UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO
DENVER DIVISION

Alain, NARANJO DOMINGUEZ Petitioner v. Juan Baltazar, Warden of Denver Contract Detention Facility Robert Hagan, in his official capacity as Field Office Director, Denver, U.S. Immigration and Customs Enforcement, Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security; Todd Lyons Acting Director of Immigration and Customs Enforcement, Pamela BONDI, in her official capacity as U.S. Attorney General Respondents.	Case No. 1:26-cv-00482 **AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

This case concerns the unlawful detention of Alain Naranjo Dominguez ("Petitioner"), a Cuban national whom Department of Homeland Security ("DHS") apprehended and detained on May 27, 2025, while he was in full removal proceedings under 8 U.S.C. § 1229a. *See* Exh. A-C., DHS Form I-862 Notice to Appear, DHS Form I-261 Additional Charges of Inadmissibility/Deportability and DHS Form I-213 Record of Deportable/Inadmissible Alien. For more than three years, Petitioner lived in the community, complied with all Immigration and Customs Enforcement ("ICE") supervision, appeared at every required court proceeding, and pursued his asylum claim. On May 27, 2025, ICE detained Petitioner despite no criminal conduct, no violation of release conditions, and no change in his immigration posture.

The Respondent now asserts that Petitioner is an "applicant for admission subject to mandatory detention" under 8 U.S.C. § 1225 and therefore is ineligible for a bond hearing. That assertion is based solely on a post hoc reclassification that contradicts DHS's prior custody determinations and the statutory scheme governing Petitioner's detention. As a result, Petitioner is being detained under a provision that does not apply to him.

STATEMENT OF FACTS

Petitioner, Alain Naranjo Dominguez, is a native and citizen of Cuba. *See* Exh. A, DHS Form I-862. On February 11, 2022, the Petitioner entered the U.S., without inspection, at or near San Luis, Az. *Id.* DHS issued Petitioner a Notice to Appear, placed him in removal proceedings under 8 U.S.C. § 1229a, and charged him as a noncitizen present in the U.S. without admission or parole. *Id.* On February 12, 2022, DHS issued Form I-286, Notice of Custody Determination,

explicitly citing 8 U.S.C. § 1226 and DHS Form I-200, Warrant for Arrest of Alien. *See* Exh. D-E, DHS Form I-286 and DHS Form I-200. On that same day, the Petitioner also was issued an Order of Release on Recognizance, releasing the Petitioner pursuant to 8 U.S.C. § 1226. *Id.*, *See* Exh. E, ICE Form I-220A.

On May 27, 2025, within U.S. territory, the Petitioner was apprehended and detained by DHS, and he has been held in detention ever since. *See* Exh. A-C., DHS Form I-862; Notice to Appear, DHS Form I-261 Additional Charges of Inadmissibility/Deportability and DHS Form I-213 Record of Deportable/Inadmissible. On December 2, 2025, Petitioner's counsel filed a "Motion to set Hearing for Bond and Custody Redetermination," under 8 U.S.C. § 1226(a). *See* Exh. G, Petitioner's Motion to set Hearing for Bond and Custody Redetermination ("Motion for Bond"). Despite the evidentiary record, on December 8, 2025, the Immigration Judge denied access to a bond hearing citing a lack of jurisdiction, *See* Exh. H, Order of the Immigration Judge.

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is held in custody within this District and challenges the legality of that custody. *See* 28 U.S.C. § 2241(c)(3). The habeas petition does not seek review of a final order of removal and therefore is not barred by 8 U.S.C. § 1252(a)(5) or (b)(9). A § 2241 petition for a writ of habeas corpus must be addressed to the federal district court in the district where the prisoner is confined. *United States v. Scott*, 803 F.2d 1095, 1096 (10th Cir. 1986). As such, venue is proper in the Denver Division because Petitioner is detained at Denver Contract Detention Facility, located at 3130 N. Oakland St., Aurora, CO 80010, within this Division, and the immediate custodian is located here. Therefore,

the case is ripe for adjudication.

ARGUMENT

I. Prudential Exhaustion is not required.

The Board of Immigration Appeals is applying its precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) to remove Immigration Judge's jurisdiction over bond hearings. As a result, an administrative appeal would serve no purpose.

Generally, "a court may excuse exhaustion if administrative remedies would be futile, when administrative remedies would provide inadequate relief, or when the agency has adopted a policy or practice of general applicability which is contrary to law." See *Bryan v. Off. of Pers. Mgmt.*, 165 F.3d 1315, 1319 (10th Cir. 1999).

II. Unlawful Detention (Ultravires Agency Action) – The government is detaining the petitioner under the wrong statutory scheme.

The BIA's decision in *Yajure Hurtado* asserts that anyone who entered without admission is perpetually an "applicant for admission," thus subject to § 1225 mandatory detention under 8 U.S.C. § 1225(b)(2). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218–23 (BIA 2025). There are several reasons why the board's expansive interpretation of 8 U.S.C. § 1225(b)(2) misreads the statute. Most recently confirmed in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). In *Maldonado Bautista* the court certified the 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 the Department of Homeland Security makes an initial custody determination. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at 9 (C.D. Cal. Nov. 25, 2025).

As the Supreme Court recognized in *Jennings*, § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "*at the Nation's borders and ports of entry*, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *See Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018).

Throughout its text, 8 U.S.C. § 1225 repeatedly refers to "inspections," a term not expressly defined in the statute, but which ordinarily connotes an examination conducted at or shortly after physical entry into the United States. See 8 U.S.C. § 1225 (entitled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"); 8 U.S.C. §§ 1225(b)(1)–(2); 8 U.S.C. § 1225(d)(1). Many statutory provisions, various regulations and agency precedent discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 1225 has a limited temporal and geographic scope. *See, e.g.* 8 U.S.C. §§ 1187 (h)(2)(B)(i), 1225A; 8 C.F.R. § 1225.1; *Matter of Quilantan*, 25 I&N Dec. 285, 289–90 (BIA 2010).

Consistent with this focus on the moment of physical entry, § 1225(b)(2) is limited to those in the process of "seeking admission." *See* generally 8 U.S.C. § 1225. Similarly, the implementing regulations at 8 C.F.R. § 1.2 define noncitizens who are presently "coming or attempting to come into the United States." The statutory and regulatory text's use of the present and present progressive tenses excludes noncitizens apprehended in the interior, because they are no

longer in the process of arriving in or seeking admission to the United States. *See Martinez v. Hyde*, 2025 WL 2084238, at 6 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588, at 6–7 (S.D.N.Y. Aug. 13, 2025); *See also United States v. Wilson*, 503 U.S. 329, 333 (1992).

A number of the courts cited above have agreed that § 1225(b)(2) only reaches individuals who are in the process of entering or who have just entered the United States. See, *e.g. Orellana Juarez v. Moniz*, 2025 WL 1698600, at 3–4 (D. Mass. June 11, 2025); *Sampiao v. Hyde*, 2025 WL 2607924, at 5–6 (D. Mass. Sept. 9, 2025).

Similarly, H.R. Rep No. 104-469 at 18-19 (1996) (Conf. Rep.), clearly confers the respondents the authority under 8 U.S.C. § 1226, to apprehend, and detain aliens that were not previously admitted. This section authorizes the Attorney General to release alien nationals under three scenarios. In relevant part, the second scenario states: "the alien was not lawfully admitted to the United States, cannot be removed because the designated country of removal will not accept the alien, and satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." *See* H.R. Rep No. 104-469 at 19 (1996). The instant cite would cover applicants for admission, such as the Petitioner, who were never lawfully admitted to the United States, yet were detained and released under 8 U.S.C. § 1226, in conformance with the permissible release scenario described immediately above.

Most concerning, Respondents contradict the reasoning provided by *Jennings,* reiterating the government's unfettered right to detain aliens under either §§ 1225 or 1226. *See Jennings v.*

Rodriguez, 583 U.S. 281 (2018). "In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)." *See Jennings v. Rodriguez*, 583 U.S. 281, 289, 138 S. Ct. 830, 838, 200 L. Ed. 2d 122 (2018).

This interpretation is inconsistent with the board's reasoning in *Cabrera-Fernandez*, which held that noncitizens who Entered Without Inspection ("EWI") and are apprehended near the border can be released pursuant to 8 U.S.C. § 1226(a)(2) (implying that their initial detention was also pursuant to 8 U.S.C. § 1226(a), *See Matter of Cabrera-Fernandez*, 28 I&N Dec. at 748–49. Indeed, the statutory structure makes clear that 8 U.S.C. § 1226 also reaches individuals who have not been admitted and have entered without inspection. *See* 8 U.S.C.§ 1226.

The Laken Riley Act amendment confirms that § 1226 reaches inadmissible EWI's and defeats the government's effort to make § 1225(b)(2) universal. *Diaz Marquez v. Baltasar* reasoned that if Respondents were correct that § 1225(b)(2)(A) mandates detention for all non-admitted noncitizens present in the United States, Congress would have had no reason to enact the LRA's new mandatory detention provision within § 1226(c)(1)(E), which expressly covers inadmissibility categories including § 1182(a)(6)(A) and § 1182(a)(7). *Diaz Marquez v. Baltasar,* Case No. 1:26-cv-00293-CYC (D. Colo. Feb. 10, 2026). This Court should apply the same structural reasoning here.

This case tracks the statutory posture that courts have treated as quintessentially governed by § 1226(a): a noncitizen re-detained in the interior pursuant to ICE custody authority. In *Diaz*

Marquez v. Baltasar, the Court emphasized that § 1226 is the detention scheme that "authorizes the Government to detain certain aliens already in the country" and noted that several courts have suggested § 1226—not § 1225(b)—governs detention of noncitizens arrested on a warrant while residing in the United States. *Id.*

Because the BIA's decision in *Yajure Hurtado* is a deviation from the agency's long-standing interpretation of §§ 1225 and 1226; is not guidance issued contemporaneously with enactment of the relevant statutes; and contradicts the statutory interpretations of dozens of federal courts, a habeas court should give it no weight under *Loper Bright or Skidmore v. Swift & Co. See Skidmore v. Swift & Co.,* 323 U.S. 134, 140 (1944).

Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, a federal habeas court should independently interpret the meaning and scope of § 1225(b) using the traditional tools of statutory construction. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385, 401 (2024).

The government's post hoc reclassification maneuver underscores why habeas relief is warranted. In *Diaz Marquez v. Baltasar*, ICE initially issued a Notice of Custody Determination stating that detention was "[p]ursuant to" INA § 236 (8 U.S.C. § 1226), and only later rescinded it as "improvidently issued," subsequently asserting that detention instead arose under INA § 235(b)(2)(A) (8 U.S.C. § 1225(b)(2)(A)). *Diaz Marquez v. Baltasar,* Case No. 1:26-cv-00293-CYC (D. Colo. Feb. 10, 2026). That sequence mirrors the structural problem here: the agency cannot deprive Petitioner of the procedures attached to the detention authority it actually invoked and operationalized, then retroactively relabel custody to evade bond jurisdiction. Under longstanding Supreme Court precedent, courts must read statutes and agency action as

prospective unless Congress has "unambiguously instructed" retroactive application. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 263–65 (1994).

III. The Government Violated the Accardi Doctrine by Failing to Follow Its Own Regulations

Under the Accardi doctrine, administrative agencies are bound to adhere to their duly promulgated regulations and procedures, particularly where those rules are intended to protect individual rights or channel agency discretion. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265–68 (1954). *Accardi* holds that where an agency's decision is tainted by failure to follow its own rules, that decision is unlawful and must be set aside. *Id.* at 268.

Notwithstanding the case procedural posture, the respondents refuse to take jurisdiction over the bond matter. *See* Exh. E., Bond Order. Despite 8 U.S.C. § 1226 governing the petitioner's detention, the respondents continue to deprive them of their statutory right to be heard on the issue of bond. By bypassing these constraints, the agency acted "without observance of procedure required by law," rendering the action invalid under *Accardi*. 347 U.S. at 268.

IV. The Government Violated the Fifth Amendment by Failing to Afford a Pre Deprivation Hearing prior to Re-detaining Petitioner

Noncitizens released on parole acquire a due process-protected liberty interest in their continued freedom when DHS releases them pending final removal decisions on condition that they abide by reporting requirements. *Esquivel Pacheco v. LaRose*, No. 3:25-CV-2421-JO-AHG, 2026 WL 242300, at 6 (S.D. Cal. Jan. 29, 2026). This liberty interest is similar to, if not greater than, the liberty interests of people on pre-parole, parole, and probation. *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1054 (N.D. Cal. 2021). Courts have distinguished between the initial parole

decision, which is part of the admissions process, and the revocation of parole after release, with the latter implicating stronger constitutional protections. *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1031 (N.D. Cal. 2025).

The released individual's interest in avoiding re-detention differs from a detainee's interest in having ongoing periodic reviews of prolonged detention, as revocation implicates a liberty interest that inheres in the Due Process Clause while denial of eligibility for release does not. *Id.* at 1033. Even if immigration detainees must wait months before periodic re-review of their detention, those already released on immigration bond possess an interest in their continued liberty that grows over time and creates a due process right to a hearing before being re-detained. *Id.* at 1031.

Courts apply the three-factor balancing test from *Mathews v. Eldridge* to determine what process is due before revoking parole. See *Mathews v. Eldridge*, 424 U.S. 319 (1976). The first factor—the private interest affected—weighs heavily in favor of parolees, as they have a significant interest in remaining free from physical detention. *Azalyar v. Raycraft*, No. 1:25-CV-916, 2026 WL 30741, at 4 (S.D. Ohio Jan. 2, 2026). The second factor examines the risk of erroneous deprivation, which courts have found to be high when ICE re-detains individuals without any individualized assessment or explanation. *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1323 (W.D. Wash. 2025); *Valdez v. Joyce*, 803 F. Supp. 3d 213, 218 (S.D.N.Y. 2025). When noncitizens are arrested immediately after appearing in court with inconsistent justifications and no prior assessment of changed circumstances, the risk of erroneous deprivation is substantial. *E.A. T.-B.*, 795 F. Supp. 3d at 1323.

The third factor—the government's interest—has been found to carry little weight when balanced against constitutional protections. *Esquivel Pacheco v. LaRose*, No. 3:25-CV-2421-JO-AHG, 2026 WL 242300, at 7 (S.D. Cal. Jan. 29, 2026). Although providing pre-deprivation hearings requires expenditure of finite resources, these costs are far outweighed by the risk of erroneous deprivation of liberty. *E.A. T.-B.*, 795 F. Supp. 3d at 1324. Courts have noted that when DHS previously determined an individual did not pose a risk of flight or danger, those factors should be re-assessed before re-arrest. *Id.* at 1323.

The Fifth Circuit has repeatedly affirmed the vitality of *Mathews v. Eldridge* in recent decisions. In *Meza v. Livingston*, the court explicitly relied on "the balancing test in *Mathews v. Eldridge*" to determine whether procedures provided to Texas criminal parolees met constitutional standards. *Meza v. Livingston*, 607 F.3d 392, 402 (5th Cir. 2010), decision clarified on denial of reh'g, No. 09-50367, 2010 WL 6511727 (5th Cir. Oct. 19, 2010).

The Fifth Circuit has historically held that excludable aliens do not have the same procedural due process rights in connection with initial revocation of immigration parole as those granted to criminal parolees. *Gisbert v. U.S. Atty. Gen.*, 988 F.2d 1437, 1443 (5th Cir.), amended, 997 F.2d 1122 (5th Cir. 1993). In *Gisbert v. U.S. Atty. Gen.*, the Fifth Circuit ruled that immigration parole is part of the admissions process, and its denial or revocation does not rise to the level of a constitutional. *Id.* The court cited *Ahrens v. Rojas* for the proposition that revocation of an alien's immigration parole without a hearing did not violate the alien's rights. *Id.*

However, this older Fifth Circuit precedent from 1993 predates the recent wave of district court decisions from 2025-2026 that have found pre-deprivation hearings constitutionally required.

The Fifth Circuit's position that "whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned" reflects a more deferential approach to executive immigration decisions that may be in tension with current constitutional analysis. *Pena v. Thornburgh*, 770 F. Supp. 1153, 1160 (E.D. Tex. 1991).

Multiple district courts in 2025 have granted habeas relief to parolees re-detained without pre-deprivation hearings. In *Esquivel Pacheco v. LaRose*, the court held that a noncitizen who had been released on parole for six years acquired a due-process protected liberty interest, and the government's failure to conduct an individualized assessment prior to revoking parole risked erroneous deprivation. *Esquivel Pacheco* 2026 WL 242300, at 6. The court ordered immediate release and prohibited further detention absent justification at a pre-deprivation hearing. *Id.* at 8.

Similarly, in *Tumba v. Francis*, the court found that re-detention without any process at all, much less prior notice and without any showing of changed circumstances or opportunity to respond, violated procedural due process rights showing. *Tumba v. Francis*, No. 25-CV-8110 (LJL), 2025 WL 3079014, at 9 (S.D.N.Y. Nov. 4, 2025). The noncitizen was entitled to release because the re-detention was illegal from the start release. *Id.* at 8. In *Savane v. Francis*, ICE officers violated a noncitizen's due process liberty interest when they detained him following a routine immigration court appearance without prior written notice required by regulation and without providing any explanation or reasoning for revoking parole process. *Savane v. Francis*, 801 F. Supp. 3d 483, 492 (S.D.N.Y. 2025).

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant their petitions for writs of habeas corpus. Consistent with *Diaz Marquez v. Baltasar*, Respondents are required to provide Petitioner with an individualized bond hearing under 8 U.S.C. § 1226(a) within a specified period, or otherwise effectuate his release. *Diaz Marquez v. Baltasar,* Case No. 1:26-cv-00293-CYC (D. Colo. Feb. 10, 2026).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **AMENDED PETITION FOR WRIT OF HABEAS CORPUS** was filed via CM/ECF and served on all counsels of record on this 25 day of February, 2026.

Respectfully submitted,

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