UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

ALEX ARMANDO MARTINEZ-ORELLANA
A [redacted]

Petitioner,

v.

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

Respondents.

Case No. 1:26-cv-355

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

INTRODUCTION

1. This case presents a new iteration of the Department of Homeland Security's ("DHS") relentless efforts over the past six months to keep noncitizens in mandatory detention. *See Briales-Zuniga v. Baltazar*, 2026 WL 35227, at *3 (D. Colo. Jan. 6, 2026) (noting that federal courts have overwhelmingly rejected the government's policy and statutory interpretation). Both DHS and immigration judges in the Department of Justice ("DOJ") continue to decline to provide noncitizens bond determinations as required by statute and regulations.

2. Here, an immigration judge attempted to hide behind DHS's procedural misstep by relying on the agency's s assertion that it had not conducted an initial custody determination to support its position that 8 U.S.C. § 1225(b)(2) provided the statutory authority to detain Petitioner Alex Armando Martinez-Orellana. However, DHS *had* provided an initial custody determination, albeit under 8 U.S.C. § 1226(a). Respondents' attempts to avoid providing Mr. Martinez-

Orellana the process actually due absent an order from a federal court—despite an overwhelming number of district court cases and a nationwide class action—is remarkable.

3. Accordingly, Mr. Martinez-Orellana not only brings this habeas petition to challenge the application of DHS's unlawful policy and statutory construction. He also argues that Respondents' position regarding § 1252(b)(2) detention violates the existing regulations governing custody determinations and violates the Administrative Procedure Act ("APA") for lack of notice and comment. Respondents' actions infringe upon Mr. Martinez-Orellana's due process rights, rendering his custody unlawful. Accordingly, this Court should order his immediate release.

JURISDICTION AND VENUE

4. Mr. Martinez-Orellana 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 subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. §§ 2201-02 (declaratory relief), the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, and 28 U.S.C. § 1651 (All Writs Act).
6. This Court may grant relief pursuant to 28 U.S.C. § 2241, § 2243, 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-Orellana'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 Alex Armando Martinez-Orellana is a native of El Salvador. As of the filing of this Petition, ICE is detaining him at the Denver Contract Detention Facility in Aurora, Colorado. Exhibit 1, ICE Detainee Locator.

9. Respondent Robert Hagan is the Field Office Director of the Immigration and Customs Enforcement ("ICE") Denver Field Office and is responsible for ICE's operations in Colorado where Mr. Martinez-Orellana is held. He is sued in his official capacity.

10. Respondent Juan Baltazar is the Warden of the Denver Contract Detention Facility and is the immediate custodian of Mr. Martinez-Orellana. He is sued in his official capacity.

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

12. 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.

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).

15. "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

16. Mr. Martinez-Orellana 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.

EXHAUSTION

17. Mr. Martinez-Orellana has already attempted to exhaust his administrative remedies by seeking a custody redetermination hearing in immigration court. However, the immigration judge dismissed that custody redetermination request for lack of jurisdiction, noting that she would only make a determination on the merits upon being ordered to do so through a writ of habeas corpus. An appeal of that decision to the Board of Immigration Appeals would be futile, as the Board remains bound by *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and thus the Board would not provide for immigration court jurisdiction over a bond proceeding in this case.

18. Moreover, the failure to exhaust administrative remedies does not bar Mr. Martinez-Orellana'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)). No such mandate exists here.

STATEMENT OF RELEVANT FACTS

19. Mr. Martinez-Orellana entered the United States in 2008 without inspection and prior to his detention lived with his family in Colorado. Exhibit 2, Form I-213. He has no criminal history. *Id.* He has "strong ties to the community" including two U.S. citizen children, "one of whom has a medical issue that is under treatment." Exhibit 3, IJ Custody Dec'n.

20. On December 15, 2025, ICE officers detained Mr. Martinez-Orellana after he was stopped by Wyoming Highway Patrol. Exhibit 2 at 2.

21. ICE issued a warrant of arrest, citing 8 U.S.C. §§ 1226 and 1357. Exhibit 4, Warrant of Arrest.

22. On December 16, 2025, ICE completed a Notice of Custody Determination, Form I-286, concluding that Mr. Martinez-Orellana would remain detained. Exhibit 5, Notice of Custody Determination.

23. ICE also placed Mr. Martinez-Orellana in removal proceedings before an immigration judge, charging him as removable as a noncitizen present in the United States without being admitted or paroled. Exhibit 6, Notice to Appear. Through counsel in immigration court, Mr. Martinez-Orellana admitted the allegations in the Notice to Appear and conceded removability.

24. Mr. Martinez-Orellana also filed a motion for bond with the immigration court on the basis that he is a member of the *Maldonado Bautista* class and is thus entitled to a bond hearing. Exhibit 7, Brief in Support of Bond; *see also Maldonado Bautista*, 5:25-cv-1873, -- F. Supp. 3d --, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (certifying a bond eligible class as "All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination); *see*

also Maldonado Bautista, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025) (declaring that the bond eligible class members "are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2).").

25. In the bond proceedings before the immigration judge, DHS filed only the Form I-213, Record of Deportable/Inadmissible Alien. *See* Exhibit 2.

26. However, in the removal proceedings before the immigration judge, DHS filed the Warrant and the Notice of Custody Determination. *See* 8 C.F.R. § 1003.19(d) (providing that custody and removal proceedings are separate proceedings). This is significant because the immigration judge was precluded from considering those documents in the custody proceedings. *Id.*

27. At a custody hearing on January 15, 2025, ICE maintained the position that *Maldonado Bautista* was not binding on Mr. Martinez-Orellana and that he remained detained under 8 U.S.C. § 1225(b)(2). The immigration judge asked for briefing regarding Mr. Martinez-Orellana's membership in the *Mandonado Bautista* class. *See* Exhibit 8, Supplemental Brief in Support of Bond.

28. On January 25, 2026, the immigration judge issued a written decision dismissing the custody redetermination request for lack of jurisdiction. Exhibit 3. The immigration judge explained that she lacked jurisdiction "to redetermine bond, namely because the *Maldonado Bautista* order specifically finds the DHS's policy not to issue bond determinations is unlawful, and because in this case the DHS has not yet determined bond by issuing a Form I-286, such that there is no bond for this Court to redetermine."[1] *Id.* at 1. The immigration judge issued an alternative order setting a bond amount of $3,000 "should this Court be ordered by writ of

[1] It is unclear if the immigration judge knew that the I-286 Notice of Custody Determination had been filed in the removal proceedings docket.

habeas corpus to find it has jurisdiction to determine bond where the DHS has refused to make an initial determination, or should there be a clear change in law that clearly binds this Court to find it has jurisdiction[.]" *Id.* at 2.

LEGAL BACKGROUND

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

29. 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").

30. 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).

31. 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).

32. Separate from the removal proceedings under § 1229a, Congress created an expedited removal process to be implemented during initial inspection 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 the expedited removal statute 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").

33. 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).

34. Separately, 8 U.S.C. § 1225(b)(2) mandates the detention of certain "applicants for admission" not covered by § 1225(b)(1). Yet in keeping with the statute's focus on arriving aliens, the

statute does not mandate detention for all applicants for admission. Instead, § 1225(b)(2)(A) only mandates the detention of "an applicant for admission" when "the examining immigration officer determines" that the noncitizen who is "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 Mendoza Gutierrez v. Baltasar*, 2025 WL 2962908, at *5-6 (D. Colo. Oct. 17, 2025) (concluding that § 1225 does not apply to a noncitizen who has been residing in the United States for more than two years) (collecting cases); *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."[2] This policy has since been vacated. *Maldonado Bautista*, 2025 WL 3713987, at *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—including every case within this district—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; *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Galdamez Martinez*

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[2] https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

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 and the *Maldonado Bautista* court's vacatur of the policy, Respondents continue to defend the policy and follow *Matter of Yajure Hurtado*, insisting that all noncitizens who have not been admitted to the United States are considered subject to mandatory detention under 8 U.S.C. § 1225(b).

41. Upon information and belief, ICE is so unwavering in its position that it will invoke the automatic stay provision in 8 C.F.R. § 1003.6(c) to preclude a noncitizen from being released on a bond set by an immigration judge if the judge finds the noncitizen to be a member of the *Maldonado Bautista* bond eligible class.

Immigration Detention and Bond

42. As noted above, noncitizens subject to expedited removal are subject to mandatory detention during those proceedings. *Jennings*, 583 U.S. at 287. DHS makes the determination that someone is inadmissible and subject to expedited removal by issuing a Form I-860, Notice and Order of Expedited Removal. 8 C.F.R. § 235.2(b)(2)(1).

43. For noncitizens subject to detention under 8 U.S.C. § 1226(a), DHS must make an initial custody determination, which is recorded on a Form I-286, Notice of Custody Determination. 8 C.F.R. § 236.1(c)(8), (g)(1).

44. Detention under 8 U.S.C. § 1226(a) "must be premised on an individualized custody determination based on Petitioner's dangerousness and flight risk." *Campbell v. Almodovar*, 2025 WL 3626099, at *1 (S.D.N.Y. Dec. 15, 2025) (marks and citation omitted). A noncitizen who is neither a danger nor a flight risk may be released on a "bond of at least $1,500 with

security approved by, and containing conditions prescribed by [ICE]." 8 U.S.C. § 1226(a); *see N-N- v. McShane*, 2025 WL 3143594, at *2 (E.D. Pa. Nov. 10, 2025).

45. The decision whether to release a noncitizen is an individualized determination first made by ICE. 8 C.F.R. § 236.1(c)(8); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 26 (1st Cir. 2021) (Noting that ICE officers make the initial custody determination); *Velasco Lopez v. Decker*, 978 F.3d 842, 849 (2d Cir. 2020) (noting that 8 C.F.R. § 236.1(c)(8) "applies only to the initial custody determination made by the arresting officer and not to immigration judges in bond hearings" although immigration judges do apply the same rule regarding presumption of detention to custody hearings under § 1226(a)); *Lopez Benitez*, 795 F. Supp. 3d at 484.

46. If DHS elects to detain a noncitizen, the noncitizen may seek a custody *re*determination before an immigration judge. 8 C.F.R. §§ 1003.19(a) 1236.1(c)(8), (d)(1); *Mendoza Gutierrez*, 2025 WL 2962908, at *7; *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 68-69 (D. Mass. 2025).

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

48. Detention pursuant to 8 U.S.C. § 1225(b)(2) has no corresponding regulation.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Procedural Due Process
***Accardi* – Due Process**

49. Mr. Martinez-Orellana realleges and incorporates by reference the paragraphs above.

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

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

52. ICE must provide an initial custody determination in order to keep someone in custody, which inherently includes determining (and providing notice of) the statutory basis for detention. *Nielsen v. Preap*, 586 U.S. 392, 397 (2019); *Orellana Juarez*, 788 F. Supp. 3d at 68-69; 8 C.F.R. § 235.3(b)(2) (providing for detention while an examining immigration officer determines inadmissibility and applicability of expedited removal proceedings), § 236.1(d), (g) (providing for custody and notice procedures for individuals detained under 8 U.S.C. § 1226(a)); *cf.* 8 C.F.R. 235.3(a) (stating that a notice to detain is not required prior to inspection for individuals arriving at a port of entry by vessel or aircraft).

53. ICE served Mr. Martinez-Orellana with a Form I-286 in this case, which is for custody determinations under 8 U.S.C. § 1226(a).

54. Nevertheless, ICE is insistent that Mr. Martinez-Orellana is detained under 8 U.S.C. § 1225(b)(2), despite not having provided any evidence of a custody determination made under that section.

55. This violated Mr. Martinez-Orellana's due process rights, as Respondents have refused to abide by the proper process for someone detained under 8 U.S.C. § 1226(a) and they have not provided any evidence of how they could detain Mr. Martinez-Orellana under 8 U.S.C. § 1225(b)(2) in light of the overwhelming judicial authority to the contrary.

56. Additionally, the immigration judge, who may or may not have known of the existence of the Form I-286 in this case, dismissed Mr. Martinez-Orellana's bond request on the basis that no custody determination had been made.

57. The immigration judge's dismissal of bond notwithstanding the I-286 further violated Mr. Martinez-Orellana's procedural due process rights.

58. Respondents are taking every opportunity to keep individuals like Mr. Martinez-Orellana in custody in violation of their due process rights. Release is the proper remedy. *Blanco*, 2025 WL 3908488, at *6; *Martinez v. Noem*, 2025 WL 3471575, at *6 (W.D. Tex. Nov. 26, 2025).

COUNT TWO
Arbitrary and Capricious Agency Action

59. Mr. Martinez-Orellana realleges and incorporates by reference the paragraphs above.

60. The APA requires courts to hold unlawful and set aside any agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;" "contrary to constitutional right, power, privilege, or immunity;" "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;" and "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(C).

61. ICE must provide an initial custody determination in order to keep someone in custody, which inherently includes determining the statutory basis for detention. *Nielsen v. Preap*, 586 U.S. 392, 397 (2019); *Hernandez-Lara*, 10 F.4th at 26; *Velasco Lopez v. Decker*, 978 F.3d at 849; *Lopez Benitez*, 795 F. Supp. 3d at 484; 8 C.F.R. §§ 235.3(b)(2), 236.1(d), (g); *cf.* 8 C.F.R. 235.3(a).

62. ICE served Mr. Martinez-Orellana with a Form I-286 in this case, which is for custody determinations under 8 U.S.C. § 1226(a).

63. Nevertheless, in opposing bond eligibility, ICE has been insistent that Mr. Martinez-Orellana is detained under 8 U.S.C. § 1225(b)(2), despite not having provided any evidence of a custody determination made under that section.

64. Here, ICE did not make a custody determination that Mr. Martinez-Orellana is detained under § 1225(b)(2). ICE's attempt to keep Mr. Martinez-Orellana in mandatory detention violates the custody regulations because it has not made an initial determination that Mr. Martinez-Orellana is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), only that it would continue to detain him under 8 U.S.C. § 1226(a). *Lopez Benitez*, 795 F. Supp. 3d at 484.

65. ICE's actions in asserting that Mr. Martinez-Orellana is detained under § 1225(b)(2), but only providing a determination for detention under § 1226(a) provides no actual justification for their position that Mr. Martinez-Orellana is subject to detention under § 1225(b)(2) and is thus arbitrary and capricious. *Zzyym v. Pompeo*, 958 F.3d 1014, 1033 (10th Cir. 2020) (noting that the court "lack[s] the power to guess at the theory underlying the agency's action.") (quoting *SEC v. Chenery Corp.*, 332 U.S. 194, 197 (1947)) (marks omitted); *Motor Vehicle Manufacturers Assoc. v. State Farm Auto Mutual Ins. Co.*, 363 U.S. 29, 43 (1983).

66. Furthermore, the immigration judge dismissed the bond redetermination, even though ICE clearly had determined it would keep Mr. Martinez-Orellana detained. 8 C.F.R. § 1003.19. To the extent the immigration judge failed to rely on ICE's representations in immigration court that it considered Mr. Martinez-Orellana subject to mandatory detention and not subject to a bond hearing under the *Maldonado Bautista* decision, the immigration judge's decision was also arbitrary and capricious.

67. This Court should accordingly set aside Respondents' assertions regarding Mr. Martinez-Orellana's custody determinations and order Mr. Martinez-Orellana released from custody. *Blanco v. Bondi*, 2025 WL 3908488, at *6 (W.D. Tex. Dec. 30, 2025) (concluding that release is the proper remedy upon determining that the petitioner was not subject to detention under 8 U.S.C. § 1225(b)(2)).

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

68. Mr. Martinez-Orellana realleges and incorporates by reference the paragraphs above.

69. To the extent ICE will not admit that Mr. Martinez-Orellana is detained under 8 U.S.C. § 1226(a), this Court should grant the petition and order that Mr. Martinez-Orellana 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).

70. 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. Further, with regard to § 1225(b)(2), Mr. Martinez-Orellana cannot reasonably be described as "seeking admission" to a country he has now resided in for over two decades. The titles of 8 U.S.C. § 1225 and § 1226 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").

71. 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).

72. The ordinary meaning of the terms "seeking" and "admission" do not apply to noncitizens, like Mr. Martinez-Orellana, who are not actively seeking inspection to enter the United States. *Jose Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025).

73. 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-Orellana, is not an "applicant for admission" who is "seeking admission" to the United States.

74. Thus, this Court must find that subjecting Mr. Martinez-Orellana 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.[3] *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).

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

75. Mr. Martinez-Orellana realleges and incorporates by reference the paragraphs above.

76. 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).

77. Mr. Martinez-Orellana 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

[3] Alternatively, the Court should order that Mr. Martinez-Orellana be released on the immigration judge's alternative order, which the BIA did not vacate. In that case, Mr. Martinez-Orellana requests the Court issue an order precluding ICE from automatically staying that bond order by filing a form EOIR-43 as that automatic stay provision is ultra vires and invocation of it in this case would be unconstitutional. *See Merchan-Pacheo v. Noem*, 2026 WL 88526 (D. Colo. Jan. 12, 2026). Mr. Martinez-Orellana reserves the right to further brief this issue should Respondents decline to promise not to invoke the automatic stay in proceedings before the immigration court in this case.

8 U.S.C. § 1225(b)(2)(A) without any avenue to challenge that detention violates his substantive right to due process.

78. Respondents' insistence that Mr. Martinez-Orellana remain in immigration custody pursuant to these policies is a violation of his due process rights. The Court should order his release.

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

79. Mr. Martinez-Orellana realleges and incorporates by reference the paragraphs above.

80. 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-Orellana is no longer on the threshold of initial entry. It is well established that noncitizens like Mr. Martinez-Orellana 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-Orellana is not properly detained under § 1225(b)(2), his detention does not comply with due process.

81. Mr. Martinez-Orellana 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).

82. While the government has an interest in ensuring Mr. Martinez-Orellana's appearance at his removal proceedings and protecting the community, the government cannot plausibly justify their position that he is subject to mandatory detention based on "administrative burdens" when it has, for the past three decades, consistently allowed for bond for noncitizens like Mr. Martinez-Orellana who have established a presence in the United States after previously entering without inspection.

83. Finally, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to detain noncitizens like Mr. Martinez-Orellana without being able to pay bond upon a determination that he is neither a danger nor a flight risk. Without an order from this Court, there is a high probability that Mr. Martinez-Orellana 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.

84. In Respondents' contrasting version of the INA, as espoused in *Matter of Yajure Hurtado*, Mr. Martinez-Orellana is 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. Release is the appropriate remedy, either without any

conditions upon release or under the conditions set by the immigration judge's alternative order. Exhibit 3.

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

85. Mr. Martinez-Orellana realleges and incorporates by reference the paragraphs above.

86. As a member of the Bond Eligible Class, Mr. Martinez-Orellana is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

87. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

88. 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 to Petitioners to the Bond Eligible Class as a whole."

89. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

90. By opposing Mr. Martinez-Orellana's bond hearing under § 1226(a) on the basis of jurisdiction and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Mr. Martiinez-Orellana's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

91. Accordingly, should the Court decline to grant release, it should order his release on the conditions set by the immigration judge in the alternative order.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Order under the All Writs Act that Mr. Martinez-Orellana 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-Orellana's detention by U.S. immigration authorities;

(5) Order that Mr. Martinez-Orellana be immediately released from immigration custody with all of his personal belongings, either on his own recognizance or upon the bond order set by the immigration judge in her alternative finding;

(6) If the Court orders Mr. Martinez-Orellana's release on the immigration judge's bond, order that ICE is precluded from automatically staying the immigration judge's bond order by filing a form EOIR-43;

(7) 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.*; and

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

Dated: January 29, 2026

Respectfully submitted,

/s/ Jessica A. Dawgert

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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney before the immigration court. I have discussed with Petitioner's family the events described in this Petition and was present at the bond hearing in immigration court. Based on that knowledge, 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 29, 2026

Respectfully submitted,

/s/Alyssa C. Reed
Alyssa C. Reed
Reed Immigration, LLC
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Denver, CO 80221