
UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Ricardo Ramon Martinez Garrido,¹

Petitioner,

v.

JUAN BALTASAR, Warden, GEO Group ICE
Processing Center;

ROBERT HAGAN, Director of the Denver Field
Office for U.S. Immigration and Customs
Enforcement;

TODD LYONS, Acting Director of U.S.
Immigration and Customs Enforcement;

KRISTI NOEM, Secretary, U.S. Department of
Homeland Security; and

PAMELA BONDI, U.S. Attorney General,
in their official capacities,

Respondents.

Case No.: 26-cv-428

**EXPEDITED
CONSIDERATION
UNDER 28 USC § 1657(a)
REQUESTED**

PETITION FOR WRIT OF HABEAS CORPUS

¹ Petitioner's name is spelled incorrectly as "Carrido" in DHS and EOIR records. However, his correct legal name is Ricardo Ramon Martinez Garrido, with a G instead of a C.

INTRODUCTION

1. This petition arises from the warrantless arrest of Ricardo Ramon Martinez Garrido—a resident of Colorado for about 25 years and father of three U.S. citizen children with no criminal history—without any individualized consideration of flight risk as required by 18 USC § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii) more than one month ago. His unlawful arrest and detention alone warrants immediate release.
2. But that is not all—despite being held in DHS custody at the ICE Processing Center for immigration detention in Aurora, Colorado, since December 31, 2025, the government now advances a theory that, because DHS refuses to issue a custody determination on a designated form, the immigration court lacks jurisdiction to issue a bond.
3. Respondents' detention of Petitioner since December 31, 2025, is an indisputable fact in this case, and therefore DHS's custody determination is clear. Nevertheless, DHS has refused to issue a Notice of Custody Determination on Form I-286, and the immigration court disclaims the ability to issue a bond determination²—even though neither the statute nor regulations require the form for an immigration judge to have jurisdiction to redetermine bond.
4. DHS's sole rationale for its refusal to issue such form for Petitioner (which, again, is not required to confirm DHS's custody redetermination) is DHS's

² See Exh. 1, Order of the Immigration Judge.

position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)—a position which has been maintained as unlawful by the overwhelming majority of federal court decisions addressing this legal question across the country.³

5. This government tactic is the latest in a series of unlawful attempts to deny bond hearings to noncitizen residents that have triggered an avalanche of habeas corpus petitions around the country, with courts overwhelmingly finding the government *was* required to provide a bond hearing.⁴
6. Having been thwarted in their efforts to deny bond by misclassifying people living in this country as applicants for admission, the government has now

³ See, e.g. *Gimenez Rivero v. Mina*, No. 6:26-cv-00066-RBD-NWH, Order, Injunction, and Order to Show Cause at 1 (M.D. Fla. Jan. 26, 2026), Doc. No. 15 (“Judges across the country—the vast majority who have considered this question—have told the Government many times in the past few months that its interpretation of the law is wrong . . . This is no partisan stance: judges appointed by every President from Ronald Reagan through Donald Trump have said so.”) (internal citations omitted); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, Final Judgment, Doc. No. 94 (C.D. Cal. Dec. 18, 2025) (declaring individuals in petitioner’s situation who entered without inspection or apprehension and have resided in the United States prior to the initiation of removal proceedings are detained under 8 U.S.C. §1226(a) and therefore not subject to mandatory detention under § 1225(b)(2), also vacating the ICE Policy Memorandum underlying this position as unlawful) and *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, Doc. 82, Dkt. No. 41 (C.D. Cal. Nov. 25, 2025) (order granting plaintiff petitioners’ motion for class certification); *Jimenez Facio v. Baltazar*, Doc. No. 13, No. 25-cv-03592-CYC, Order at 3–4 (D. Colo. Dec. 12, 2025) (“Courts have therefore held, with a regularity bordering on monotonous, that because section “1225(b)(2)(A) applies only to those noncitizens who are actively seeking admission to the United States, it cannot, according to its ordinary meaning, apply to persons who have already been residing in the United States for several years.”) (collecting cases that overwhelmingly reject Respondents’ argument); see also *Choglo Chafra v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541, Order on Petitions for Writs of Habeas Corpus, Doc. 26, at *12–13 (D. Me. Sept. 22, 2025) (collecting cases that overwhelmingly reject Respondents’ argument); *Ochoa Ochoa v. Noem*, No. 25-cv-10865, 2025 WL 2938779, Memorandum Opinion and Order, Doc. 20, at *10 n.8 (N.D. Ill. Oct. 16, 2025) (collecting cases that overwhelmingly reject Respondents’ argument). See also Kyle Cheney, *Hundreds of Judges Reject Trump’s Mandatory Detention Policy with No End in Sight*, POLITICO (Jan. 5, 2026), www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-detention-00709494 (reporting that review of thousands of federal dockets reveals that by January 5, 2026, 308 judges ordered release or bond hearings in more than 1,600 cases while “just 14 judges, including 11 appointed by President Donald Trump himself, have sided with the administration’s position”).

⁴ *Id.*

shifted tactics in this case. Under this new rationale, the immigration judge cannot *redetermine* bond if DHS never makes the initial bond determination. Ergo, noncitizens can be held *indefinitely without individualized review* as long as DHS never completes the paperwork stating they won't be given bond.

7. This position finds no support in statute or regulations. It flies in the face of decades of practice. And, unless it is immediately stamped out, it is likely to lead to a new avalanche of federal habeas filings necessitated by the government's lawless determination to deprive noncitizens of their liberty without due process.
8. To be clear, Petitioner does not challenge any discretionary denial of bond. Petitioner challenges (a) his unlawful warrantless arrest and (b) the unlawful legal determination that Petitioner is categorically ineligible for bond under § 1226(a) and related unlawful refusal to redetermine Petitioner's custody because DHS did not formalize its decision to continue custody without bond on a form.
9. For the reasons discussed herein, Petitioner asks that this Court swiftly grant this writ of habeas corpus requiring Respondents to immediately release Petitioner from custody and enjoining Respondents from re-detaining Petitioner during the pendency of his removal proceedings.

10. Alternatively, Petitioner seeks an order requiring Respondents to provide a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days, and, if such hearing is not provided within such timeframe, immediate release.

CUSTODY

11. Petitioner is in the physical custody of Respondents, imprisoned at the Aurora ICE Processing Center, an immigration detention center in Aurora, Colorado, since December 31, 2025. Petitioner is under direct control and supervision of Respondents.

JURISDICTION

12. This Court has subject matter jurisdiction over this petition pursuant to 28 U.S.C. § 2241(c), which authorizes federal courts to grant writs of habeas corpus to persons held in custody in violation of the Constitution or laws of the United States.
13. This Court also has federal question jurisdiction under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*
14. Jurisdiction is further proper under Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).
15. This Court has authority to grant relief pursuant to 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

16. Venue is proper in this judicial district under 28 U.S.C. § 2241 because Petitioner is detained at the GEO Group’s ICE Processing Center in Aurora, Colorado, which is within the jurisdiction of this district and is in the immediate physical custody of Respondent Juan Baltasar, who resides in this district for purposes of this action. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1005–06 (2025) (per curiam) (“For core habeas petitions, jurisdiction lies in only one district: the district of confinement” (internal quotation marks and citations omitted.)).
17. Venue is also proper under 28 U.S.C. § 1391(e)(1) because Respondents are officers, employees, or agencies of the United States acting in their official capacities; because a substantial part of the events or omissions giving rise to Petitioner’s claims—including Petitioner’s detention, the denial of bond eligibility, and Respondents’ refusal to comply with binding declaratory judgment—occurred within this district; Petitioner resides in this District, and no real property is involved in this action.

REQUIREMENTS OF 28 U.S.C. § 2243

18. This Court must grant the petition for a writ of habeas corpus or issue an order directing Respondents to show cause “forthwith” why the writ should not be granted, unless it appears from the application that Petitioner is not entitled to relief. 28 U.S.C. § 2243.

19. If the Court issues an order to show cause, Respondents must file a return within three days unless, for good cause, additional time not exceeding twenty days is allowed. *Id.*
20. Prompt resolution is particularly warranted here because the legal issues governing Petitioner's detention have already been resolved overwhelmingly in Petitioner's favor by hundreds of federal courts across the country⁵ and Respondents' continued detention of Petitioner is unlawful.
21. Habeas corpus is intended to provide a "swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). Where, as here, a petitioner is detained in clear violation of federal law and binding judicial authority, expedited relief is required.

PARTIES

Petitioner

22. Petitioner Ricardo Ramon Martinez Garrido has been a Colorado resident for approximately twenty-five years. He has been in immigration detention since December 31, 2025, and remains detained at the Aurora ICE Processing Center.

Respondents

23. Respondent Juan Baltasar is the Warden of the Aurora Contract Detention Facility. Respondent Baltasar has immediate physical custody of Mr.

⁵ See Note 3, *supra*.

Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain non-citizens and is sued in his official capacity. Respondent Baltasar is a legal custodian of Petitioner.

24. Respondent Robert Hagan is the Director of the Denver Field Office for U.S. Immigration and Customs Enforcement. As such, Director Hagan is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official capacity.
25. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is responsible for Petitioner's detention and is sued in his official capacity.
26. 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, the component agency responsible for Petitioner's detention. Respondent Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
27. Respondent Pamela Bondi is the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). She has the authority to adjudicate removal cases and oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals. Respondent Bondi is a legal custodian of Petitioner and is sued in her official capacity.

STATEMENT OF FACTS

28. Petitioner has resided in Colorado for nearly twenty-five years. He has a massive network of community support and is an active member of the St. Therese Catholic Church, where he serves as a beloved youth group leader. He is married to a DACA recipient and is the father of three sons, all of whom are United States citizens. Petitioner and his wife have filed joint tax returns since 2022 and actively care for his two youngest sons, ages eighteen and three. Petitioner has paid taxes for most years dating back to 2007. He is prima facie eligible for relief from removal in the form of Cancellation of Removal for Non-Permanent Residents. 8 U.S.C. § 1229b(b)(1).
29. On December 31, 2025, Petitioner was driving to church with his mother when an unmarked vehicle stopped him and asked for his ID. He was not told that he had committed any traffic infraction, nor provided a basis for his stop, but he provided his valid Colorado driver's license upon request. After his ID was run, he was summarily taken into DHS custody without a valid warrant. *See* Exh. 2, Form I-200 Warrant for Arrest of Alien dated December 31, 2025 *with no basis for the determination*. *See also* Exh. 3 I-213 submitted by DHS (evincing that Petitioner was a collateral arrest as DHS was attempting to locate a different individual; that DHS knew Petitioner has no criminal history, is married to a DACA recipient, and has three children born in the United States).

30. Petitioner was subsequently transferred to the ICE Processing Center in Aurora, Colorado where he continues to be held in custody.
31. Significantly, Form I-200 Warrant for Arrest of Alien dated December 31, 2025, shows no basis checked for the probable cause determination required for the warrant to be issued and effectuated. *See* Exh. 2, Form I-200 Warrant for Arrest of Alien. Further, the proof of service states that the document was read to him in Spanish. It was not. *Id.*
32. After this encounter, DHS also served him with a Notice to Appear (“NTA”) on December 31, 2025, placing Petitioner in removal proceedings for the first time. *See* Exh. 4, Notice to Appear. The NTA alleges that Petitioner is not a citizen or national of the United States; that he is a native and citizen of Mexico; that he entered the United States at or near Naco, Arizona, on or about June 15, 2001; and that he was not admitted or paroled after inspection by an immigration officer. It charges Petitioner as “an alien present in the United States who has not been admitted or paroled” and as subject to removal from the United States pursuant to 212(a)(6)(A)(i). *Id.*
33. Petitioner’s removal proceedings have continued while he remains in immigration detention without individualized review of DHS’s de facto decision to detain him without bond. Absent relief from this Court, he faces the prospect of prolonged detention—potentially lasting months or years—without the opportunity for a bond hearing to which he is legally entitled.

LEGAL FRAMEWORK

ICE Arrest Authority with and Without a Warrant

34. In general, a noncitizen subject to removal proceedings can be arrested following the issuance of an administrative warrant. 8 U.S.C. § 1226(a). The warrant is issued on Form I-200. 8 C.F.R. § 236.1(b). ICE officers may then decide to release the noncitizen on bond if they are satisfied that the individual would not pose a risk to property or persons and that the individual is likely to appear for any future proceedings. 8 C.F.R. § 236.1(c)(8).
35. The statute allows immigration officers to arrest a noncitizen present in the United States in violation of law without a warrant if the officer determines the noncitizen “is likely to escape before a warrant can be obtained for arrest.” 8 U.S.C. § 1357(a)(2).
36. Where the officer makes a warrantless arrest, a “determination” on whether the noncitizen will be “continued in custody or released on bond or recognizance” must be made within 48 hours absent emergency or other extraordinary circumstance. 8 C.F.R. § 287.3(d).

Custody Determinations and Mandatory Detention

37. Since 1952, U.S. immigration law has provided that aliens detained during the pendency for removal proceedings may seek release on bond.⁶ Today,

⁶ INA § 242(a) (1952) (“Pending a determination of deportability in the case of any alien as provided in subsection (b) of this section, such alien may, upon warrant of the Attorney General, be arrested and taken into custody. Any such alien taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability, (1) be continued in custody; or (2) be

the bond statute provides that aliens present in the U.S. without authorization “may be arrested and detained” upon issuance of an arrest warrant. 8 U.S.C. § 1226(a). When the alien has not committed a circumscribed set of crimes or engaged in terrorist activity, the government “may release the alien” “on bond of at least \$1,500” or “conditional parole.” 8 U.S.C. § 1226(a)(2)(A-B), (c). Alternatively, the government “may continue to detain the alien.” 8 U.S.C. § 1226(a)(1).

38. When Congress enacted the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”) in 1996, its provisions eliminated bond eligibility for three groups: (1) those “arriving in the United States” who have not been physically present in the U.S. for at least two years; (2) those subject to a final deportation order; and, (3) “applicants for admission” who are “seeking admission” and “not clearly and beyond a doubt entitled to be admitted.” §§ 1225(b)(1)(A)(i), (iii)(II); § 1231; § 1225(b)(2)(A). Group (1) is ordered “removed from the United States without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(II). Group (2) is subject to mandatory detention. 8 U.S.C. § 1231(a)(2)(A). So is group (3). 8 U.S.C. § 1225(b)(2)(A).

released under bond in the amount of not less than \$500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe; or (3) be released on conditional parole.”). INA § 242(b) (1952), in turn, establishes proceedings “to determine the deportability of any alien.”). Conjunctively, the statutes demonstrate that any noncitizen subject to a deportation proceeding was subject to an Attorney General determination that they be continued in custody, released under bond, or released on conditional parole.

39. After IIRIRA's enactment, the Immigration and Naturalization Service promulgated regulations clarifying that noncitizens who entered the United States without inspection are generally detained under § 1226(a), not § 1225. See *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) (explaining that “[d]espite being applicants for admission, aliens who are present without having been admitted or paroled ... will be eligible for bond and bond redetermination”) (emphasis added).
40. The Supreme Court re-affirmed this distinction between §§ 1226 and 1225 as follows: “U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Jennings v. Rodriguez*, 582 U.S. 281, 289 (2018) (Alito, J.).
41. “Courts have therefore held, with a regularity bordering on monotonous, that because section “1225(b)(2)(A) applies only to those noncitizens who are actively seeking admission to the United States, it cannot, according to its ordinary meaning, apply to persons who have already been residing in the United States for several years.” *Jimenez Facio v. Baltazar*, Doc. No. 13, No. 25-cv-03592-CYC, Order at 3–4 (D. Colo. Dec. 12, 2025) (quoting

Loa Caballero v. Baltazar, No. 25-cv-03120-NYW, 2025 WL 2977650, at *6 (D. Colo. Oct. 22, 2025) ((quoting *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 489 (S.D.N.Y. 2025)). See, e.g., *Barreno v. Baltazar*, No. 25-cv-03017-GPG-TPO, 2025 WL 3190936, at *1–4 (D. Colo. Nov. 14, 2025); *Hernandez v. Baltazar*, No. 25-cv-03094-CNS, 2025 WL 2996643, at *1–8 (D. Colo. Oct. 24, 2025); *Moya Pineda v. Baltazar*, No. 25-cv-02955-GPG, 2025 WL 3516291, at *1–2 (D. Colo. Oct. 20, 2025); *Mendoza Gutierrez v. Baltazar*, No. 25-cv-02720-RMR, 2025 WL 2962908, at *4–9 (D. Colo. Oct. 17, 2025); *Garcia Cortes v. Noem*, No. 25-cv-02677-CNS, 2025 WL 2652880, at *2–3 (D. Colo. Sept. 16, 2025).

42. Decades of applying this discretionary bond determination framework outlined in 8 U.S.C. § 1226(a) to people who have already entered and have been residing in the United States (particularly for decades, as in Petitioner’s case) prior to apprehension and detention by immigration authorities came suddenly under assault on July 8, 2025, when ICE, “in coordination with the Department of Justice (DOJ),” issued new policy guidance “revisit[ing] its legal position on detention and release authorities” and determining that “section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission . . . **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released**

from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS.” See Exh. 5, U.S. Immigration and Customs Enforcement, *Interim Guidance Regarding Detention Authority for Applicants for Admission* (July 8, 2025) (emphasis in original).

43. On September 8, 2025, the DOJ’s Board of Immigration Appeals held that the “plain language” of 8 U.S.C. § 1225(b)(2)(A) removed Immigration Judges’ “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).
44. This reinterpretation of 8 U.S.C. § 1225(b)(2)(A) has triggered an avalanche of litigation throughout the United States. Federal court decisions on these cases nationwide have overwhelmingly rejected Respondents’ abrupt reinterpretation of the statutory scheme, and—contrary to both the ICE policy and the BIA’s decision in *Yajure Hurtado*—have held that § 1226(a), not § 1225(b), applies to noncitizens who are arrested while residing in the United States—as opposed to being arrested when arriving at the border. Indeed, federal courts across the country have overwhelmingly rejected ICE and the DOJ’s reinterpretation of 8 U.S.C. § 1225(b), holding that noncitizens who were not apprehended upon entry and were residing in the

United States at the time of arrest must be afforded bond hearings. *See* Note 3, *supra*.

APPLICATION TO PETITIONER'S CASE

The Warrantless Arrest of Petitioner without an Individualized Flight Risk Determination Violates the Statute, Regulations, and Due Process

45. DHS-produced documents in this case indicate that Petitioner was not the initial target of any arrest operation. *See* Exh. 3, I-213. After Petitioner was stopped driving his vehicle, at some point ICE officers issued an I-200 administrative arrest warrant. *See* Exh. 2, Form I-200.
46. DHS officers failed to complete the I-200 section specifying what “[t]his determination”—that Petitioner “is removable from the United States” based on “probable cause”—“is based upon.” *Id.* As written, the warrant is not “based upon” anything at all and is necessarily defective.
47. Without a properly completed I-200 arrest warrant, Petitioner’s arrest constituted a warrantless arrest. A warrantless arrest can only be made with a determination that a noncitizen “is likely to escape before a warrant can be obtained for his arrest.” 8 U.S.C. § 1357(a)(2). Here, no such determination was made.
48. Indeed, a determination that Petitioner constitutes a flight risk would defy logic given his deep roots and family connections to Colorado. Petitioner has lived in Colorado for approximately twenty-five years. He has three U.S. Citizen children and no criminal history. He is *prima facie* eligible for relief

from removal in the form of Cancellation of Removal for Non-Permanent Residents. 8 U.S.C. § 1229b(b)(1).

49. Nor can Respondents simply rely on a conclusory assertion that Respondent may not be inclined to wait for immigration officers to obtain a warrant. Such a finding would serve to justify *any* warrantless arrest of a noncitizen without immigration status and would effectively read the requirement of a determination that a noncitizen be deemed likely to escape out of 8 U.S.C. § 1357(a)(2). *Moreno v. Napolitano*, 213 F.Supp.3d 999, 1007 (2016) (“Nor can it be the case that, simply by being potentially removable, an alien must be deemed to be likely to evade detention by ICE. Such a reading would render the limitations on warrantless arrest created by 8 U.S.C. §§ 1226(a) and 1357(a)(2) meaningless.”).
50. Separately, ICE’s failure to make a custody determination within 48 hours as to whether to maintain custody or whether to release Petitioner on bond or on his own recognizance violated 8 C.F.R. § 287.3(d). As such, his continued detention has been unlawful in violation of the regulations.

The refusal of Respondents to Provide Petitioner with an Initial Custody Determination and Custody Redetermination Violates 8 U.S.C. § 1226(a), its Implementing Regulations, and Petitioner’s Constitutional Right to Due Process.

51. In disclaiming jurisdiction to make a bond determination, the Immigration Judge (IJ) found that she could not conduct a custody redetermination hearing where DHS has not issued a Form I-286 Notice of Custody Determination. However, there is no statutory or regulatory requirement

that the government issue any specific form documenting DHS's decision to continue custody without bond in order for the IJ to redetermine that decision in a bond hearing. The form at issue is classified as a "Notice of Custody Determination" at 8 C.F.R. § 236(g) separately from the custody determination itself 8 C.F.R. 236.1(d)(1).

52. The rationale relied upon by the IJ is that bond redeterminations by the court are reviews of DHS initial determinations under the regulations. *See* 8 C.F.R. § 1003.19(a) ("Custody and bond determinations *made by the service* pursuant to 8 CFR part 1236 *may be reviewed by an Immigration Judge* pursuant to 8 CFR part 1236." [emphasis added]); 8 C.F.R. § 1236.1(d)(1) ("*After* an initial custody determination by the district director, including the setting of a bond, the respondent may, at any time before an order under 8 CFR part 1240 becomes final, request amelioration of the conditions under which he or she may be released. Prior to such final order, and except as otherwise provided in this chapter, the immigration judge is authorized to exercise the authority in section 236 of the Act ... to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released." [emphasis added]).
53. The key consideration when construing the regulatory text of 8 C.F.R. § 1003.19(a) and 8 C.F.R. § 1236.1(d)(1) is ""to effectuate the intent of the enacting body." *United States v. Christensen*, 419 F.2d 1401, 1403 (9th

Cir. 1969) (quoting *U.S. v. Miller*, 303 F.2d 703, 707 (9th Cir. 1962)).

Congress provided that the “Attorney General” “may release the alien” on bond or conditional parole, or “may continue to detain the alien.” 8 U.S.C. § 1226(a)(1)–(2). “[T]he natural meaning of ‘may’ in the context of the enabling clause is that it authorizes certain” “actions—ones that satisfy the subsequent specified conditions—and no others.” *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 166 (2004). The actions enabled by the Attorney General by statute and regulation are thus: (a) setting a bond and releasing Petitioner; (b) setting conditional parole and releasing Petitioner; or (c) continuing to detain the alien. While the Attorney General retains discretion over which option to choose, the only permissible options are the three enumerated by Congress. Congress thus intended for the DOJ to issue a determination regarding whether an alien is to be detained, released on bond, or released on conditional parole. *See also Matter of Garcia-Garcia*, 25 I&N Dec. 93, 96, 98 (BIA 2009) (8 C.F.R. § 1236.1(d)(1) confers upon Immigration Judges’ the authority to review “the District Director’s *decision to retain an alien in DHS custody*” and “an interpretation of the regulation limiting the Immigration Judge’s authority” in this sphere “would be inconsistent with the language of section 236(a) of the Act” and “would produce results that are incompatible with the objective of the statute.”).

54. “[B]efore the Government may exercise such discretion to detain a person, ‘§ 1226(a) and its implementing regulations require ICE officials to make an *individualized custody determination*.’ That conclusion follows from the text of § 1226(a), which provides that the Attorney General “may continue to detain” an arrested noncitizen, as “[t]he Supreme Court has interpreted similar ‘may’ language in other provisions of the INA to require the Attorney General to make ‘some level of individualized determination.’” *Benitez v. Francis*, 795 F.Supp.3d. 475, 493 (S.D. N.Y. 2025) (emphasis added) (internal citations omitted). Put differently, when Petitioner’s bond hearing occurred, the fact that the government had “continue[d] to detain” Petitioner is itself an “initial custody determination” that the IJ had jurisdiction to review.
55. Nevertheless, the Attorney General’s officer sought to apply a fourth option not supplied by statute: that no bond determination be reached either now or in the future. The IJ found: “The Department has not determined bond in the first instance and does not plan to do so.” Exh. 1, Order of the Immigration Judge (emphasis added) (also summarizing DHS’ position that Petitioner be mandatorily detained under 8 U.S.C. § 1225). The IJ further noted that, as long as DHS did not issue a bond determination, the IJ would not redetermine bond since “it does not have jurisdiction.” *Id.*
56. The decision contradicts decades of DOJ treatment of those in Petitioner’s position as “aliens who are present without having been admitted or

paroled” as “eligible for bond and bond redetermination” and even the DOJ’s own Immigration Court Practice Manual. *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997); *see also* Immigration Court Practice Manual Ch. 9.3(b) (providing, with limited exceptions, that an IJ “generally has jurisdiction to conduct a bond hearing if the alien is in Department of Homeland Security (DHS) custody.”)

57. Critically, the DOJ’s position would render the statute a nullity. If the DOJ is permitted to claim that it cannot decide bond until DHS issues a form, and DHS “may” issue the form at “any time” “up to the time removal proceedings are completed” (8 C.F.R. § 236(g)(1)), then DHS’ refusal to issue the form acts as a de facto elimination of the Attorney General statutory authority to issue bond determinations—and along with it, any subsequent judicial review. Noncitizens would be indefinitely detained, and that decision would not be reviewable by a federal court during removal proceedings’ years-long pendency. *See* 8 U.S.C. § 1226(e) (“The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review.”). Such an absurd result cannot be what Congress intended when it directed the Attorney General to make bond assessments as outlined *supra*.

58. Petitioner thus challenges Respondents' deviation from these longstanding procedural protections.

CLAIMS FOR RELIEF

COUNT I: Respondent's Detention of Petitioner Violates 8 U.S.C. § 1226(a)

59. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
60. Respondents' unlawful application of 8 U.S.C. § 1225(b)(2) mandating continued detention of Petitioner violates the INA.
61. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to individuals like Petitioner who previously entered the country and reside in the United States prior to being apprehended and placed in removal proceedings.
62. Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a). Petitioner's detention up to this point has thus been illegal, as Petitioner was not provided an individualized bond determination by either ICE or EOIR.

COUNT II: Warrantless Arrest Without Individualized Flight Risk Determination in Violation of Immigration and Nationality Act

63. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
64. Respondents arrested Petitioner without a properly completed administrative warrant. Without an administrative warrant specifying the legal basis for issuance, this arrest was legally warrantless.

65. To make a warrantless arrest, DHS officers must make an individualized determination that the noncitizen is likely to escape before a warrant can be issued. 8 U.S.C. § 1357(a)(2). DHS officers made no such determination, rendering the arrest and ensuing custody unlawful from its inception. Because Petitioner's custody is unlawful and has been since the time of arrest, the proper remedy is an order of immediate release.⁷

COUNT III: Arrest On Warrant Lacking Legal Basis in Violation of the Immigration and Nationality Act and Implementing Regulations

66. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
67. Regulations allow for the arrest of a noncitizen under the authority of Form I-200, Warrant of Arrest. 8 C.F.R. § 236.1(b).
68. The I-200 administrative warrant in this case was fatally flawed in that it failed to specify the legal basis for its issuance. The use of such this putative administrative warrant as the basis for arrest and custody was unlawful in violation of 8 U.S.C. § 1226(a) and 8 C.F.R. § 236.1(b).
69. Because Petitioner's custody premised on an uncompleted administrative warrant is unlawful and has been since the time of arrest, the proper remedy is an order of immediate release.⁸

⁷ See notes 10 and 11, *infra*. See also paragraphs 77 and 80.

⁸ See *id.*

**COUNT IV: Failure to Issue Custody Determination
in Violation of Regulations**

70. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
71. Because Respondents issued only a non-complete administrative warrant lacking any indication of the legal basis for issuance, Petitioner's arrest was effectively warrantless.
72. Where the officer makes a warrantless arrest, a determination on whether the noncitizen will be held in custody or released on bond or recognizance must be made within 48 hours absent emergency or other extraordinary circumstance. 8 C.F.R. § 287.3(d).
73. Petitioners' failure to issue a determination on whether he would be held in custody or released on bond or on his own recognizance within 48 hours of arrest constituted a violation of regulations.
74. Because Petitioner's custody has continued in violation of the regulations requiring a DHS determination on his custody, the proper remedy is an order of immediate release.⁹

COUNT V: Violation of Due Process

75. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
76. "It is well established that the Fifth Amendment [Due Process Clause] entitles aliens to due process of law in deportation proceedings." *Reno v.*

⁹ See notes 10 and 11, *infra*. See also paragraphs 77 and 80.

Flores, 507 U.S. 292, 306 (1993). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint— lies at the heart of the liberty [the Due Process Clause] protects.” *Zadvydas v. Davis*, 533 U.S., 690.

77. Petitioner has a fundamental interest in liberty and being free from official restraint, including his imprisonment in the Aurora Detention Center. Respondents’ conduct has undermined this interest in two ways. First, Respondents’ arrest of Petitioner, effectuated without a valid warrant and individualized flight risk determination, subjected Petitioner to loss of liberty without the due process afforded by law. Courts analyzing illegal ICE arrests in this district have sought to “restore plaintiffs” “to the position they would have occupied but for ICE’s unlawful conduct.” *Ramirez Ovando v. Noem*, No. 1:25-cv-03183-RBJ, Order Granting in part preliminary injunction, Doc. No. 49, at 60 (D. Colo. Nov. 25, 2025). Because the arrest itself was illegal at its conception, the Court held that the government was obligated to repay bond. *Id.* Here, any bond set would likewise force Petitioner to bear the costs of Respondents’ illegal arrest, violating the “[d]eeply rooted” “maxim” “that no man may take advantage of his own wrong.” *Glus v. Brooklyn Eastern District Terminal*, 359 U.S. 231, 3 L.Ed.2d 770, 79 S.Ct. 760 (1959). Accordingly, this Court should order that Petitioner be released immediately.

78. Second, Respondents deprived Petitioner of both an initial bond determination by ICE within 48 hours, as required by 8 C.F.R. § 287.3(d), and a subsequent bond redetermination by an IJ pursuant to the appropriate statute of detention: 8 U.S.C. § 1226(a).
79. While one “cannot forecast how immigration authorities would have exercised their discretion, had [Petitioner] received the process he was due,” it is “plausible that, had ICE faithfully applied § 1226, it would have decided not to detain [Petitioner]” and it is “likewise plausible that, even had ICE decided otherwise, an immigration judge thereafter would have released [Petitioner] on bond.” *Yao v. Almodovar*, No. 25-cv-9982 (PAE), 2025 WL 3653433, at * 21 (S.D.N.Y. Dec. 17, 2025).
80. The proper remedy¹⁰ is thus immediate release. “A bond hearing is “no substitute for the requirement that ICE engage in a deliberate process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause. The fact that Plaintiffs may seek review by an IJ of their initial bond determination does nothing to mitigate the harm to Plaintiffs in the time they are in detention

¹⁰The “equitable and flexible nature of habeas relief” affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“[H]abeas corpus is, at its core, an equitable remedy”). This Court should order a remedy that fully addresses the statutory and constitutional violations in this case and is efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 239 (1968) (the habeas statute “does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted”). Release is the customary remedy in habeas proceedings. *See* 28 U.S.C. § 2243 (the habeas should shall “dispose of the matter as law and justice require.”); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (finding “that the traditional function of the writ is to secure release from illegal custody”).

awaiting review. Indeed, given the nature of the constitutional violation [Petitioner] sustained here—i.e., Respondents’ failure to conduct any kind of individualized assessment *before* detaining him—any post-deprivation review by an immigration judge would be inadequate.¹¹ This is particularly so given that detention under § 1226(a) is frequently prolonged because it continues until all proceedings and appeals are concluded.” *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 496-497 (S.D.N.Y. 2025) (internal citations omitted, cleaned up), citing *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *3 and *Velasco Lopez v. Decker*, 978 F.3d 842, 852 (2d Cir. 2020); *see also Tumba Huamani v. Francis et al*, No. 1:25-cv-08110-LJL – Document 14 (S.D.N.Y. 2025), slip op. at 18; *Chen v. Almodovar*, 26 Civ. 291 (GBD) (S.D. N.Y. Jan 22, 2026), at 3; *Chipantiza-Sisalema v. Francis*, 25 Civ. 5528 (AT) (S.D. N.Y. Jul 13, 2025), at 6 (all concluding that immediate release was the proper remedy when a Petitioner was illegally detained under § 1225 instead of § 1226).

81. In the alternative, Petitioner should be released if the government does not provide Petitioner, within 7 days, a bond hearing where the government bears the burden of demonstrating that Petitioner should continue to be detained based on an individualized flight risk and danger to the community assessment. *Velasquez Salazar v. Dedos*, No.

¹¹ *See, e.g., Garcia Covarrubias v. Holston*, No. 2:25-cv-02445, 2026 WL 25970 (D. Nev. Jan. 5, 2026); *Crespo Tacuri v. Genalo*, No. 25-cv-06896, 2026 WL 35569 (E.D.N.Y. Jan. 6, 2026); *Moctezuma Macias v. Henkey*, No. 1:25-cv-00741-BLW, 2026 WL 18809 (D. Idaho Jan. 2, 2026); *Santiago Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 1–2, 2025).

1:25-cv-00835-DHU-JMR, 2025 WL 2676729 at*18–19 (D.N.M. Sept. 17, 2025) (“Respondents shall bear the burden of justifying, by clear and convincing evidence, Petitioner’s continued detention. If Petitioner has not received a lawful bond hearing by September 23, 2025, this Court ORDERS that he be immediately released.”); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, Doc. 18, at 20 (D. Colo. Oct. 22, 2025) (“**If Respondents to not do not provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) as required herein, Petitioner must be immediately released from detention.**”) (emphasis in original).

COUNT VI: Violation of Accardi Doctrine

82. Petitioners repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
83. In habeas proceedings, courts may invalidate agency action which violates the Accardi doctrine. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).
84. Federal agencies must follow their own formally established procedures, even if those procedures provide additional or greater rights beyond the applicable statute. *Accardi*, 347 U.S. at 260; *Service v. Dulles*, 354 U.S. 363, 388 (1957); *Vitarelli v. Seaton*, 359 U.S. 535, 539-40 (1959). This principle is particularly important where the agency’s deviation undermines “important procedural benefits.” *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 538-39 (1970).

85. Here, the regulations “protect fundamental constitutional or statutory rights” to due process in removal proceedings, so Petitioner need not make an affirmative showing that Respondents’ failure to follow procedure “prejudiced” him. *Leslie v. Attorney General*, 611 F.3d at 179-180 (3rd. Cir. 2010).
86. Respondents failed to follow their own regulations by (1) arresting Petitioner without a valid I-200 warrant in violation of 8 C.F.R. § 236.1(b)(1), (2) not issuing a custody determination within 48 hours of the warrantless arrest in violation of 8 C.F.R. § 287.3(d), and (3) refusing to hold a bond hearing in violation of 8 C.F.R. § 236.1(d)(1) and *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 97 (BIA 2009) (the “plain language of section 236(a) gives the Attorney General the authority, which is shared with the Secretary of Homeland Security, to place conditions on an alien’s release from custody,” and directly confers upon Immigration Judges the authority to review “the District Director’s *decision to retain an alien in DHS custody.*”) (emphasis added).¹²
87. Because Respondents violated their own detention procedures, Petitioner has been detained without a bond hearing for over a month. Petitioner’s detention has been illegal since its inception, warranting an order of immediate release.¹³

¹² *Ramos v. Bondi*, 155 F.4th 1154, 1165 (10th Cir. 2025), citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266, 74 S.Ct. 499, 98 L.Ed. 681 (1954) (“The BIA’s regulations legally bind the agency, as it is expected to render a decision in accord with its own collective belief.”).

¹³ See notes 10 and 11, *infra*. See also paragraphs 77 and 80.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Enjoin Petitioner's removal or transfer outside of this Court's jurisdiction during the pendency of this case;
- c. Pursuant to 28 U.S.C. § 2243, forthwith award the writ or issue an order directing respondents to show cause why the writ should not be granted within three days;
- d. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, and the *Accardi* doctrine;
- e. Grant a writ of habeas corpus directing Respondents to immediately release Petitioner and enjoining Respondents from re-detaining Petitioner during the pendency of his removal proceedings;
- f. Or, in the alternative, issue a writ of habeas corpus requiring Respondents release Petitioner unless they, within seven days, provide Petitioner a bond hearing where the government will bear the burden to show, by clear and convincing evidence, why Petitioner's detention should continue and enjoining the Immigration Court from denying bond on the basis that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2);

- g. Award Petitioner 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.

Dated: February 4, 2026

/s/ Aaron Hall
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Attorney for Petitioner

28 U.S.C. § 2242 VERIFICATION STATEMENT

I, Aaron C. Hall, submit this verification on behalf of the Petitioner because I am Petitioner's attorney. On the basis of documents reviewed and discussions with Petitioner and Petitioner's family, I hereby verify that statements made in this petition are true and correct to the best of my knowledge.

Dated: February 4, 2026

/s/ Aaron Hall
Attorney for Petitioner