

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

JOSE ALEJANDRO DEL CID RAMIREZ,

Petitioner,

v.

MARY DE ANDA-YBARRA, *in her official capacity* as Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement; Warden of ERO El Paso Camp East Montana;

TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

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

DEPARTMENT OF HOMELAND SECURITY;

DAREN K. MARGOLIN, *in his official capacity* as Director, Executive Office for Immigration Review;

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;

and

PAMELA JO BONDI, *in her official capacity* as Attorney General of the United States;

Respondents.

C/A No. 3:26-cv-188

VERIFIED
PETITION FOR WRIT
OF HABEAS
CORPUS AND
COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE
RELIEF

Agency #



INTRODUCTION

1. Petitioner-Plaintiff (“Petitioner”) is a citizen of Guatemala who has resided in the United States since 2017.
2. Respondents are detaining Petitioner in violation of law.
3. On May 28, 2025, an immigration judge granted Petitioner bond under 8 U.S.C. § 1226(a), the government waived appeal, and Petitioner posted the bond.
4. On January 9, 2026, without any material change in Petitioner’s circumstances, Respondents re-detained Petitioner despite his posted bond.
5. Petitioner is currently detained at the ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.
6. The continued detention of Petitioner serves no legitimate purpose.
7. To remedy this unlawful detention, Petitioner seeks declaratory relief and a writ of habeas corpus in the form of immediate release from detention, or, in the alternative, an order to hold a bond hearing pursuant to 8 U.S.C. § 1226(a) and *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981), within three days in which the government must prove by clear and convincing evidence a material change in his individual circumstances, excluding *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), rendering Petitioner a danger or flight risk.

CUSTODY

8. Petitioner is currently in the custody of Immigration and Customs Enforcement (“ICE”) at ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936. He is therefore in “‘custody’ of [the DHS] within the meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

9. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et. seq.*
10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).
11. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

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

12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days unless, for good cause, additional time, not exceeding twenty days, is allowed.” *Id.*
13. Petitioner is “in custody” for the purpose of § 2241 because Petitioner was detained by Respondents.

VENUE

14. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because Petitioner is currently detained in El Paso, at the ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. The Fifth Circuit has long held that exhaustion may be excused when administrative remedies are (i) unavailable, (ii) wholly inadequate, (iii) patently futile, or (iv) when a constitutional challenge is advanced that is unsuitable for determination in an administrative proceeding. *See Fuller v. Rich*, 11 F3d 61, 62 (5th Cir 1994); *Garner v US Department of Labor*, 221 F3d 822, 825 (5th Cir 2000).

16. ICE asserts authority to detain Petitioner pursuant to the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(a). No statutory requirement of exhaustion applies to Petitioner’s challenge to the lawfulness of his detention. *See, e.g., Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) (“There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention.”); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *11 (W.D. Wash. Apr. 24, 2025) (citing *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 962 (N.D. Cal. 2019) (“this Court ‘follows the vast majority of other cases which have waived exhaustion based on irreparable injury when an individual has been detained for months without a bond hearing, and where several additional months may pass before the BIA renders a decision on a pending appeal.’”); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) ((citing *Portela-Gonzalez v. Sec’y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992))).
17. Prudential exhaustion is not required when to do so would be futile or “the administrative body . . . has . . . predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992), *superseded by statute on other grounds as stated in Woodford v. Ngo*, 548 U.S. 81 (2006).

18. Any bond request or appeal to the Board of Immigration Appeals is futile. Respondents' new policy was issued "in coordination with DOJ," which oversees the immigration courts. Until November 2025, the Board's published decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), bound the immigration court and erroneously denied many noncitizens access to a bond hearing.
19. Petitioner entered the United States without inspection, was not apprehended on arrival, and is not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

PARTIES

20. Petitioner is from Guatemala and has resided in the United States since 2017. He is currently detained in the ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.
21. Respondent Mary De Anda-Ybarra, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement and Warden of ERO El Paso Camp East Montana, is sued in her official capacity. Respondent Anda-Ybarra is a legal custodian of Petitioner.
22. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

23. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.
24. Respondent Department of Homeland Security ("DHS") is the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens such as Petitioners.
25. Respondent Daren K. Margolin is the Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including bond hearings such as the one to which Petitioner is entitled. He is sued in his official capacity.
26. Respondent Executive Office for Immigration Review ("EOIR") is the adjudicative authority with jurisdiction over the removal and bond cases of Petitioner. Its authority includes individuals detained in El Paso, Texas. This district is known as the El Paso district.
27. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

28. *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981), requires the government to show a change of circumstances to justify the re-detention of a person after the immigration court had previously released person on bond.
29. A change of position relative to the law is not a change of circumstances material to whether Petitioner is a flight risk or danger.
30. Any alleged change of circumstances must impact on the primary considerations that the immigration court considers under 8 C.F.R. § 1003.19 and section 9.3 of the Immigration Court Practice Manual.
31. Removal proceedings are governed under 8 U.S.C. § 1229a, which provides that “[a]n immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien,” 8 U.S.C. § 1229a(a)(1) and that “[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States.” 8 U.S.C. § 1229a(a)(3).
32. To initiate removal proceedings, “written notice (in this section referred to as a ‘notice to appear’) shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien’s counsel of record, if any).” 8 U.S.C. § 1229(a)(1).

33. The “[a]pprehension and detention of aliens” is governed under 8 U.S.C. § 1226, which provides that:

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, **the Attorney General ... may release the alien on bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General.**

8 U.S.C. § 1226(a)(2)(A) (emphasis added).

34. The regulations provide that, to detain a person under 8 U.S.C. § 1226(a), the Department must issue an I-200 to take a person into custody; and that such a person is subject to release on bond. The regulation states:

(b) Warrant of arrest—

(1) In general. **At the time of issuance of the notice to appear, or at any time thereafter** and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest. A warrant of arrest may be issued only by those immigration officers listed in § 287.5(e)(2) of this chapter and may be served only by those immigration officers listed in § 287.5(e)(3) of this chapter.

(2) If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation.

(c) Custody issues and release procedures—

(1) In general.

(i) After the expiration of the Transition Period Custody Rules (TPCR) set forth in section 303(b)(3) of Div. C of Pub.L. 104–208, no alien described in section 236(c)(1) of the Act may be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act.

8 C.F.R. § 236.1(b).

35. 8 U.S.C. 1226(a) is the default detention authority, and it applies to anyone who is detained “pending a decision on whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a).
36. 8 U.S.C. 1226(a) applies to those who are “already in the country” and are detained “pending the outcome of removal proceedings.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).
37. 8 U.S.C. § 1226(a) applies not just to persons who are deportable, but also to noncitizens who are inadmissible. Specifically, while § 1226(a) provides the general right to seek release, § 1226(c) carves out discrete categories of noncitizens from being released—including certain categories of inadmissible noncitizens—and subjects those limited classes of inadmissible aliens instead to mandatory detention. *See, e.g.*, 8 U.S.C. § 1226(c)(1)(A), (C).
38. The Laken Riley Act (LRA) added language to § 1226 that directly references people who have entered without inspection or who are present without

authorization. *See* LAKEN RILEY ACT, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. See 8 U.S.C. § 1226(c)(1)(E).

39. By including such individuals under § 1226(c), Congress reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or (a)(7). Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanent residents, who have been lawfully admitted and continue to have lawful status, while grounds of inadmissibility (found in § 1182) apply to those who have not yet been admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020) (“specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.”) (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).
40. The [i]nspection by immigration officers [and] expedited removal of inadmissible arriving aliens, [and] referral for hearing” is governed under 8 U.S.C. § 1225, which provides that “[a]n alien 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 an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1).

41. “All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3).
42. “If an immigration officer determines that an alien ... who **is arriving in the United States** ... is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum.” 8 U.S.C. § 1225(b)(1)(A)(i) (emphasis added).
43. “If the officer determines at the time of the interview that an alien has a credible fear of persecution ... the alien shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).
44. “[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien **seeking admission** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a

proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

45. 8 U.S.C. § 1225(b)’s mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).
46. “Read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention of applicants for admission until certain proceedings have concluded. Until that point, nothing in the statutory text imposes a limit on the length of detention, and neither provision says anything about bond hearings.” *Jennings v. Rodriguez*, 583 U.S. 281, 282 (2018).
47. By regulation, “[a]rriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.” 8 C.F.R. § 1.2.

48. “[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to ... [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act.” 8 C.F.R. § 1003.19(h)(2)(i)(B).
49. As such, arriving aliens are not entitled to bond, nor, arguably, are aliens falling within the confines of 8 U.S.C. § 1225(b).
50. Congress did not intend to subject all people present in the United States after an unlawful entry to mandatory detention if arrested. Prior to Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), which codified both 8 U.S.C. § 1225 and 8 U.S.C. § 1226, aliens present without admission were not necessarily subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportability proceedings, which applied to all persons within the United States).
51. In articulating the impact of IIRIRA, Congress noted that the new § 1226(a) merely “restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

52. Respondents' longstanding practice of considering people like Petitioner as detained under § 1226(a) further supports reading the statute to apply to them. Typically, DHS issues a person Form I-286, Notice of Custody Determination, or Form I-200, Warrant for Arrest of Alien, stating that the person is detained under § 1226(a) (§ 236 of the INA).
53. As these arrest documents demonstrate, DHS has long acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the country's borders long after their entry. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government's interpretation and practice to reject its new proposed interpretation of the law at issue).
54. EOIR regulations have long recognized that Petitioner are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19—the regulatory basis for the immigration court's jurisdiction—provides otherwise.
55. In fact, EOIR confirmed that § 1226(a) applies to Petitioner when it promulgated the regulations governing immigration courts and implementing § 1226 decades ago. At that time, EOIR explained that "[d]espite being

applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323.

56. There are now almost 2000 rulings rejecting Respondents’ interpretation of the law and instead have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. More than 95% of the rulings on this issue have concluded that § 1226 controls, not § 1225.

Re-detention

57. Respondents are not permitted by law to re-detain noncitizens who have been released on bond under § 1226(a) and to hold them in custody under § 1225. *See, e.g., dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (ordering the petitioner released from custody subject to his previous bond order because the government failed to carry its burden to show that a change in circumstances supported its decision to revoke the Immigration Judge’s bond order).

58. Although DHS has the statutory authority to revoke discretionary bond or parole “at any time,” 8 U.S.C. § 1226(b), the BIA long ago “recognized an important implicit limitation on DHS’s authority.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). “[W]here a previous bond determination has been made by an immigration judge” and reflects a determination that a noncitizen is not a danger to the community or a flight risk, DHS may not re-detain a noncitizen “absent a change of circumstance.” *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981).
59. “DHS for decades limited the re-detention of noncitizens released pursuant to its discretionary authority under § 1226(a), revoking a noncitizen’s bond or parole under § 1226(b) only if it determined that the noncitizen’s individual circumstances had materially changed.” *Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, 2025 WL 3691938, at *3 (N.D. Cal. Dec. 19, 2025) (emphasis added); *see also* Federal Defendants’ Supplemental Brief at 1, *Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017) (No. 17-cv-03615-VC), Dkt. No. 90 at 2 (explaining that “in practice, [DHS] follow[ed] *Matter of Sugay* in situations ... where a previous release determination was made by DHS. Thus, DHS generally only re-arrest[ed] an alien pursuant to § 1226(b) after a material change in circumstances.”); *see also Ortega v. Bonnar*, 415 F. Supp.

3d 963, 969 (N.D. Cal. 2019) (describing “the government’s view that the DHS has ... discretionary authority to re-arrest [a noncitizen] in the event of material changed circumstances”); *Saravia*, F. Supp. 3d at 1197 (similar).

60. Re-detaining noncitizens who have been granted bond by an immigration judge where there has been no material change in the noncitizen’s individual circumstances violates § 1226(b). *See, e.g., dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025).
61. Re-detaining noncitizens who have posted bond in the absence of any material change in the noncitizen’s individual circumstances is also a violation of due process. *See, e.g., Lesic v. LaRose*, 2025 WL 3158675 (S.D. Cal. Nov. 12, 2025); *Hernandez-Parrilla v. De Anda-Ybarra*, 2025 WL 3632769, at *5 (D.N.M. Dec. 15, 2025) (“Petitioner has made a strong showing that circumstances have not materially changed because he has been gainfully employed, has complied with all of the conditions of his release, and there has been no evidence or argument that he has committed a crime”).
62. Finally, re-detaining noncitizens who have posted bond in the absence of any material change in the noncitizen’s individual circumstances is a final agency action that is arbitrary and capricious and violates the APA. *See, e.g., Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, 2025 WL 3691938, at *19-*29 (N.D. Cal. Dec. 19, 2025).

63. Even if, *arguendo*, the Board's published decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), were a material change in Petitioner's individual circumstances, Petitioner is subject to 8 U.S.C. § 1226(a) and not 8 U.S.C. § 1225(b)(2). *See supra*.

STATEMENT OF FACTS

64. Petitioner is a citizen of Guatemala.
65. Petitioner entered the United States without inspection in 2017.
66. Petitioner has resided in the United States ever since.
67. Respondents detained Petitioner in Minnesota on May 15, 2025.
68. At the time of his detention in 2025, Petitioner was not in proceedings under 8 U.S.C. § 1229a.
69. On May 15, 2025, Respondents initiated removal proceedings against Petitioner under 8 U.S.C. § 1229a.
70. On May 28, 2025, an Immigration Judge granted Petitioner bond under 8 U.S.C. § 1226(a) in the amount of \$5,000. *See* Exh. A.
71. Respondents waived appeal of the Immigration Judge's order granting bond. *See id.*
72. Petitioner posted the \$5,000 bond and was released from ICE custody.
73. Respondents encountered and detained Petitioner during at-large operations in Minnesota on January 9, 2026.

74. Petitioner did not pose a flight risk at the time of his arrest.
75. Petitioner complied with Respondents' instructions at the time of arrest.
76. Respondents were not in possession of an administrative warrant at the time of Petitioner's arrest.
77. Respondents apprehended Petitioner in Minnesota without a warrant of arrest.
78. Respondents did not secure a judicial warrant by a showing of probable cause after detaining Petitioner.
79. Respondents did not comply with their custody redetermination regulations.
80. Petitioner has not committed an offense that implicates 8 U.S.C. § 1226(c).
81. Respondents moved Petitioner from Minnesota to Texas after detaining him.
82. Petitioner is now detained at the ERO El Paso Camp East Montana located at 6920 Digital Road, El Paso, Texas 79936.
83. Petitioner's alien registration number is .
84. On January 13, 2026, Petitioner filed a bond redetermination request with the El Paso Immigration Court.
85. On January 20, 2026, the El Paso Immigration Court held a bond hearing for Petitioner. *See* Exh. B.
86. The immigration judge did not ask the government to present any argument or explanation for re-detaining Petitioner.

87. The immigration judge did not permit Petitioner to present a full argument regarding his eligibility for bond or release.
88. The immigration judge simply stated that *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), is a change in circumstance and denied bond for lack of jurisdiction. *See* Exh. B.
89. Without relief from this Court, Petitioner faces continued indefinite detention.
90. Respondents, through the Board of Immigration Appeals, issued a precedential decision, binding on lower immigration courts, finding that “Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) on September 5, 2025.
91. Respondents will not provide Petitioner with a bond hearing. Respondents assert that the immigration court lacks the jurisdiction to conduct a bond redetermination hearing under 8 U.S.C. § 1226(a), citing *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Respondents assert that *Matter of Yajure Hurtado* is a change of circumstances allowing them to re-detain noncitizens like Petitioner and hold them without bond.
92. Petitioner has been denied the opportunity to seek release despite his previous bond and the lack of any material change in his circumstances.

REMEDY

93. Respondents' detention of Petitioner under 8 U.S.C. § 1225(b)(2) violates the Due Process Clause of the United States Constitution. Petitioner's ongoing detention violates the Fifth Amendment's guarantee that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const., Amend. 5.
94. Due Process requires that detention "bear [] a reasonable relation to the purpose for which the individual [was] committed." *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001) (citing *Jackson v. Mexicono*, 406 U.S. 715, 738 (1972)).
95. Petitioner seeks immediate release pursuant to his previous bond to the extent that Respondents justify his detention on 8 U.S.C. § 1225(b)(2), which plainly does not apply to him.
96. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.").

97. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g., Munaf v. Geren*, 553 U.S. 674 (2008) (“The typical remedy for [unlawful executive detention] is, of course, release.”); *see also Wajda v. US*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 “is to obtain release from the duration or fact of present custody.”).
98. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, “habeas corpus is, at its core, an equitable remedy,” *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and that as an equitable remedy, federal courts “[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters ‘as law and justice require.’” *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987), quoting 28 U.S.C. § 2243. An order of release falls under court’s broad discretion to fashion relief. *See, e.g., Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) (“Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien’s release.”).
99. Respondents detained Petitioner without a warrant of arrest and despite his posted bond. Immediate release is the proper remedy in this case.

100. Alternatively, Petitioner requests a constitutionally adequate custody redetermination hearing in which he is not erroneously treated as detained pursuant to 8 U.S.C. § 1225(b)(2) and is instead treated as a detainee under 8 U.S.C. § 1226(a) within three calendar days in which the government must prove by clear and convincing evidence a material change in his individual circumstances, excluding *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), rendering Petitioner a danger or flight risk. The burden should be placed on the government because an Immigration Judge has already determined that Petitioner is not a danger or a flight risk and granted him bond on February 25, 2025; the government did not appeal that decision; and circumstances have not changed in the interim.

CAUSE OF ACTION

COUNT ONE: VIOLATION OF THE IMMIGRATION & NATIONALITY ACT – 8 U.S.C. § 1225(b)(2)

101. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
102. Section 1225 of Title 8 of the U.S. Code governs aliens arriving at the border and seeking admission from outside the country. *See* 8 U.S.C. § 1225.
103. 8 U.S.C. § 1225(b)(2)(A), specifically, cannot apply as it only applies to those “applicants for admission” who are “seeking admission” at the time of

detention and Petitioner was not “seeking admission” at the time he was detained, nor is he doing so now. 8 U.S.C. § 1225(b)(2)(A).

104. As Respondents assert authority to detain Petitioner under 8 U.S.C. § 1225(b)(2)(A), and no such authority exists under that provision, he requests that he be immediately released pursuant to his previous bond.

**COUNT TWO: VIOLATION OF THE IMMIGRATION & NATIONALITY
ACT – 8 U.S.C. § 1226(a)**

105. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
106. Section 1226 of Title 8 of the U.S. Code governs the detention of aliens pending a determination of removal from the United States.
107. Such an alien “may [be] release[d] ... on bond of at least \$1,500.” 8 U.S.C. § 1226(a)(2)(A).
108. The denial of Petitioner’s bond eligibility is in violation of 8 U.S.C. § 1226(a)(2)(A), which specifically makes him eligible for bond.
109. If Respondents do not release Petitioner pursuant to his prior bond, he requests that he be afforded the opportunity to present his case for release in a bond hearing pursuant to 8 U.S.C. § 1226(a)(2)(A) in which the government must prove by clear and convincing evidence a material change in his individual circumstances, excluding *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), rendering Petitioner a danger or flight risk.

**COUNT THREE: VIOLATION OF THE IMMIGRATION &
NATIONALITY ACT – 8 U.S.C. § 1226(b)**

110. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
111. 8 U.S.C. § 1226(b) provides DHS the statutory authority to revoke discretionary bond.
112. However, the Board has placed a limit on that authority and has long held that “where a previous bond determination has been made by an immigration judge” and reflects a determination that a noncitizen is not a danger to the community or a flight risk, DHS may not re-detain a noncitizen “absent a change of circumstance.” *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981).
113. As Respondents have not shown a change of circumstance since Petitioner was released on bond in 2025, their sudden re-detention of Petitioner is in violation of 8 U.S.C. § 1226(b).

COUNT FOUR: DECLARATORY RELIEF

114. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
115. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that he is eligible for release from Respondents’ custody.

116. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is not subject to detention under 8 U.S.C. § 1225(b)(2) and must be released pursuant to his posted bond unless Respondents assert authority to detain him under 8 U.S.C. § 1226(c).
117. In the event Respondents assert that Petitioner is detained under 8 U.S.C. § 1226(a), Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is eligible for release from Respondents' custody pursuant to his posted bond as set forth at 8 U.S.C. § 1226(a)(1).

**COUNT FIVE: VIOLATION OF THE FIFTH AMENDMENT –
SUBSTANTIVE DUE PROCESS**

118. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
119. Petitioner's continued detention violates his right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.
120. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest.
121. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and

accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

122. Due process asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty. Petitioner is in civil immigration detention.
123. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.
124. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner, who already posted bond, needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community.
125. Petitioner's detention is also punitive and bears no "reasonable relation" to any legitimate purpose for detaining him. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("nature and duration" of civil confinement must "bear some reasonable relation to the purpose for which the individuals is committed");

Zadvydas, 533 U.S. at 690 (finding immigration detention is civil and thus ostensibly “nonpunitive in purpose and effect”). His “detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons.” *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

126. Petitioner is not subject to mandatory custody under the Immigration & Nationality Act and is therefore entitled to immediate release pursuant to the bond he posted in 2025, or, in the alternative, a bond hearing in which the government must prove by clear and convincing evidence a material change in his individual circumstances, excluding *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), rendering Petitioner a danger or flight risk.

**COUNT SIX: VIOLATION OF THE FIFTH AMENDMENT –
PROCEDURAL DUE PROCESS**

127. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
128. The Constitution establishes due process rights for “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.
129. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and

accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

130. Under the Due Process Clause of the Fifth Amendment, a noncitizen is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained.
131. Because Respondents detained Petitioner by re-detaining in violation of the Due Process Clause, *see* Count V, his detention is unlawful.
132. DHS also did not advise Petitioner that it sought to detain him and claim that he is subject to mandatory detention.
133. Petitioner was detained despite having already posted bond in which he proved that he is neither a flight risk or danger to the community.
134. There has been no intervening criminal or other activity that would constitute a material change of circumstances.
135. Respondents detained Petitioner without any opportunity to even be heard on these issues.
136. Because of Petitioner's profound legal interest in his liberty as a noncitizen who was granted bond and posted bond, and who has complied with that bond, his detention violates his due process rights. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

137. Respondents violated Petitioner's Fifth Amendment Due Process rights by failing to provide him with written notice as what change in his circumstances existed that warranted revocation of his bond.
138. Respondents failed to provide Petitioner with a hearing in which Respondents had the burden to prove a change of circumstances to justify the revocation of his bond.
139. Respondents violated Petitioner's Due Process rights by violating their statute, regulation, and *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981).
140. Petitioner's sudden and continuing detention, with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights.

**COUNT SEVEN: VIOLATION OF THE FOURTH AMENDMENT TO THE
U.S. CONSTITUTION, 8 U.S.C. § 1357(A)(2), AND 8 C.F.R. § 287.3(D) –
UNLAWFUL ARREST**

141. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.
142. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. Amend. IV. Immigration arrests and detentions are seizures within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984)

(acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the “seizure” of the person).

143. The Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). “Probable cause requires a ‘substantial probability; based on facts related to the individual.’” *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *15 (D. Colo. Nov. 25, 2025) (quoting *Storey v. Taylor*, 696 F.3d 987, 992 (10th Cir. 2012) (finding probable cause for immigration arrests lacking). That determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.*
144. It must, however, occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstance. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).
145. There is a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The INA thus provides immigration agents with only limited authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2). Specifically, an officer must have probable cause to believe the person is violating the immigration laws *and* that the person “is likely to escape before a warrant can be obtained,” *i.e.*, is a flight risk. *Id.*; *see*

also Ramirez Ovando, 2025 WL 3293467, at *2. Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

146. Petitioner's warrantless arrest occurred without probable cause that Petitioner posed a flight risk. "Courts have ... made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties." *Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. CV 25-3417 (BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (collecting cases).
147. At the moment of Petitioner's seizure, Petitioner was living at a stable home address and had been in the United States for years. Petitioner has built ties to his community. Petitioner posted bond in 2025 and has had no change in his circumstances. Petitioner fully complied with the ICE officers and in no way tried to disobey or flee. Therefore, no officer could have probable cause that Petitioner was likely to escape before a warrant could be obtained.
148. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Petitioner. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. Petitioner received no such judicial determination, yet his detention continued well beyond 48 hours, rendering it presumptively unconstitutional.

149. Regulations also provide that noncitizens arrested without a warrant must receive a custody determination within 48 hours of the arrest, unless there is “an emergency or other extraordinary circumstance” that requires “an additional reasonable period of time” to make the custody determination. 8 C.F.R. § 287.3(d).

150. During that custody determination, the immigration officer must make findings as to whether “release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). Similarly, upon information and belief, Petitioner has received no such custody determination.

**COUNT EIGHT: VIOLATION OF 8 C.F.R. §§ 236.1, 1236.1 AND 1003.19 -
UNLAWFUL DENIAL OF RELEASE ON BOND**

151. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

152. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as

[noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added).

153. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before immigration courts under 8 U.S.C. § 1226 and its implementing regulations.
154. Nonetheless, DHS and EOIR have adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.
155. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.
156. As such, the Court must order the Respondents to release Petitioner in accordance with his posted bond, or, in the alternative, afford Petitioner a bond hearing to comport with these regulatory requirements and *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981), in which the government must prove by clear and convincing evidence a material change in his individual circumstances, excluding *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), rendering Petitioner a danger or flight risk.

COUNT NINE: VIOLATION OF THE APA - ACCARDI

157. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

158. 5 U.S.C. § 706(2)(A) provides that a final agency action can be set aside if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” including if it fails to make a rational connection between the facts found and the decision made. 5 U.S.C. § 706(2)(A).
159. Respondents must observe the rules, regulations or procedures which it has established. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).
160. Respondents failed to articulate the facts that formed a basis for their decision to re-detain Petitioner, let alone any rational connection between the facts found and the decision made.
161. By re-detaining the Petitioner without consideration of his individualized facts and circumstances and without a change in circumstances, Respondents have violated the APA.
162. Respondents have failed to adhere to *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981).
163. Respondents failed to require the government to show the requisite change of circumstances to justify the re-detention of Petitioner.
164. A change of position relative to the law is not a change of circumstances material to whether Petitioner is a flight risk or danger.

165. Any alleged change of circumstances must impact the primary considerations that the immigration court considers under 8 C.F.R. § 1003.19 and section 9.3 of the Immigration Court Practice Manual.
166. Respondents' action is therefore arbitrary and capricious.
167. Respondents' action violates the *Accardi* doctrine.
168. Respondents' action violates the APA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

1. Assume jurisdiction over this matter;
2. Order that he not be transferred outside of this District;
3. Issue an Order to Show Cause ordering Respondents to show cause why his Petition should not be granted within three days;
4. Declare that Petitioner's detention is unlawful;
5. Issue a Writ of Habeas Corpus ordering Petitioner's immediate release because Respondents detained him despite his posted bond and no material change in his individual circumstances.
6. Order Petitioner's immediate release because Respondents detained him without a warrant of arrest or apprehension.
7. Alternatively, Petitioner asks that the Court order Respondents to hold a bond hearing pursuant to 8 U.S.C. § 1226(a) within three days in which the

government must prove by clear and convincing evidence a material change in his individual circumstances, excluding *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), rendering Petitioner a danger or flight risk.

8. Declare that Respondents' action is arbitrary and capricious.
9. Declare that Respondents failed to adhere to its regulations.
10. Declare that Petitioner's detention despite his posted bond violates the Due Process Clause of the Fifth Amendment.
11. Declare that Petitioner's detention absent a bond hearing violates the Due Process Clause of the Fifth Amendment.
12. Enjoin and restrain Respondents from re-detaining Petitioner without notice and a pre-deprivation hearing before a neutral decisionmaker where the government must demonstrate, by clear and convincing evidence, a material change in Petitioner's circumstances such that he presents a flight risk or danger to the community.
13. Grant Petitioner reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).
14. Grant all further relief this Court deems just and proper.

Respectfully submitted,

/s/ David L. Wilson

January 27, 2026

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Admitted to the Western District of Texas

Attorney for the Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

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

Dated this Tuesday, January 27, 2026.

/s/David L. Wilson
DAVID L. WILSON