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

JAIME RODRIGO ANTE LATACUNGA,

Petitioner,

v. Case No: 2:26-cv-312

GEORGE DEDOS, Warden of Cibola County Correctional Center; and MARY DE ANDA-YBARRA, Field Office Director of El Paso Field Office, U.S. Immigration and Customs Enforcement,

Respondents.

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

**INTRODUCTION**

1. Petitioner Jaime Rodrigo Ante Latacunga is in immigration detention at the Otero County Processing Center. He is a citizen of Ecuador and entered the United States on July 26, 2023, near Lukeville, Arizona. Mr. Ante Latacunga, his wife, and two minor children, presented themselves to the immigration authorities and were released the following day under an Order of Release on Recognizance, which expressly states that 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 July 26, 2024. Exhibit B, Notice to Appear (NTA).

2. Despite having always complied with the terms of his release, U.S. Immigration and Customs Enforcement (ICE) arrested Mr. Ante Latacunga without a warrant on Tuesday, January 6, 2026, in North Minneapolis, Minnesota while he was working.

3. This petition concerns the detention statutes at 8 U.S.C. § 1225(b)(2)(A) and § 1226(a). The issues presented are not novel, and this Court and many others have correctly determined that individuals who are released on their own recognizance and subsequently re-detained by ICE are not subject to mandatory detention under § 1225(b)(2)(A). 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. Ante Latacunga, are charged as inadmissible for having entered the United States without inspection and were subsequently released under an OREC.

4. Petitioner's re-detention follows significant policy developments. On July 8, 2025, the Department of Homeland Security (DHS) issued a memorandum instructing all ICE employees to consider anyone present in the United States without admission—to be subject to mandatory detention under 8 U.S.C. § 1225(b) and ineligible for release except under § 1182(d)(5) parole. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedent decision adopting the reasoning of DHS's policy and holding that immigration judges lack jurisdiction to consider bond for any one present without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). More recently, in early January 2026, DHS launched Operation Metro Surge in Minnesota, described by government officials as "the largest federal immigration operation ever."[1]

5. Mr. Ante Latacunga has been forced to endure unlawful detention, and without

[1] Rebecca Santana & Michael Balsamo, *2,000 federal agents sent to Minnesota area to carry out 'largest immigration operation ever,' ICE says*, PBS News (Jan. 6, 2026), https://www.pbs.org/newshour/politics/2000-federal-agents-sent-to-minneapolis-area-to-carry-out-largest-immigration-operation-ever-ice-says (last accessed Feb. 5, 2026).

intervention from this Court, his unlawful detention will continue because DHS and the Executive Office for Immigration Review (EOIR) have concluded that he is subject to mandatory detention under § 1225(b)(2), despite initially detaining and releasing him under § 1226(a). Mr. Ante Latacunga's detention on this basis violates the plain language of the Immigration and Nationality Act (INA).

6. 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. Ante Latacunga appeared before immigration authorities upon entry and was released under an OREC, he is a *Maldonado Bautista* class member.

7. 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. Respondents lacked the legal authority under § 1225 or § 1226 to detain Mr. Ante Latacunga on January 6, 2026, and, consequently, his detention was unlawful from the outset. Thus, he is entitled to immediate release, rather than a bond hearing.

8. Accordingly, Mr. Ante Latacunga respectfully requests a writ of habeas corpus ordering Respondents to immediately release him from unlawful detention.

**JURISDICTION**

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

10. 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).

11. 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. 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. 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**

13. 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.* 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

14. Petitioner Jaime Rodrigo Ante Latacunga is 36 years old and a native and citizen of Ecuador. DHS released him on his own recognizance on July 27, 2023, 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 two years later, on January 6, 2026, ICE detained him in North Minneapolis, Minnesota while he was working. He has been in immigration detention since that time. Petitioner is in custody and under the direct control of Respondents.

15. Respondent George Dedos is sued in his official capacity as Warden of Cibola County Correctional Center, where Petitioner is detained. Respondent Dedos has immediate physical custody of Petitioner.

16. 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**

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

18. 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. 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 last year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

25. 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).

26. 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)).

27. 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 individuals 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 an individual 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.

28. 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.

29. 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).

30. 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 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 individuals "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]."

31. 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 one district 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)).

32. 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 two years pursuant to release on recognizance under § 1226(a) when ICE detained him.

33. 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 [January 6] 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.).

34. 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 two years later while he was working, 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).

35. 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 two years, Petitioner exercised his freedom under the OREC issued by DHS in 2023. 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 process while subjecting him to mandatory detention. 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 2023 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 Jaime Rodrigo Ante Latacunga has resided in the United States since DHS released him on his own recognizance on July 27, 2023. Exhibit A. Prior to his recent detention, he was living in Columbia Heights, Minnesota with his wife and children, ages 8 and 12 years old. Petitioner worked lawfully and was employed as a handyman for a property management company. He became actively involved with Emmanuel Covenant Church, provided and cared for his family, and complied with the terms of his release.

49. In early January, thousands of federal agents descended upon Minneapolis to carry out the "largest immigration operation ever." *See supra* n.1. On Tuesday, January 6, 2026, Petitioner and his wife left home to go to work. *See* Exhibit C, Declaration of Sandra Veronica Umajinga Latacunga. That afternoon, ICE agents arrested Petitioner as he was tending to a property as part of his job duties. ICE immediately detained him at the Bishop Henry Whipple Building in Minneapolis.

50. For more than 24 hours, Petitioner was unable to sleep and was given very little to eat. He was shackled and moved to ERO El Paso East Montana Detention Facility, and then to Cibola County Correctional Center. Meanwhile, in Minnesota Petitioner's wife and her co-worker searched for hours trying to locate Petitioner's vehicle. No one knew where Petitioner would be taken or whether he was safe. *See* Exhibit C.

51. During a panicked call from the detention facility in Texas, Petitioner told his wife, pastor, and a member of his church that ICE agents were pressuring him and other detainees to sign documents to self-deport and threatened that they could be dropped across the border or sent to El Salvador if they refused. Petitioner was also concerned about his children and feared that they could be taken away.

52. 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).

53. 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 January, there were no changed circumstances with respect to flight risk and dangerousness. He worked as a handyman with valid employment authorization, and he was actively complying with the terms of his release, just as he had always done.

54. Petitioner is in standard removal proceedings pursuant to 8 U.S.C. § 1229a. ICE charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without admission. *See* Exhibit B. Petitioner timely filed for asylum on October 30, 2024. Upon information and belief, Petitioner sought a bond hearing pro se and was denied on January 29 for lack of jurisdiction. Petitioner's next master calendar hearing will be held on February 26, 2026.

55. 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 disregarded his conditional parole—granted in accordance with § 1226(a)—and arrested Petitioner without a warrant. Furthermore, Respondents have not afforded Petitioner any procedural protections as required by law and the Due Process Clause of the Fifth Amendment.

56. Without relief from this court, Petitioner faces the prospect of months, or even years, in immigration custody, separated from his wife, minor children, and 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

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

58. 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.

59. 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.

60. 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.

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

62. 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

63. Petitioner repeats, re-alleges, and incorporates by reference each and every

allegation in the preceding paragraphs as if fully set forth herein.

64. 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.

65. 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).

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

67. The government's assertion of the wrong detention authority and disregard 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.

68. 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.

69. 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.")

70. 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 July 2023. Petitioner has complied with the terms of his release, has no criminal history, and wishes to continue pursuing his asylum claim.

71. 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.

72. 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. Declare that Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) is unlawful and violates the INA and Due Process Clause of the Fifth Amendment.

f. 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;

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

h. 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

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

Date: February 7, 2026

Respectfully submitted,

/s/ *Alexa S. White*

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

I represent Petitioner, Jaime Rodrigo Ante Latacunga, and submit this verification on his behalf. 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.

Date: February 7, 2026

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