UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

DIOSDANIS GARCES-GUEVARA,

Petitioner,

v. Case No: 1:26-cv-00231

DORA CASTRO, Warden of the Otero County Processing Center; and MARY DE ANDA-YBARRA, Field Office Director of the El Paso Field Office,

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Diosdanis Garces-Guevara is in the physical custody of Respondents at the Otero County Processing Center. He is a citizen of Cuba and entered the United States on January 6, 2022, at San Luis, Arizona. He was immediately encountered by immigration authorities and was released a week later under an Order of Release on Recognizance, which expressly states that his release was "in accordance with section 236 of the Immigration and Nationality Act [8 U.S.C. § 1226]." Exhibit A, Order of Release on Recognizance (OREC). His first immigration hearing was scheduled for March 7, 2023. Exhibit B, Notice to Appear (NTA).

2. Despite having always complied with the terms of his release, U.S. Immigration and Customs Enforcement (ICE) detained Mr. Garces-Guevara on August 19, 2025, as he exited his Master Calendar hearing at the Miami Immigration Court.

3. Mr. Garces-Guevara has been forced to endure over 5 months of unlawful detention, and without intervention from this Court, his unlawful detention will continue because

the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have concluded that he is subject to mandatory detention, despite initially detaining and releasing him under 8 U.S.C. § 1226(a).

4. Mr. Garces-Guevara is charged with having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i); Exhibit B.

5. Based on this charge of inadmissibility, DHS will not consider releasing Mr. Garces-Guevara from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all ICE employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and, therefore, ineligible for release on bond.

6. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and, therefore, ineligible for release on bond.

7. Mr. Garces-Guevara's detention on this basis violates the plain language of the Immigration and Nationality Act (INA). Section 1225(b)(2)(A) does not apply to individuals like Mr. Garces-Guevara who previously entered and are now residing in the United States following release on recognizance. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to individuals who, like Mr. Garces-Guevara, are charged as inadmissible for having entered the United States without

inspection and were subsequently released under an OREC.

8. The government's new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to individuals like Petitioner.

9. On November 25, 2025, the U.S. District Court for the Central District of California certified a nationwide Bond Eligible Class, defined 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 DHS makes an initial custody determination. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 231977, at *4 (C.D. Cal. Nov. 25, 2025) (Sykes, J.). On December 18, 2025, the district court entered final judgment declaring DHS's policy unlawful and that § 1226(a) governs class members' detention and entitles them to bond hearings. *Maldonado Bautista v. Santacruz*, 2025 U.S. Dist. LEXIS 262265 at *35 (C.D. Cal. Dec. 18, 2025). Because Mr. Garces-Guevara was apprehended upon entry and released under an OREC, he is not a member of the *Maldonado Bautista* class.

10. Accordingly, Mr. Garces-Guevara seeks a writ of habeas corpus requiring Respondents to immediately release him from unlawful detention.

JURISDICTION

11. This action arises under the U.S. Constitution and the INA, 8 U.S.C. § 1101 *et seq.*

12. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the U.S. Constitution (the Suspension Clause).

13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

14. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the U.S. District Court for the District of New Mexico, the judicial district in which Petitioner currently is detained.

15. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are an employees, officers, or agent of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of New Mexico.

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for 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.* Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). The writ "'is a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.'" *Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990) (quoting *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737-38 (9th Cir. 1954)).

PARTIES

17. Petitioner Diosdanis Garces-Guevara is 48 years old and a native and citizen of

Cuba. He entered the United States without inspection on January 6, 2022, and was immediately apprehended by immigration authorities. A week later, DHS released him on his own recognizance in accordance with § 1226(a). Petitioner complied with the conditions of his release, was granted work authorization, and appeared at his immigration hearings. He has no criminal history. More than three years later, on August 19, 2025, ICE detained him as he left his Master Calendar hearing at the Miami Immigration Court. He has been in immigration detention since that time. Petitioner is in custody and under the direct control of Respondents.

18. Respondent Dora Castro is sued in her official capacity as Warden of Otero County Processing Center, where Petitioner is detained. Respondent Castro has immediate physical custody of Petitioner.

19. Respondent Mary De Anda-Ybarra is sued in her official capacity as Director of the El Paso Field Office of ICE's Enforcement and Removal Operations division. As such, she is a legal custodian of Petitioner responsible for his detention and removal, and she has the authority to release him.

LEGAL FRAMEWORK

Statutory Authority for Immigration Detention

20. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

21. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of

certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

22. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

23. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

24. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

25. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

26. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, individuals who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

27. Thus, in the decades that followed, most individuals who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an immigration judge or other hearing officer.

See 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

28. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended or how they were released from initial detention, and affects those who have resided in the United States for months, years, and even decades.

29. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for bond hearings before the immigration court.

30. Since the government adopted its new policies, this Court and many others have rejected the government's novel interpretation of the INA's detention authorities and the BIA's reasoning in *Matter of Yajure Hurtado*, which adopts the same reasoning in DHS's policy. *See, e.g.*, *Molina Ochoa v. Noem*, No. 1:25-CV-00881-JB-LF, 2025 WL 3125846, at *7 (D.N.M. Nov. 7, 2025) (Fashing, Mag. J.) (collecting cases); *Pu Sacvin v. De Anda-Ybarra*, No. 2:25-CV-01031-KG-JFR, 2025 WL 3187432, at *3 (D.N.M. Nov. 14, 2025) (Gonzales, C.J.) (holding "consistent with the majority of district courts" that § 1226 governed detention of individual who had resided in the U.S. for years); *Requejo Roman v. Castro*, No. 2:25-CV-01076-DHU-JHR, 2026 WL 125681, at *8 (D.N.M. Jan. 12, 2026) (Urias, J.) (conducting independent analysis of the statutory

text and joining "the 70+ courts who have found" that discretionary detention governs detention of individuals "already present in the United States"); *Munoz Teran v. Bondi*, No. 2:25-CV-01218-KWR-SCY, 2026 WL 161527, at *6 (D.N.M. Jan. 21, 2026) (Riggs, J.) (holding § 1225(b)(2)(A) does not apply to individual who lived in the U.S. for decades); *see also Patel v. McShane*, No. 25-5975, 2025 U.S. Dist. LEXIS 228258, at *1 (E.D. Pa. Nov. 20, 2025) (noting "at least 282" recent district court decisions rejecting the government's interpretation of § 1225); *Mendes v. Hyde*, No. 25-cv-627-JJM-AEM, 2025 U.S. Dist. LEXIS 251341, at *1–2 (D.R.I. Dec. 5, 2025) (emphasizing that "[a]t least 225 judges have ruled in more than 700 cases" rejecting DHS's interpretation of § 1225(b)(2)) (citation omitted); *but see Singh v. Noem*, No. CIV 25-1110 JB/KK, 2026 WL 146005, at *35 (D.N.M. Jan. 20, 2026) (Browning, J.) (concluding noncitizen who filed defensive asylum application after residing in U.S. for nearly two years is "seeking admission" under § 1225(b)(2), despite government's prior § 1226(a) determination).

31. Courts have rejected DHS's and EOIR's new interpretation with near unanimity because it defies the INA. As this Court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to individuals like Petitioner. *See, e.g.*, *Melchor-Rios v. Ortiz*, No. 2:25-CV-01055-WJ-GJF, 2025 WL 3764775, at *2 (D.N.M. Dec. 30, 2025) (Johnson, J.). Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

32. The text of § 1226 also explicitly applies to individuals charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such individuals makes clear that, by default, such individuals are

afforded a bond hearing under subsection (a). As the *Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Vazquez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 U.S. Dist. LEXIS 193611, at *52 (W.D. Wash. Sep. 30, 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

33. Section 1226 therefore leaves no doubt that it applies to individuals who face charges of being inadmissible to the United States, including those who are present without admission or parole. This interpretation applies with particular force to Petitioner because he had been living in the United States for more than three years pursuant to release on recognizance under § 1226(a) when ICE detained him.

34. By contrast, § 1225(b) applies to individuals arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of individuals who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Simply put, Petitioner "was not seeking admission at the time of his [August 19] arrest, and so § 1226 (a) governs his detention." *Cuya-Priale v. Castro*, No. 2:25-CV-01166-KG-DLM, 2026 WL 74171, at *2 (D.N.M. Jan. 9, 2026) (Gonzales, C.J.).

35. Critically, DHS's treatment of Petitioner confirms that only § 1226(a) applies here. DHS released Petitioner on his own recognizance and issued him an OREC that expressly states that his release was in accordance with § 1226. ICE then detained Petitioner more than three years

later at his immigration hearing, even though Petitioner had fully complied with the conditions of his release. While Respondents have unilaterally changed Petitioner's detention authority, they cannot "cite authority supporting the idea that they possessed that unilateral right." *Loa Caballero v. Baltazar*, No. 25-CV-03120-NYW, 2025 WL 2977650, at *8 (D. Colo. Oct. 22, 2025) (citation omitted).

36. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to individuals like Petitioner, who were granted conditional parole and were residing in the United States at the time they were re-detained.

Due Process Principles

37. Liberty from immigration custody is protected by the Due Process Clause: "Freedom 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 v. Davis*, 533 U.S. 678, 690 (2001). "[T]he Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful unlawful, temporary, or permanent." *Id*. at 693.

38. The Supreme Court recently reiterated the well-established rule that noncitizens, even those without legal status, are entitled to due process of law requiring "notice and an opportunity to be heard." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (holding that individuals subject to detention and removal under the Alien Enemies Act must be afforded sufficient notice to allow them "to actually seek habeas relief").

39. Re-detention without any notice or opportunity to be heard violates an individual's due process rights. *See Danierov v. Noem*, No. 2:25-CV-01215-KG-KRS, 2026 WL 45288, at *2

(D.N.M. Jan. 7, 2026) (Gonzales, C.J.) (stating that petitioner "was entitled to procedural safeguards before he was redetained" and concluding that "the Government [] violated [petitioner's] due process rights.").

40. Petitioner retained a significant liberty interest under the Due Process Clause of the Fifth Amendment in avoiding detention. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972). For over three years, Petitioner exercised his freedom under the OREC issued by DHS in 2022. He lived in his community while his removal proceedings were pending, complied with the conditions of his release, was granted work authorization, and was permitted to seek relief from removal.

41. Petitioner's situation is materially indistinguishable from the parolee in *Morrissey*: he lived at home, worked lawfully with authorization from the DHS, and was free to "form the other enduring attachments of a normal life." *Morrissey*, 408 U.S. at 482. He relied on "an implicit promise that parole [would] be revoked only if he fail[ed] to live up to the parole conditions." *Id.*; *Danierov*, 2026 WL 45288, at *2 (finding protected liberty interest following release from custody).

42. Courts evaluate procedural due process claims using the *Mathews v. Eldridge* factors which consider: (1) the private interest affected; (2) the risk of erroneous deprivation and probable value of additional safeguards; and (3) the government's interest, including fiscal and administrative burdens. 424 U.S. 319, 335 (1976).

43. Being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Individuals have a liberty interest in their continued freedom and this principle has been reinforced by both the Supreme Court and district courts on

many occasions. *See, e.g.*, *Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program have a protected liberty interest pre-deprivation due process); *Danierov*, 2026 WL 45288, at *2 (recognizing liberty interest "in remaining out of custody on bond") (citation omitted); *Garcia Domingo v. Castro*, No. 1:25-CV-00979-DHU-GJF, 2025 WL 2941217, at *3 (D.N.M. Oct. 15, 2025) (Urias, J.) (same); *Cuya-Priale*, 2026 WL 74171, at *2 (same).

44. The risk of erroneous deprivation to Petitioner is high. By adopting an impermissibly broad reading of 8 U.S.C. § 1225—a reading that DHS and the BIA did not initially apply to individuals like Petitioner—Respondents now deny Petitioner any opportunity receive a bond hearing where they must prove his re-detention is justified. Before detaining Petitioner, Respondents never assessed "whether any material facts had changed," and in failing to do so, Respondents "create[e] a substantial risk of erroneous deprivation of [Petitioner's] liberty interest." *Danierov*, 2026 WL 45288, at *2.

45. Civil immigration detention must be "nonpunitive in purpose and effect" and is only justified when a noncitizen presents a risk of flight or danger to the community. *Zadvydas*, 533 U.S. at 690. Significantly, where DHS already determined that Petitioner does not pose a danger or a flight risk, his re-detention without notice, a hearing, or any individualized assessment before DHS revoked his release, presents an evident risk of erroneous deprivation of Petitioner's liberty interest. *See, e.g.*, *Garcia Domingo*, 2025 WL 2941217, at *4 (finding risk of erroneous deprivation substantially likely because "ICE made a unilateral decision to re-detain" without justification).

46. While the government has an interest in ensuring that noncitizens appear at their removal proceedings and are not a danger to the community, this interest is low when compared

to Petitioner's significant liberty interest. *See id.* DHS already determined in 2022 that Petitioner was neither dangerous nor a flight risk and released him according to that determination. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd* 905 F.3d 1137 (9th Cir. 2018). Petitioner has no criminal history, and he fully complied with the terms of his release. Outside of the government's incorrect interpretation of § 1225, nothing has changed to warrant Petitioner's detention. Affording Petitioner notice and a pre-deprivation hearing where he could have presented evidence to support his continued release on recognizance would have imposed only a minimal burden and cost on the government because DHS and Immigration Courts frequently perform these reviews for individuals in detention. *See* 8 C.F.R. § 1236.1(d)(1); *see Garcia Domingo*, 2025 WL 2941217, at *4 (noting the "effort and costs to provide Petitioner with procedural safeguards is minimal.").

47. Because ICE stripped Petitioner of his freedom without any procedure, his current detention violates due process, is unlawful, and entitles him to immediate release.

FACTS

48. Petitioner Diosdanis Garces-Guevara is 48 years old and has resided in the United States since DHS released him on his own recognizance on January 14, 2022. Exhibit A. Prior to his re-detention, he was living in Florida with his long-term partner and lawfully working as a carpenter with a custom millwork company in Homestead, Florida. Petitioner has no criminal history and has fully complied with the terms of his release.

49. On August 19, 2025, Petitioner attended his Master Calendar hearing at the Miami Immigration Court. Petitioner's timely-filed asylum application was pending before the court. During the hearing, DHS moved to dismiss Petitioner's immigration proceedings. *See* 8 C.F.R. §

1239.2(c) (permitting DHS to seek dismissal on various grounds).[1] Petitioner's prior attorney failed to oppose the motion, and the Immigration Court granted dismissal. ICE officers immediately arrested and detained Petitioner as he left the hearing.

50. The expedited removal procedures under 8 U.S.C. § 1225(b)(1) do not apply to Petitioner simply because the Immigration Court dismissed his proceedings. Expedited removal applies to individuals who are charged as inadmissible under § 1182(a)(6) or (a)(7), and who are either arriving in the United States, or who have not been admitted or paroled and cannot establish continuous presence for 2 years immediately prior to the determination of inadmissibility. *See* 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). When Petitioner's proceedings were dismissed and ICE detained him, he had been living in the United States for over three years. *See Giron v. Noem*, No. 2:25-cv-01201-SPC-NPM, 2026 U.S. Dist. LEXIS 2912, at *8 (M.D. Fla. Jan. 7, 2026) (concluding expedited removal did not apply to individual who was granted conditional parole and had been residing in the U.S. for more than two years at the time proceedings were dismissed and ICE re-detained him).

51. On September 17, 2025, Petitioner timely appealed the Immigration Judge's decision dismissing his removal proceedings. That appeal is currently pending before the BIA. Petitioner has been in ICE custody for more than five months and is now detained at the Otero County Processing Center.

52. During these many months of detention, Petitioner's physical and mental health

[1] The government may move to dismiss proceedings under 8 C.F.R. § 1239.2(c) on various grounds, including when a noncitizen is a national of the United States or not present in the United States, when "the [NTA] was improvidently issued, or when circumstances have changed such that continuing removal proceedings is no longer in the government's best interest. 8 C.F.R. § 239.2(a).

have declined. Since being detained, he has reported to his family that he has trouble sleeping and experiences recurring nightmares. Fear and stress, coupled with the lack of sleep, have heightened Petitioner's anxiety. In just over five months of detention, Petitioner informed his family of at least five separate ear and throat infections. In addition to these illnesses, Petitioner expressed considerable concerned about a painful, 2–3 centimeter mass in his chest that developed roughly two months ago. He shared that he has not received a diagnosis or adequate attention regarding his health concerns. Petitioner is suffering significantly from his unexpected arrest and continued detention, and he remains separated more than 1,800 miles away from the only family and community he has in this country.

53. By releasing Petitioner on conditional parole under an OREC, DHS created a reasonable expectation in Petitioner that he would be permitted to remain free without being subject to arbitrary arrest. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest).

54. Petitioner has no criminal history, and he is neither a flight risk nor a danger to the community—as the government necessarily determined when it granted Petitioner conditional parole. *Saravia v. Sessions,* 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017) ("[r]elease reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.") When Petitioner was detained in August 2025, there were no changed circumstances with respect to flight risk and dangerousness. He worked as a carpenter with valid employment authorization, and he was actively complying with the terms of his release, just as he had previously done.

55. Petitioner was in standard removal proceedings before the Miami Immigration Court pursuant to 8 U.S.C. § 1229a, and he fears return to Cuba based on past political persecution. ICE charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. *See* Exhibit B.

56. Although many judges have issued hundreds of decisions holding that § 1226 applies to individuals similarly-situated to Petitioner, the government seemingly ignores the courts' sound reasoning and continues to misapply § 1225. At the same time, immigration judges continue to deny bond based on *Matter of Yajure Hurtado*.

57. Petitioner remains in unlawful detention because the government applies an impermissibly broad reading of § 1225 to him. Additionally, Petitioner's detention is unlawful because ICE revoked his conditional parole—granted in accordance with § 1226(a)—and arrested Petitioner without affording him any procedural protections as required by law and the Due Process Clause of the Fifth Amendment.

58. Without relief from this court, Petitioner faces the prospect of months, or even years, in immigration custody, separated from his community. Accordingly, Petitioner seeks immediate release from detention, or in the alternative, an immediate bond hearing where the government must bear the burden of establishing by clear and convincing evidence that Petitioner is a flight risk or a danger to the community.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA | 8 U.S.C. § 1226 and Implementing Regulations

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

60. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who were residing in the United States pursuant to a grant of conditional parole under § 1226(a) at the time of arrest.

61. The Court should reject any argument that Petitioner falls under § 1225(b)(1) or (b)(2) on the basis that he is an "applicant for admission" or was paroled at a port of entry because such arguments ignore that DHS released Petitioner under § 1226(a) and that Petitioner has an established liberty interest from his years living freely in the United States under an OREC.

62. DHS re-detained Petitioner without notice or individualized assessment as to his dangerousness or flight risk, despite DHS's previous determination that Petitioner posed neither.

63. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

64. Accordingly, Petitioner's detention is properly governed by § 1226(a), and he is entitled to immediate release under that provision because DHS failed to provide him notice or a pre-deprivation hearing before revoking his release on his own recognizance.

COUNT II

Violation of Fifth Amendment Due Process

65. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

66. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. The Supreme Court has long-established that noncitizens are afforded due process rights. *Reno v.*

Flores, 507 U.S. 292, 306 (1993); *Zadvydas*, 533 U.S. at 690.

67. To determine whether civil detention violates an individual's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge,* 424 U.S. 319 (1976).

68. Petitioner has a fundamental interest in liberty and being free from official restraint. He acquired a substantial liberty interest in the more than three years that he remained out of custody and living in the United States.

69. The government's assertion of the wrong detention authority and revocation of Petitioner's release on recognizance without any process presents a significant risk of erroneous deprivation of Petitioner's liberty interest. The government's position lacks support in the plain text of the INA and contravenes longstanding interpretation and prevailing case law. Respondents' interpretation prohibits any review of their unilateral decision to re-detain Petitioner, despite their prior determination that Petitioner warranted release on his own recognizance.

70. Respondents re-detention of Petitioner without a bond redetermination hearing *prior to his re-detention*, as to whether he is a flight risk or danger to others, violates his right to due process.

71. Any appeal to the BIA would be futile because the BIA has adopted the same erroneous interpretation of the law as DHS. *Carr v. Saul*, 593 U.S. 83, 93 (2021) ("[i]t makes little sense to require litigants to present claims to adjudicators who are powerless to grant the relief requested.") In essence, Petitioner has no meaningful opportunity, outside of this Petition, to challenge the fact of his detention based on an incorrect reading of the law or his unjustified detention after being at liberty for more than three years before ICE detained him following his Master Calendar hearing.

72. There is no significant governmental interest in keeping Petitioner detained. To the extent that the government has an interest in ensuring Petitioner is not a danger and will appear at future immigration hearings, DHS already made that determination and released Petitioner pursuant to § 1226(a) in January 2022. Petitioner has complied with the terms of his release, has no criminal history, and wishes to continue pursuing his asylum claim.

73. The government's interest and any administrative burden in providing Petitioner with procedural due process prior to revoking his release and detaining him is low.

74. Petitioner's continued detention without procedural due process amounts to a serious deprivation of his constitutional rights and violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the U.S. District Court for the District of New Mexico while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner immediately;

e. Order that Respondents are enjoined and restrained from re-detaining Petitioner unless the government demonstrates, by clear and convincing, evidence at a pre-deprivation bond

hearing before a neutral decisionmaker, that Petitioner is a flight risk or danger to the community, such that his physical detention is legally justified;

f. Order Respondents to file a Notice of Compliance within seven days of the Court's order;

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

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

Date: February 2, 2026

Respectfully submitted,

/s/ *Alexa S. White*

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

I, Enrique Nunez Elorza, am one of the attorneys for Diosdanis Garces-Guevara, and submit this verification on his behalf. Based on my conversation with Mr. Garces-Guevara and my review of his documents, I verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and the documents submitted in support thereof are true and correct to the best of my knowledge.

Dated this 30th Day of January, 2026.

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