

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Salvador Cayambe Shulqui,

Petitioner,

2:26-cv-00205

v.

Pamela Bondi, Attorney General,

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

Daren K. Margolin, Director for Executive
Office for Immigration Review,

Executive Office for Immigration Review,

Kristi Noem, Secretary, U.S. Department of
Homeland Security,

Agency



Department of Homeland Security,

Todd M. Lyons, Acting Director of
Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

Mary De Anda-Ybarra, Director, El Paso
Field Office, Immigration and Customs
Enforcement, and

Deputy Warden of Otero County Processing
Center,

Respondents.

INTRODUCTION

1. Respondents are detaining Petitioner, Mr. Salvador Cayambe Shulqui (“Petitioner”) in violation of law.
2. Respondents are unlawfully detaining Petitioner without an administrative warrant of arrest and further improperly denying him access to a bond hearing to which he is entitled under 8 U.S.C. § 1226(a).
3. The continued detention of Petitioner, particularly absent a bond hearing, serves no legitimate purpose.
4. To remedy this unlawful detention, Petitioner seeks declaratory relief and a writ of habeas corpus in the form of immediate release or, alternatively an order to hold a bond hearing pursuant to 8 U.S.C. § 1226(a) within three days.
5. Pending the adjudication of his petition, Petitioner seeks an order restraining the Respondents from transferring him to a location where he cannot reasonably consult with counsel, such a location to be construed as any location outside of the geographic jurisdiction of the day-to-day operations of U.S. Customs and Immigration’s (“ICE”) Otero Field Office.
6. Pending the adjudication of this Petition, Petitioner also respectfully requests that Respondents be ordered to provide seventy-two (72) hour notice of any movement of Petitioner.

JURISDICTION AND VENUE

7. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1651 (All Writs Act), and § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the Immigration and Nationality Act (“INA”).
8. Because Petitioner seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this court.
9. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018); *Nielsen v. Preap*, 139 S. Ct. 954, 961–63 (2019); *Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199, 1209-12 (11th Cir. 2016).
10. Federal district courts have jurisdiction to enforce 8 U.S.C. § 1226(a)(2). This statute, 8 U.S.C. § 1226(a)(2), requires the issuance of an administrative warrant and entitles Petitioner to a bond hearing in which an immigration judge may determine his eligibility for release from custody.
11. Venue is proper in this Court pursuant to 28 USC §§ 1391(b), (e)(1)(B), and

2241(d) because Petitioner is detained within this District.

PARTIES

12. Petitioner Salvador Cayambe Shulqui is a citizen of Ecuador. Prior to his detention, he was residing in Minnesota. He is not an arriving alien, nor is he seeking admission.
13. Petitioner Salvador Cayambe Shulqui is currently in Immigration & Customs Enforcement (“ICE”) custody at the Otero County Processing Center.
14. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice, which encompasses the Board of Immigration Appeals (“BIA”) and the immigration judges through the Executive Office for Immigration Review (“EOIR”). Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Petitioner.
15. 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. He is sued in his official capacity.
16. Respondent Executive Office for Immigration Review (“EOIR”) is the adjudicative authority with jurisdiction over the removal and bond cases of Petitioner.

17. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to § 103(a) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1103(a), routinely transacts business in the District of New Mexico, supervises the El Paso ICE Field Office, and is legally responsible for pursuing Petitioner’s detention and removal. As such, Respondent Noem is a legal custodian of Petitioner.
18. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens. As such, Respondent DHS is a legal custodian of Petitioner.
19. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Respondent Lyons is responsible for Petitioner’s detention. As such, Respondent Lyons is a legal custodian of Petitioner.
20. Respondent Immigration and Customs Enforcement (ICE) is the subagency within the Department of Homeland Security responsible for implementing and enforcing the Immigration & Nationality Act, including the detention of noncitizens. As such, Respondent ICE is a legal custodian of Petitioner.
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 Warden of Otero County Processing Center is sued in his or her official capacity as warden of Otero County Processing Center. Because Petitioner is detained in the Otero County Processing Center, Respondent has immediate day-to-day control over Petitioner. The mailing address is 26 McGregor Range Road, Chaparral, New Mexico 88081.

EXHAUSTION

23. 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*, 779 F. Supp. 3d 1239 (W.D. Wash. 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))).

24. 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).
25. The Board of Immigration Appeals’ published decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) binds the immigration court and erroneously denies all noncitizens situated like Petitioner access to a bond hearings.
26. Petitioner entered the United States without inspection, was not detained and is not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

27. Petitioner is a native and citizen of Ecuador.
28. Petitioner entered the United States on or around 2020.
29. Petitioner was ordered released on recognizance by Immigration and Customs Enforcement on April 9, 2021.
30. On September 5, 2025, 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).

31. Petitioner Salvador Cayambe Shulqui has no criminal history of the sort that would subject him to mandatory custody under 8 U.S.C. § 1226(c).
32. Respondents took Petitioner Salvador Cayambe Shulqui into custody without an administrative warrant or any form of judicial warrant.
33. Petitioner is presently detained at the Otero County Processing Center.

LEGAL FRAMEWORK

34. 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).
35. 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).

36. 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).

37. 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).

38. 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).
39. 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).
40. 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).
41. 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).
42. 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)).
43. 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).

44. “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).
45. “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).
46. “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).
47. “[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).

48. 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).
49. "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).
50. 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.
51. "[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).

52. As such, arriving aliens are not entitled to bond, nor, arguably, are aliens falling within the confines of 8 U.S.C. § 1225(b).
53. 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).
54. 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).
55. 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).

56. 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).
57. 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.
58. 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.

59. Courts in the district of New Mexico have regularly ruled contrary to Respondents' interpretation of the law. *See, e.g., Gonzalez Ramos v. Dedos*, No. 1:25-CV-00975-MLG-KRS, 2025 WL 3653928 (D.N.M. Dec. 17, 2025); *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Pu Sacvin v. De Anda-Ybarra*, No. 2:25-cv-01031-KG-JFR, 2025 WL 3187432 (D.N.M. Nov. 14, 2025); *Cortez-Gonzalez v. Noem*, No. 2:25-cv-00985-MLG-KK, 2025 WL 3485771 (D.N.M. Dec. 4, 2025); *Cuya-Priale v. Castro*, No. 2:25-CV-01166-KG-DLM, 2026 WL 74171 (D.N.M. Jan. 9, 2026); *Danierov v. Noem*, No. 2:25-CV-01215-KG-KRS, 2026 WL 45288 (D.N.M. Jan. 7, 2026); *Garcia-Lopez v. Castro*, No. CV 25-1144 JB/SCY, 2025 WL 3754137 (D.N.M. Dec. 29, 2025); *Singh v. Noem*, No. CV 25-1110 JB/KK, 2025 WL 3774569 (D.N.M. Dec. 31, 2025); *Intriago-Sedgwick v. Noem*, No. 1:25-CV-01065-MIS-LF, 2025 WL 3688155 (D.N.M. Dec. 19, 2025); *Briceno-Sanchez v. Dedos*, No. 2:25-CV-01054-WJ-GBW, 2025 WL 3764829 (D.N.M. Dec. 30, 2025); *Velasquez Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Castillo v. Andra-Ybarra*, No. CV 25-1074 JB/JFR, 2025 WL 3251223 (D.N.M. Nov. 21, 2025).
60. Additionally, “[i]t is well established that the Fifth Amendment entitles aliens to

due process of law’ in the context of removal proceedings.” *Trump v. J.G.G.*, 604 U.S. 673 (2025) ((quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

61. “To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).” *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025).
62. Those factors are: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.
63. “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Id.* at 333 (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).
64. “[T]he interest in being free from physical detention by one's own government” is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).
65. Where there is no “opportunity to contest the existence, nature, or significance of

[any] supervision violations’ or otherwise make an individualized assessment of the need to re-detain, ... there is a high risk that [Petitioner] has been and will continue to be erroneously deprived of his liberty.” *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025).

66. Where a noncitizen “not abscond from his proceedings ... [n]or is there anything in the record to indicate that he has committed any crimes or endangered anyone during his three years at liberty in the United States,” the burden to the government is minimal and any concerns about flight and danger “would be squarely addressed if the Court were to grant the petition and order a bond hearing.” *Id.*

REMEDY

67. Respondents’ detention of Petitioner without an administrative warrant, purportedly under 8 U.S.C. § 1225(b)(2) violates that statute, section 1226(a), and 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.
68. Due Process requires that detention “bear a reasonable relation to the purpose for which the individual [was] committed.” *Zadvydas, v. Davis*, 533U.S. 678,

690 (2001) (citing *Jackson v. Ethiopianians*, 406 U.S. 715, 738 (1972)).

69. Petitioner seeks immediate release to the extent that Respondents justify his detention on 8 U.S.C. § 1225(b)(2), which plainly does not apply to him.
70. Petitioner also seeks immediate release to the extent that Respondents justify his detention on 8 U.S.C. § 1226(a) if Respondents cannot produce a warrant of arrest, given that detention under the provision plainly requires a warrant of arrest.
71. 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.”).
72. 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.”).

73. 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.”).
74. Alternatively, if Respondents do produce a warrant of arrest, 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 days.

CAUSE OF ACTION

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

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

76. 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.
77. 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).
78. 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.

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

79. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
80. Section 1226 of Title 8 of the U.S. Code governs the detention of aliens pending a determination of removal from the United States.
81. That provision provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested” 8 U.S.C. § 1226(a)(2)(A).
82. If Respondents are unable to produce a warrant of arrest, Petitioner must be immediately released pursuant to the plain terms of 8 U.S.C. § 1226(a)(2)(A), as, absent a warrant, the arrest and ongoing detention are improper.

COUNT THREE: VIOLATION OF THE IMMIGRATION &

NATIONALITY ACT – 8 U.S.C. § 1226(a)

83. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
84. Section 1226 of Title 8 of the U.S. Code governs the detention of aliens pending a determination of removal from the United States.
85. Such an alien “may [be] release[d] ... on bond of at least \$1,500.” 8 U.S.C. § 1226(a)(2)(A).
86. 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.
87. If Respondents do not release Petitioner without any conditions, 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).

COUNT FOUR: DECLARATORY RELIEF

88. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
89. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is not subject to detention under to 8 U.S.C. § 1225(b)(2) and must be released unless Respondents assert authority to detain him under 8 U.S.C. § 1226(a).
90. 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 must be released if Respondents are unable to produce a warrant for arrest.

91. In the event Respondents assert that Petitioner is detained under 8 U.S.C. § 1226(a) and produce the requisite warrant, Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is eligible for release from Respondents' custody pursuant to a bond as set forth at 8 U.S.C. § 1226(a)(1).

COUNT FIVE: VIOLATION OF THE FIFTH AMENDMENT

92. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
93. 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.
94. Petitioner is not subject to mandatory custody under the Immigration & Nationality Act and is therefore entitled to a bond hearing in which a neutral arbiter may determine the justification for his continued detention under 8 U.S.C. § 1226(a)(2)(A), the denial of which constitutes a violation of the Fifth Amendment's guarantee of due process.

95. Moreover, even if Respondent were subject to 8 U.S.C. § 1225(b)(2)(A), those mandatory detention provisions, absent a bond hearing, would be unconstitutional in violation of the Fifth Amendment's procedural due processes clause as set forth in as applied to him under the standard set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

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

96. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
97. 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).
98. 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.
99. Nonetheless, DHS and EOIR have adopted a policy and practice of applying §

1225(b)(2) to Petitioner and others in the same position.

100. 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.
101. As such, the Court must order the Respondents afford Petitioner a bond hearing to comport with these regulatory requirements.

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)

102. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.
103. 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).
104. The Fourth Amendment requires that an 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.*

105. 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).
106. 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 strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).
107. 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). 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 in the community. 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.

108. 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.
109. Regulations also provide that noncitizen 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).
110. 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.

111. Respondents are not performing their regulatory duty because Respondents maintain that Petitioner is subject to 8 U.S.C. § 1225(b)(2).

PRAYER FOR RELIEF

WHEREFORE, Petitioner Salvador Cayambe Shulqui, asks this Court for the following relief:

1. Assume jurisdiction over this matter.
2. Issue an order restraining Respondents from attempting to move Petitioner from the District of New Mexico during the pendency of this Petition.
3. In case Petitioner has already been transferred, issue an order to return him to the District of New Mexico during the pendency of this Petition.
4. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Petitioner.
5. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. § 153.
6. Order Petitioner's immediate release, or, alternatively, order Respondents to hold a bond hearing pursuant to 8 U.S.C. § 1226(a) within three days.
7. Declare that Respondents' action is arbitrary and capricious.
8. Declare that Respondents failed to adhere to its regulations.
9. Declare that Petitioner's detention absent a bond hearing violates the Due
10. Process Clause of the Fifth Amendment.

11. Grant Petitioner reasonable attorney fees and costs pursuant to the Equal

Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).

12. Grant all further relief this Court deems just and proper.

DATED: January 29, 2026

Respectfully submitted,

/s/ David L. Wilson

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Attorney for Petitioner

**Verification by Someone Acting on
Petitioner's Behalf Pursuant to 28 U.S.C. § 2242**

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I have discussed the events described in this Petition with Petitioner and his family and reviewed relevant documents. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status, are true and correct to the best of my knowledge.

/s/ David Wilson

Date: January 29, 2026