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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Nestor Luis Moncada-Hernandez

Petitioner,

-against-

Donald J. Trump, in his official capacity as President of the United States; **Sheryl Hayashi**, in her official capacity as Denver Field Office Director, Immigration and Customs Enforcement, Enforcement and Removal Operations; **Todd M. Lyons**, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; **Pete R. Flores**, in his official capacity as Acting Commissioner for U.S. Customs and Border Protections; **Kristi Noem**, in her official capacity as Secretary of the United States Department of Homeland Security; **Marco Rubio**, in his official capacity as Secretary of State; **Pamela Bondi**, in her official capacity as U.S. Attorney General; and **Johnny Choate**, Warden, Aurora ICE Processing Center.

Respondents.

Case No.: 1:26-cv-436
District Judge:

PETITION FOR WRIT OF HABEAS CORPUS

PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This Petition for a Writ of Habeas Corpus is respectfully submitted on behalf of Nestor Luis Moncada-Hernandez ("Mr. Moncada" or "Petitioner"). Mr. Moncada is a Venezuelan national who fled his country on account of [redacted]

2. [redacted]

3. [redacted]

4. Fearing for his life in Venezuela, Mr. Moncada fled to the United States on or around November 28, 2021. He entered the United States at or near Brownsville, Texas, on or around December 1, 2021. Mr. Moncada was initially detained by Immigration and Customs Enforcement ("ICE") upon entry before being released on his own recognizance

on December 11, 2021. He moved to Florida to live with family already present there, subject to supervisory requirements, including electronic monitoring through an ankle monitor. He complied with all supervisory requirements for approximately ten months, resulting in the removal of said monitor and the cessation of his electronic monitoring requirement.

5. On November 21, 2022, Mr. Moncada timely filed his Form I-589, Application for Asylum and Withholding of Removal with U.S. Citizenship and Immigration Services ("USCIS"). Mr. Moncada was granted Temporary Protected Status ("TPS") and received his Employment Authorization Document ("EAD") May 4, 2023. *See* Exh. 1 (EAD 2023). His EAD remains current and valid, having been re-approved on January 10, 2025 under eligibility category C08, which applies to those with pending asylum applications. His current EAD is valid from through until January 9, 2030. *See* Exh. 2 (EAD 2025).
6. Mr. Moncada was placed in removal proceedings before an immigration court, though these proceedings were closed by the Immigration Judge ("IJ") on November 22, 2023 for a failure to prosecute. Mr. Moncada then filed a subsequent Form I-589 Application for Asylum and Withholding for Removal with USCIS on March 1, 2023. This application remains pending, and USCIS records indicate that he is currently awaiting an asylum interview.
7. Mr. Moncada was detained while working in his capacity as a taxi driver in Puerto Rico. He was approached and detained by Immigration and Customs Enforcement ("ICE") outside of an airport on or around December 15, 2025. Mr. Moncada has been detained at the Aurora ICE Processing Center in Colorado.

8. Furthermore, the Department of Homeland Security ("the Department" or "DHS"), through the Board of Immigration Appeals ("the Board" or "BIA"), has abruptly and unlawfully reversed decades of settled statutory interpretation and immigration practice in order to deny immigration bond hearings to potentially millions of people nationwide situated like Mr. Moncada.

9. The Board's recent decision in *Matter of Yajure Hurtado* posits a novel re-interpretation of the statutory framework of the Immigration and Nationality Act ("INA"), which strips immigration courts of the jurisdictional authority to hear custody redetermination for detained noncitizens who entered the United States without inspection. As a result, any individualized review of Mr. Moncada's custody has become unobtainable through the typical administrative channels.

10. This matter thus arises from the both the Government's failure to articulate a clear or lawful basis for Mr. Moncada's detention, sans determination by either the Department or any court relative to perceived danger to the community or flight risk that he might otherwise present, as well as their imposition of conditions of confinement that amount to punishment. Mr. Moncada's detention without a bond hearing is unlawful, a violation of the pertinent statutory regulations, and a violation of his right to due process under the Fifth Amendment to the United States Constitution.

JURISDICTION

11. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

12. Petitioner is in the physical custody of Respondents and is detained at the Aurora ICE Processing Center at 3130 N. Oakland St., Aurora, CO 80010.

13. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

14. Habeas relief is available when a person is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Any vindication of Mr. Moncada's statutory, constitutional, or regulatory rights can and must come from this Court through writ of habeas corpus.

15. 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

12. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

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

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

REQUIREMENTS OF 28 U.S.C. § 2243

15. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

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.*

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

PARTIES

18. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

19. Mr. Moncada is a Venezuelan national, a long-time resident of Florida, and is currently detained in Colorado. He is in custody and under the direct control of Respondents and their agents.

20. Respondent Donald J. Trump is named in his official capacity as the President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of Homeland Security. Respondent Trump's address is the White House, 1600 Pennsylvania Ave. NW, Washington D.C. 20500.

21. Respondent Sheryl Hayashi is sued in her official capacity as the Director of the Denver Field Office of U.S. Immigration and Customs Enforcement within the United States Department of Homeland Security. Respondent Hayashi is a legal custodian of Petitioner and has the Authority to release him. Respondent Hayashi's address is 950 17th Street, Suite 300, Denver, CO 80202.

22. Respondent Todd M. Lyons is named in his official capacity as the acting director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of Colorado, is legally responsible for pursuing efforts to remove Petitioner, and as such is the custodian of Petitioner. Respondent Lyon's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington D.C. 20536-5900.

23. Respondent Pete R. Flores is named in his official capacity as the acting commissioner of Customs and Border Protection ("CBP"). In this capacity, Respondent Flores leads CBP employees who are responsible for the administration of immigration laws and the execution of detention and removal determinations within its area of authority. Respondent Flores' address is 1300 Pennsylvania Ave. NW, Washington D.C. 20229.

21. Respondent Kristi Noem is named in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement ("ICE") the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner. Respondent Noem's address is 2801 Nebraska Avenue N.W., Washington, DC 20528.

22. Respondent Marco Rubio is named in his official capacity as the Secretary of State of the U.S. Department of State. Respondent Rubio's address is 2201 C Street N.W., Washington, D.C. 20451.

22. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner and her address is 950 Pennsylvania Avenue N.W., Washington, DC 20530.

25. Respondent Johnny Choate is named in his official capacity as the Warden of the Aurora ICE Processing Center, and is therefore the immediate custodian of Petitioner. Respondent Choate's address is 3130 North Oakland Street, Aurora, CO 80010.

STATEMENT OF FACTS

26. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

27. After fleeing violence and persecution on account of [redacted] in Venezuela, Mr. Moncada came to the United States and applied for asylum and other forms of relief to enable him to remain here and seek lawful permanent residence. His application remains pending before USCIS, and records indicate that he is still awaiting an asylum interview.

28. Mr. Moncada's arrest and subsequent detention by ICE occurred without any legitimate or material change in circumstances that might rationally justify his loss of personal liberty.

29. Mr. Moncada cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), including because Petitioner does not meet the criteria for Expedited Removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

30. Mr. Moncada cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, as a person already present in the United States, Petitioner is not currently "seeking admission" to the United States. This Court has found that "§ 1225(b)(2)(A)'s provision for mandatory detention does not apply to someone like [Petitioner], who has been residing in the United States for more than two years," *Hernandez v. Baltazar*, No. 1:25-cv-03094-CNS, 2025 U.S. Dist. LEXIS 210449, 2025 WL 2996643, at *11 (D. Colo. Oct. 24, 2025) (citing *Benitez v. Francis*, 2025 U.S. Dist. LEXIS 157214, 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025)).

31. Mr. Moncada is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).

32. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).

33. Mr. Moncada is *prima facie* eligible for a grant of release, as he has never been convicted of any crime and maintains strong community ties in Florida and Puerto Rico, where he has, between both locations, continuously resided since 2021.

34. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon their request, receive a custody redetermination hearing (colloquially called a "bond hearing") with strong procedural protections. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021).

LEGAL FRAMEWORK

35. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

36. Based solely on the allegation that Mr. Moncada entered the United States without being inspected and admitted, the Department denies him individualized review of his immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all ICE employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) – i.e., those who entered the United States without admission or inspection – to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

37. Echoing this sentiment, on September 5, 2025, the Board of Immigration Appeals issued a precedential decision, 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). This decision requires the Immigration Court to deny a bond hearing to all persons such as Petitioner.

38. The responsible administrative agency has therefore predetermined that Petitioner will be denied a bond hearing.

39. Petitioner's detention on this basis violates the plain language of the INA. Section 1225(b)(2)(A) does not apply to individuals, like Petitioner, who previously entered and are now residing within the United States. Instead, such individuals are subject to a different statute, § 1226(a), which allows for the discretionary release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection. *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

40. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2). This Court has held that Section 1226(a), rather than Section 1225(b)(2), governs the civil

detention of a noncitizen, who has resided in the United States for years. *Hernandez v. Baltazar*, No. 1:25-cv-03094-CNS, 2025 U.S. Dist. LEXIS 210449, 2025 WL 2996643, at *13 (D. Colo. Oct. 24, 2025) (citing *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771, 776 (E.D. Mich. 2025)); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 U.S. Dist. LEXIS 208290, at *15 (D. Colo. Oct. 22, 2025) ("Simply put, '[n]oncitizens who are just 'present' in the country …, who have been here for years upon years and never proceeded to obtain any form of citizenship, … are not 'seeking' admission."); *Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 U.S. Dist. LEXIS 208448, 2025 WL 2962908, at *15 (D. Colo. Oct. 17, 2025) ("a proper understanding of the relevant statutes, in light of their plain text, overall structure, and uniform case law interpreting them, compels the conclusion that § 1225's provision for mandatory detention of noncitizens 'seeking admission' does not apply to someone like [Mr. Gutierrez], who has been residing in the United States for more than two years." (citing *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 U.S. Dist. LEXIS 157214, 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025)); *Marin v. Baltazar*, No. 25-cv-03697-PAB, 2025 U.S. Dist. LEXIS 261962, 2025 WL 3677019, at *5 (D. Colo. Dec. 18, 2025) ("Therefore, *Jennings* distinguishes between noncitizens seeking admission, who are subject to § 1225, and noncitizens who are already present in the country, who are subject to § 1226."). Petitioner has lived in the United States for years and is, accordingly, only subject to civil detention, if at all, pursuant to § 1226(a).

41. Petitioner is being irreparably harmed by his ongoing detention sans any individualized review of his custody, in violation of his Fifth Amendment right to due process. *Free the Nipple – Fort Collins v. City of Fort Collins*, 916 F.3d 792, 805 (10th Cir. 2019) ("Most

courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury.").

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process
(Failure to Provide an Individualized Hearing for Domestic Civil Detention).

42. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

43. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

44. This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[] any person … of … liberty … without due process of law." U.S. Const. Amend. V.

45. "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).

46. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693; *see Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[Noncitizens] who have once passed through our gates, even illegally, may be expelled only after proceedings confirming to traditional standards of fairness encompassed in due process of law"); *cf. Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizens due process rights were limited where the person was not residing in the United States, but rather had been arrested 25 yards into U.S. territory, apparently moments after he crossed the border, while he was still "on the threshold").

47. "Freedom from imprisonment—from Government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690.

48. The Supreme Court has thus "repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

49. Mr. Moncada was arrested inside the United States, after living here for years, and is being detained without being provided any individualized detention hearing.

50. Mr. Moncada's continued detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

COUNT TWO
Violation of 8 U.S.C. § 1226(a) and Associated Regulations.

51. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

52. Mr. Moncada may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

53. Under § 1226(a) and its associated regulations, Mr. Moncada is entitled to a bond hearing. *See* 8 C.F.R. § 236.1(d); 8 C.F.R. § 1003.19(a)-(f).

54. Mr. Moncada has not and will not be provided with a bond hearing as required by law.

COUNT THREE

Violation of Fifth Amendment Right to Due Process
(Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a)).

55. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

56. Because Mr. Moncada is a person arrested inside the United States and is subject to detention, if at all, under 8 U.S.C. § 1226(a), the Due Process Clause of the Fifth Amendment to the United States Constitution requires that he receives a bond hearing with strong procedural protections. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) ("the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property");

57. Mr. Moncada has not been provided with a bond hearing as required by law and will be unable to obtain one due to the Board's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

58. Mr. Moncada's continued detention, sans opportunity for individualized review, is unlawful and violative of his constitutionally protected rights.

COUNT FOUR
Violation of Fifth Amendment Right to Due Process
(Substantive Due Process)

59. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

60. Because Mr. Moncada is not being provided a bond hearing, the Government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a "reasonable relation" to the purposes of immigration detention (*i.e.*, the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring).

61. Mr. Moncada's detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

COUNT FIVE
Violation of Fifth Amendment Right to Due Process
(Unlawful Punishment; Freedom From Cruel Treatment and Conditions of Confinement)

62. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

63. The Supreme Court has held that where "a restriction [of liberty] or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees." *Bell v. Wolfish*, 441 U.S. 520, 536-37 (1979). The Tenth Circuit has adopted and applied this standard. *See Dawson v. Bd. of Counnty Comm'rs*, 732 Fed.Appx. 624, 630-31 (10th Cir. 2018); *Dodds v. Richardson*, 614 F.3d 1185, 1192 (10th Cir. 2010) ("To avoid depriving an arrestee of due process, the government may only interfere with this protected liberty interest … if its actions reasonably relate 'to a legitimate goal.' Otherwise, the detention of such an arrestee would constitute punishment prior to trial, in violation of due process." (citation omitted)). Where the Government cannot or will not justify civil detention pursuant to legitimate governmental interests, as is the case in the instant matter, such detention is inherently arbitrary and excessive in relation to legitimate and non-punitive purposes of detention.

64. "[I]f pretrial detainees cannot be punished because they have not yet been convicted, then [civil detainees] cannot be subjected to conditions of confinement substantially worse than they would face upon commitment." *Lynch v. Baxley*, 744 F.2d 1452, 1461 (11th Cir.

1984)). "Or, to put it more colorfully, purgatory cannot be worse than hell." *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004).

65. The Fifth Amendment guarantees that civil detainees, including all immigrant detainees, may not be subject to punishment. The Government violates this substantive due process right when it subjects civil detainees to treatment and conditions of confinement that amount to punishment or does not ensure the detainees' safety and health.

66. Respondents have violated Petitioner's Fifth Amendment substantive due process rights by subjecting him to conditions of confinement that amount to punishment.

PRAYER FOR RELIEF

WHEREFORE, Mr. Moncada respectfully requests that this Court grant the following:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be transferred outside the District of Colorado pending resolution of this Petition.

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within ten days;

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately on conditions this Court deems just and proper, or in the alternative to exercise its inherent authority to hold its own bail hearing on the question of custody, or in the alternative to provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days and requiring any bond set to properly account for his ability to pay;

(5) 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

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

Respectfully submitted on this 4th February, 2026.

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