UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

CARLOS MARTINEZ CRUZ
A [redacted]

Petitioner,

v.

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

Respondents.

Case No. 1:26-cv-312

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

INTRODUCTION

1. Petitioner Carlos Martinez Cruz ("Mr. Martinez") is a native of Mexico who has lived in the United States for almost twenty years. On November 12, 2025, U.S. Immigration and Customs Enforcement ("ICE") detained Mr. Martinez and placed him in immigration custody pending completion of removal proceedings. The Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have concluded that he is subject to mandatory immigration detention under 8 U.S.C. § 1225(b)(2), as an "applicant for admission" who is "seeking admission" to the United States.

2. DHS's interpretation of its detention authority under 8 U.S.C. § 1225(b)(2) marks a complete reversal of the interpretation of the statute that the government has embraced since its inception three decades ago, its prior practice, Supreme Court precedent, and the plain language of the Immigration and Nationality Act ("INA").

3. This Court should therefore intervene and grant Mr. Martinez's petition for a writ of habeas

corpus and order his immediate release from immigration custody. This Court must find that subjecting Mr. Martinez to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is a clear violation of the INA and order his immediate release from custody. Respondents do not claim that Mr. Martinez is being detained under Section 1226, therefore, there is no reason for this Court to order EOIR to consider Section 1226 as a basis for his current detention. In the alternative, however, Mr. Martinez requests that this Court order EOIR to conduct a bond hearing at which 8 U.S.C. § 1225(b) cannot be applied.

JURISDICTION AND VENUE

4. Mr. Martinez is detained at the Denver Contract Detention Facility in Aurora, Colorado, and is in physical custody of Respondents. *See* Ex. 1, ICE Detainee Locator.

5. 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. Martinez'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).

6. 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.

7. Venue is proper because Mr. Martinez's immediate custodian at Denver Contract Detention Facility is located in this District and a "substantial part of the events or omissions giving rise to the claim" occurred in this District. 28 U.S.C. § 1391(e)(1).

PARTIES

8. Petitioner Carlos Martinez Cruz is a native of Mexico. As of the filing of this Petition, ICE is detaining him at the Denver Contract Detention Facility in Aurora, Colorado.

9. 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. Martinez's detention. Secretary Noem has ultimate custodial authority over Mr. Martinez and is sued in her official capacity.

10. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

11. Respondent Robert Hagan is the Field Office Director of the ICE Denver Field Office and is responsible for ICE's operations in Colorado where Mr. Martinez is held. 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. Martinez. He is sued in his official capacity.

REQUIREMENTS OF 28 U.S.C. § 2243

13. 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.*

14. 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).

15. Mr. Martinez 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

16. 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."

17. Courts both in and outside 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*, 794 F. Supp. 3d 926, 945-46 (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).

18. Mr. Martinez requests that this Court invoke the All Writs Act to prevent any transfer out of the District of Colorado during the pendency of his habeas action, given the likelihood that he will be ordered to appear at a bond hearing shortly after this Court rules upon the habeas petition. Mr. Martinez's law firm operates primarily in Colorado. He will need to participate in the preparation for and attend his bond hearing should the Court order one. *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*, 785 F. Supp. 3d 128, 148 (E.D. Va. May 6, 2025).

EXHAUSTION

19. The failure to exhaust administrative remedies does not bar Mr. Martinez's claim unless "Congress specifically mandates" exhaustion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir.

2022) (1993) (quoting *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992)).

20. Moreover, detaining Mr. Martinez without a significant likelihood of removal in the reasonably foreseeable future 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.'").

21. Although the Court may impose exhaustion requirements as a prudential matter, it should not do so in this case because further administrative exhaustion would be futile. Upon information and belief, many immigration judges across the country are determining that noncitizens like Mr. Martinez are detained under 8 U.S.C. § 1225(b)(2) and ineligible for bond in light of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *But see Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM, 2025 WL 3713987, at *12 (C.D. Cal. Dec. 18, 2025) (concluding that the interpretation in *Yajure Hurtado* "is no longer controlling.").

STATEMENT OF RELEVANT FACTS

22. Mr. Martinez last entered the United States almost twenty years ago and has not left since that time. Prior to that entry, he was voluntarily returned by Border Patrol on four separate occasions.

23. Prior to his detention, Mr. Martinez lived outside of Tallahassee, Florida with his United States citizen wife and four children. He and his wife own a construction business focused on remodeling.

24. On November 12, 2025, as Mr. Martinez was driving to work in his work truck, he was pulled over by the Florida Highway Patrol. He was not given any explanation for the stop, but rather was referred to ICE. Upon information and belief, the ICE officers detained him without a

warrant.

25. Mr. Martinez was first detained in Florida before being transferred to the Denver Contract Detention Facility in Aurora, Colorado on December 9, 2025. He remains detained at the Denver Contract Detention Facility.

26. Mr. Martinez is neither a flight risk nor a danger to society. His criminal history involves two convictions for driving on a suspended license.

27. Nonetheless, ICE has detained Mr. Martinez without the opportunity to seek bond. He remains in ICE custody, facing prolonged detention and separation from his family without relief from this Court.

LEGAL BACKGROUND

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

28. 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).

29. 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.*

30. Once a noncitizen is detained, DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have the initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8 C.F.R. § 1236.1(d)(3).

31. 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").

32. 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)); *See* Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: noncitizens "determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for if so designated by DHS.").

33. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii). Further, any noncitizen "subject to the procedures under [8 U.S.C. § 1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

34. Finally, § 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."

35. 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).

36. Despite amending the INA numerous times since passing IIRIRA, *see, e.g.*, REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, Congress has never seen fit to clarify or alter this universally accepted interpretation of the statute.

37. 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." Ex. 2, ICE Memorandum: Interim Guidance Regarding Detention Authority for Applicants for Admission. This policy has since been vacated. *Bautista*, 2025 WL 3713987, *32).

38. 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.

39. 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).

40. Notwithstanding the resounding rejection of DHS and DOJ's policy, Respondents continue to defend the policy. Yet this policy deprives Mr. Martinez of any process by subjecting him—

with limited criminal history and more than two decades of residence in the United States—to the same mandatory detention provisions as applicants at the border seeking to initially enter the United States.

CLAIMS FOR RELIEF

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

41. Mr. Martinez realleges and incorporates by reference the paragraphs above.

42. This Court should rule that Mr. Martinez is subject to detention under § 1226(a). Despite the overwhelming authority across the country concluding to the contrary, Respondents continue to 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 court decisions that have ruled on the issue and on a class-wide basis. *See supra* ¶ 39; *see also Morales Rodriguez v. Arnott*, No. 6:25-cv-836-MDH (W.D. Mo. Nov. 18, 2025); *Singh v. Lyons*, No. 1:25-cv-1606, 2025 WL 2932635 (E.D. Va. Oct. 14, 2025); *S.D.B.B. v. Johnson*, No. 1:25-cv-882 (M.D.N.C. Oct. 7, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Sampiao v. Hyde*, -- F. Supp. 3d --, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Gomes*, 2025 WL 1869299; *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

43. 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. Martinez cannot reasonably be described as "seeking admission" to a country he has now resided in for over two decades. 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").

44. 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).

45. The ordinary meaning of the terms "seeking" and "admission" do not apply to noncitizens,

like Mr. Martinez, who are not actively seeking inspection to enter the United States. *Jose Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025).

46. 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. Martinez, is not an "applicant for admission" who is "seeking admission" to the United States.

47. Thus, this Court must find that subjecting Mr. Martinez to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is a clear violation of the INA and order his immediate release from custody. *Vargas v. Bondi*, 2025 WL 3300446, at *5 (W.D. Tex. Nov. 12, 2025), *report and recommendation adopted Vargas v. Bondi*, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025) ("If this Court ordered a hearing, it would require the immigration judge to do that which, in light of BIA precedent, the judge would not believe he had any authority to do. *See Matter of Yajure-Hurtado*,

29 I. & N. Dec. at 229 ("The Immigration Judge . . . lacked authority to hear the respondent's request for a bond as the respondent is an applicant for admission and is subject to mandatory detention under . . . § 1225(b)(2)(A).")).

COUNT TWO
Violation of Substantive Due Process
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

48. Mr. Martinez realleges and incorporates by reference the paragraphs above.

49. 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 Clause protects." *Zadvydas*, 533 U.S. at 690. Indeed, the liberty interest in freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

50. Mr. Martinez has a fundamental interest in liberty and being free from official restraint, and the government's new, erroneous classification of him as an "arriving alien" who is "seeking admission" to the United States and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) without any avenue to challenge that detention violates his substantive right to due process.

51. Respondents' insistence that Mr. Martinez remain in immigration custody pursuant to these policies is a violation of his due process rights.

COUNT THREE
Violation of Procedural Due Process
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

52. Mr. Martinez realleges and incorporates by reference the paragraphs above.

53. The Supreme Court has been clear that for noncitizens "on the threshold of initial entry . . . [w]hatever the procedure authorized by Congress is, it is due process." *Shaughnessy v. United*

States ex rel. Mezei, 345 U.S. 206, 212 (1953) (emphasis added). However, Mr. Martinez is no longer on the threshold of initial entry. It is well established that noncitizens like Mr. Martinez who "once passed through our gates, even illegally" are entitled to greater constitutional protections. *Id.*; *see also Zadvydas*, 553 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders."). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Because Mr. Martinez is not properly detained under § 1225(b)(2), his detention does not comply with due process.

54. Mr. Martinez has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed that even for noncitizens, "[f]reedom 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." *Zadvydas*, 533 U.S. at 690. And the Supreme Court, recognizing the strong private interest in remaining free from detention, has held "that detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (cleaned up).

55. While the government has an interest in ensuring Mr. Martinez's appearance at his removal proceedings and protecting the community, the government cannot plausibly justify denying a bond hearing based on "administrative burdens" when it has, for the past three decades, consistently provided bond hearings to noncitizens like Mr. Martinez who have established a presence in the United States after previously entering without inspection.

56. Finally, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to detain noncitizens like Mr. Martinez without any opportunity to challenge his detention. Without an order from this Court, there is a high probability that Mr. Martinez will continue to be detained even though his continued detention serves no non-punitive purpose as it is unnecessary to protect the community or to ensure his appearance at his removal proceedings.

57. In Respondents' contrasting version of the INA, as espoused in *Matter of Yajure Hurtado*, Mr. Martinez may be stripped of any mechanism to require the government to justify his detention. Such a lack of any process, necessarily leading to an erroneous deprivation of liberty, cannot be supported by the Constitution.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Order under the All Writs Act that Mr. Martinez not be removed from this District while this petition is pending:

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

(4) Declare that 8 U.S.C. § 1225 does not govern Mr. Martinez's detention by U.S. immigration authorities;

(5) Order that Mr. Martinez be immediately released from immigration custody with all of his personal belongings;

(6) Alternatively, order a bond hearing as authorized under 8 U.S.C. § 1226(a) at which 8 U.S.C. § 1225(b) cannot be applied, DHS bears the burden of proof, and the immigration judge considers Mr. Martinez's ability to pay bond as part of the factors in setting bond; and

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

(8) Grant attorneys' fees and costs of this suit under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2), *et seq.*;

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

Dated: January 26, 2026

Respectfully submitted,

/s/ Sarah L. Vuong

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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 discussed with Petitioner's family the events described in this Petition. Based on those discussions and documents that 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 26, 2026

Respectfully submitted,

/s/ Sarah L. Vuong

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