resided continuously in the United States for nearly twenty years. He is a respected member of his community, owns his own business and is a devoted husband and caregiver to his family. He is married and plays an active parental role in the life of his U.S. citizen stepchild, stepchildren, U.S. citizen grandchildren, and U.S. citizen children. He is the primary breadwinner for the household. Petitioner has no criminal history that triggers mandatory detention, yet Respondents incarcerate him without the opportunity to request bond. Petitioner is an excellent candidate for release on bond so that he may meaningfully defend his removal proceedings while at liberty. *E.g.*, *Matter of Guerra*, 24 I. & N. Dec at 40 (listing factors relevant for bond).

41. Absent intervention by this Court, Petitioner will remain in Respondents' custody.

42. 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). While Respondents' current confinement

of Petitioner is incarceration, Petitioner seeks habeas relief from *all* forms of illegal ICE custody. *See Jones v. Cunningham*, 371 U.S. 236, 242 (1963) ("While petitioner's parole releases him from immediate physical imprisonment, it imposes conditions which significantly confine and restrain his freedom; this is enough to keep him 'in custody' . . . within the meaning of the habeas corpus statute"); *Orellana v. Moniz*, 788 F.Supp.3d 61, 68 (D. Mass. June 11, 2025) (same for a noncitizen with an ankle monitor); *Hogarth v. Santacruz*, 5:25-cv-09472-SPG-MAR, 2025 WL 3211461, *13 (C.D. Cal. Oct. 23, 2025) (same). This includes the imposition of GPS monitoring, check-in requirements, in-person or telephonic requirements, retention of identity documents, and any other conditions ICE unilaterally imposes as part of judge-ordered release. As discussed *supra*, Respondent's novel interpretation of the statute is wrong. Its authority to jail Petitioner is pursuant to § 1226(a) and its refusal to offer him a custody hearing is unlawful.

V. CLAIMS FOR RELIEF

COUNT I
Respondents Jail Petitioner in Violation of 8 U.S.C. § 1226(a)

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

44. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Petitioner because he was present and residing in the U.S., has been placed in § 1229a removal proceedings, and charged with inadmissibility pursuant to 8 U.S.C. § 1182. Simply, § 1225 does not apply to people like Petitioner who previously entered the country and reside in the U.S. prior to being detained and placed in removal proceedings. Such noncitizens may only be detained pursuant to § 1226(a), unless they are subject to mandatory detention provisions of § 1226(c) irrelevant here.

45. An IJ's jurisdiction to hear a noncitizen's request for liberty in a custody hearing is not contingent upon ICE conducting an initial custody determination. 8 U.S.C. § 1226(a). Noncitizens

subject to § 1226(a) incarceration require access to a bond hearing; the only exceptions are found in § 1226(c) which are not relevant here.

46. Applying § 1225 to Petitioner unlawfully mandates his continued detention without a custody determination hearing and violates 8 U.S.C. § 1226(a).

COUNT II
Respondents are Detaining Petitioner in Violation of the INA Bond Regulations (8 C.F.R. §§ 236.1, 1236.1 & 1003.19)

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

48. Respondent EOIR and the then Immigration and Naturalization Service issued a rule to interpret and apply the IIRIRA under the heading "Apprehension, Custody, and Detention of [Noncitizens]," which explained: "Despite 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.*" 62 Fed. Reg. at 10323 (emphasis added). Respondents thus long-ago made clear that people like Petitioner who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and the implementing regulations.

49. Nonetheless, Respondents here deemed Petitioner subject to mandatory detention under § 1225, which unlawfully mandates his continued detention.

50. Respondents' application of § 1225(b)(2) to Petitioner unlawfully requires his continued detention in violation of 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Respondents are Detaining Petitioner in Violation of the Administrative Procedures Act (5 U.S.C. § 706(2))

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

52. Under the APA, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

53. Respondents' detention of Petitioner pursuant to § 1225 is arbitrary and capricious, and in violation of the Fifth Amendment of the U.S. Constitution. Respondents do not have statutory authority under § 1225 to detain Petitioner.

54. Respondents' detention of Petitioner without access to bond is arbitrary, capricious, an abuse of discretion, violative of the U.S. Constitution, the statute, the implementing regulations and therefore in violation of 5 U.S.C. § 706(2).

COUNT IV

Respondents Detain Petitioner in Violation of his Fifth Amendment Due Process Rights

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

56. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the [Fifth Amendment's due process] Clause protects." *Zadvydas*, 533 U.S. at 690.

57. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty . . . ." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified). The "touchstone" of due process is protecting people against arbitrary government action, whether from "denial of a fundamental procedural fairness, or the exercise of power without any reasonable justification in the service of a legitimate government objection." *Cty. of Sacremento v. Lewis*, 532 U.S. 833, 845–46 (1998).

58. Whether government action violates procedural due process is determined by the three-factor balancing test in *Mathews*. 424 U.S. at 335. The test requires the Court to balance (1) "the private interest that will be affected by the official action"; (2) "the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.*

59. Petitioner has a fundamental interest in liberty and being free from official restraint, such as imprisonment in the Aurora Facility, *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary government action"), and ICE's unilaterally imposed restrictions including, *inter alia*, 24/7 GPS monitoring, reporting requirements, and restrictions on movement, *Orellana*, 788 F.Supp.3d at 68. The risk of erroneous deprivation is high considering the government is not providing Petitioner any process at all—including ICE's initial decision to incarcerate Petitioner—

and the administrative burden on the government to provide him with a custody hearing is negligent.

60. Respondents' detention of Petitioner without providing him with either an initial custody determination or a custody hearing before a neutral adjudicator to determine whether he is a flight risk or danger to others violates his right to Due Process.

COUNT V

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

61. Petitioner incorporates by reference the allegations and facts set forth in the preceding paragraphs.

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

63. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA when it applies the mandatory detention statute at § 1225(b)(2) to class members like Petitioner.

64. 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 Petitioners to the Bond Eligible Class as a whole." *Maldonado Bautista*, 2025 WL 3288403, *9. Then in December, the court vacated DHS' policy of applying § 1225 to the class, including Petitioner, thereby "set[ting] aside the DHS Policy" under the APA. *Maldonado Bautista*, 2025 WL 3713987, *22.

65. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has full "force and effect of a final judgement." 28 U.S.C. § 2201(a). Moreover, Respondent DHS' Policy of applying § 1225 to Petitioner was vacated nationwide.

66. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the court's judgments in *Maldonado Bautista*.

COUNT VI

Violation of Substantive Due Process

67. Petitioner incorporates by reference the allegations and facts set forth in the preceding paragraphs.

68. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. at 693.

69. The civil incarceration of noncitizens is only authorized for specific, non-punitive purposes. *Id.* at 690. Those purposes are limited to "certain special and narrow nonpunitive circumstances" including the mitigation of flight and danger to the community. *Id.*

70. Here, ICE jails Petitioner pursuant to the wrong statute, refused to consider the legitimacy of his incarceration when initially jailing him, and refuses to permit an independent adjudicator to consider whether its decision to incarcerate Petitioner is limited to certain special, narrow, and non-punitive purposes. Continued incarceration therefore serves no purpose and violates Petitioner's substantive due process rights.

PRAYER FOR RELIEF

Petitioner respectfully asks that this Court take jurisdiction over this matter and grant the following relief:

1. Issue a writ of *habeas corpus* requiring Respondents to release Petitioner immediately from all forms of custody and enjoin ICE from unilaterally imposing additional restraints on

liberty like 24/7 GPS monitoring, reporting requirements, or restrictions on movement, or in the alternative, schedule him for a custody hearing pursuant to 8 U.S.C. § 1226(a) before this Court within seven days, regardless of whether ICE conducted an initial custody determination, and at which Respondents must demonstrate by clear and convincing evidence that continued custody of any kind is necessary;

2. Or, also in the alternative, order Respondents to schedule him for a custody hearing pursuant to § 1226(a) before a neutral IJ within seven days, regardless of whether ICE conducted an initial custody determination, at which Respondents must demonstrate by clear and convincing evidence that continued custody of any kind is necessary;
3. Enjoin Respondents from unilaterally imposing additional forms of custody like 24/7 GPS monitoring, reporting requirements, or restrictions on movement unless this Court or an IJ orders those conditions after Defendants convince this Court or an IJ by clear and convincing evidence in the custody hearing that they are necessary;
4. Enjoin Respondents from invoking the automatic stay provision in 8 C.F.R. § 1003.19(i)(2) if bond is granted;
5. Enjoin Respondents from denying Petitioner a custody hearing due to DHS' refusal to conduct, claiming a failure to conduct, or failure to evidence an initial custody determination;
6. Require this Court or the IJ to consider the Respondent's financial circumstances and ability to pay a bond when deciding what bond amount is appropriate;
7. Enjoin respondents from transferring Petitioner outside the jurisdiction of the District of Colorado pending resolution of this case;

8. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and,

9. Grant any other and further relief that this Court deems just and proper.

Dated: January 26, 2026

/s/Conor T. Gleason
Conor T. Gleason, Esq.
Hans Meyer, Esq.
Meyer Law Office, P.C.
1547 Gaylord St.
Denver, CO 80206
T: (303) 831 0817
conor@themeyerlawoffice.com
hans@themeyerlawoffice.com

VERIFICATION

I, Matthew Keller, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.:

/s/ Matthew Keller
Meyer Law Office, PC
1547 Gaylord St.
Denver, CO 80206
Phone: 303.831.0817
E: matthew@themeyerlawoffice.com

CERTIFICATE OF SERVICE

I, Conor T. Gleason, hereby certify that on January 26, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Ana Loera, hereby certify that I will mail a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail within 72 hours of filing or pursuant to any forthcoming Court order requiring something else. Kevin Traskos, attorney for Respondents, confirmed with undersigned counsel that he will accept service on behalf of all Respondents.

Kevin Traskos
Chief, Civil Division
U.S. Attorney's Office
District of Colorado
1801 California Street, Ste. 1600
Denver, CO 80202

Pam Bondi
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

And to: Kristi Noem and Todd Lyons, DHS/ICE, c/o:

Office of the General Counsel
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave., SE
Washington, D.C. 20528

And to:

Juan Baltazar
GEO Group, Inc.
3130 N. Oakland Street
Aurora, CO 80010

And to:

Robert Hagan
Denver ICE Field Office
12445 E. Caley Ave.
Centennial, CO 80111

/s/ Conor T. Gleason
Conor T. Gleason, Esq.
Meyer Law Office, P.C.
1547 Gaylord St.
Denver, CO 80206
T: (303) 831 0817
conor@themeyerlawoffice.com

/s/ Ana Loera
Ana Loera
Paralegal

Meyer Law Office
1547 Gaylord St.
Denver, CO 80206
Phone: 303.831.0817
ana@themeyerlawoffice.com