JAN PETER WEISS
Law Offices of Jan P. Weiss, P.A.
1926 10th Ave. North
Suite 400
Lake Worth, FL 33461
Legal@janpweissesq.com

*Attorney for Petitioner*

**UNITED STATES DISTRICT COURT**
**DISTRICT OF COLORADO**

VASQUEZ GOMEZ, Brusly Aubdias
Alien Number: [redacted]

Petitioner,

v.

**PAMELA BONDI**, U.S. Attorney General

**KRISTI NOEM**, U.S. Secretary of Homeland Security ("DHS"),

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

**ROBERT GUADIAN**, Acting Denver Field Office Director,

**JUAN BALTAZAR** Warden of Denver Contract Detention Facility

IN THEIR OFFICIAL CAPACITIES

Respondents.

Case No.: 1:26-cv-00489

PETITION FOR WRIT OF HABEAS CORPUS

## INTRODUCTION

1. Petitioner, Brusly Audbias Vasquez Gomez, is in the physical custody of Respondents at the Denver Contract Detention Facility. He was arrested on November 10, 2025 and as of the date of this petition has been detained for ninety-one (91) days. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.
2. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).
3. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. *See* **Exhibit A**, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission.
4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. 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 people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

6. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.
7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

## JURISDICTION

8. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

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

10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

11. Jurisdiction exists despite 8 U.S.C. § 1252(g) because Petitioner is not seeking direct review of the removal order, instead Petitioner is challenging unlawful custody and removal procedure. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 S. Ct. 1959 (2020); *INS v. St. Cyr*, 533 U.S. 289, 121 S. Ct. 2271 (2001).

## VENUE

12. 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 Southern District of Florida the judicial district in which Petitioner currently is detained.
13. 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 Southern District of Florida.

## REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

14. The Court must grant the petition for writ of habeas corpus "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.*

15. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

16. Petitioner is "in custody" within the meaning of 28 U.S.C. § 2241 because he is arrested and detained by Respondents at the Krome Detention Center in Miami, Florida, pursuant to immigration detention authority. Petitioner challenges that custody as unlawful under the Constitution, federal law, and applicable treaties.

## PARTIES

17. Petitioner is Brusly Audbias Vasquez Gomez, a citizen and national of Guatemala who entered the United States on or about February 6, 2019.

18. Respondent, in their official capacity as **JUAN BALTAZAR** Warden of Denver Contract Detention has immediate custody over Petitioner and is responsible for his detention.

19. Respondent, **ROBERT GUADIAN**, Acting Denver Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, is responsible for the custody, detention, and removal of noncitizens within this jurisdiction.

20. **TODD LYONS**, in their official capacity as Acting Director of the U.S. Department of Homeland Security Immigration and Customs Enforcement at Krome Detention Center, 18201 SW 12th St., Miami, Florida 33194.

21. Respondent, **KRISTI NOEM**, in their official capacity as Secretary of the U.S. Department of Homeland Security, is the head of DHS, Krome Detention Center, 18201 SW 12th St., Miami, FL 33194, which oversees ICE and is ultimately responsible for the unlawful detention of Petitioner.

22. Respondent, **PAM BONDI**, in their official capacity as Attorney General of the United States, is charged with the administration and enforcement of the immigration laws and is a proper respondent under 28 U.S.C. § 2243.

## STATEMENT OF FACTS

23. Petitioner is a 24-year old native and citizen of Guatemala who entered the United States on or about February 6, 2019. *See* **Exhibit B,** Petitioner's Identity Documents; *see also*, **Exhibit C**, Petitioner's Notice to Appear.

24. Upon his entry into the United States, Petitioner was issued a Notice to Appear (NTA) that lacked the date and time of his hearing as well as the date of issuance. *See* **Exhibit D**, Petitioner's Original Notice to Appear; *see also,* **Exhibit E,** Verification of Release. However, that NTA was not filed with the immigration court.

25. On December 7, 2025, the Department of Homeland Security ("DHS") filed a Notice to Appear ("NTA") with the Executive Office of Immigration Review ("EOIR"), which commenced removal proceedings against Petitioner.

26. On January 13, 2025, undersigned counsel filed a motion for custody redetermination providing evidence of Petitioner's good moral character demonstrating that he is neither a danger to the community nor a flight risk. *See* **Exhibit F**, Petitioner's Bond Redetermination Package.

27. Petitioner's encounter with immigration enforcement authorities took place within the interior of the United States in Palm Beach County, Florida after the vehicle in which he was a passenger was stopped, and he was arrested without any accompanying criminal, traffic, or civil citations or charges. *See* **Exhibit G,** I-200 Warrant for Arrest of Alien.

28. Significantly, every DHS created, authored, and signed document issued in conjunction with Petitioner's encounter with DHS explicitly cited § 1226 for authority; meanwhile, § 1225 is not referenced anywhere in any of those documents. Nonetheless, the government now attempts to switch Petitioner's detention to being under § 1225. This attempted switch is not new to this case. Indeed, it seems to be an argument attempted by the government—and rejected by courts—from coast to coast.[1]

29. Courts faced with such arguments from the government in cases where DHS had previously consistently treated the alien as being subject to § 1226 have rejected this purported switching. In so doing, courts have explained that "settled law precludes the Government from now switching gears to contend that he has actually been detained under Section 1225(b)(2)."[2] In this context, courts have also found DHS' prior treatment of an alien as though they are subject to § 1226 has resulted in concluding such an alien "enjoys a liberty interest under § 1226(a) and the procedural protections thereunder that cannot be unilaterally abrogated without process by the Government simply "switching tracks."[3]

## EXHAUSTION

30. Petitioner remains detained without any opportunity for release on bond. Exhaustion under 28 U.S.C. § 2241 is prudential, not jurisdictional, and other courts have repeatedly excused it where administrative review is inadequate, futile, or would cause irreparable harm. *F.-G. v. Noem, No. 25-CV-0243-CVE-MTS*, 2025 U.S. Dist. LEXIS 111539 (N.D. Okla. June 12, 2025) (declining to require exhaustion where immigration detainee was "trapped in prolonged detention without a meaningful opportunity for bond"); *Quintana Casillas v. Sessions*, No. 17-cv-01395, slip op. at 9–11 (D. Colo. 2018) (explaining that when "the question presented is purely legal and has been repeatedly mishandled administratively, exhaustion serves no useful purpose."). Here, the appellate body is the Board of

---

[1] *See e.g. Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Patel v. Crowley,* No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025).

[2] *Patel v. Crowley,* No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025).

[3] *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *7–8 (N.D. Cal. Sept. 12, 2025) (cleaned up).

Immigration Appeals, the same body that issued the decision stripping immigration judges of their jurisdiction to hear bonds.

31. Other districts have held that habeas corpus relief was available despite a pending BIA appeal, because "[e]ach additional day of detention without a bond hearing constitutes irreparable harm that cannot be remedied after the fact" *LG v. Choate*, No. 23-cv00611, slip op. at 14 (D.N.M. 2024)
32. The BIA appeal process here exemplifies why exhaustion is unnecessary. As *Rodriguez v. Bostock* explained, while the BIA has occasionally remanded bond denials where immigration judges misapplied § 1225(b), it has declined to issue a precedential ruling. 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025).
33. Consequently, many immigration judges continue to deny bond altogether, and appeals typically take six months or more, during which noncitizens remain detained unlawfully, with severe consequences for their health, families, and ability to defend against removal. *Id.*
34. Because Petitioner's injury is the very fact of unlawful detention without a bond hearing, administrative remedies are neither timely nor effective. Habeas corpus is the only adequate remedy.

## LEGAL FRAMEWORK

35. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *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).
36. 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).
37. 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).
38. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

39. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).
40. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people 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).
41. Thus, in the decades that followed, most people 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 IJ 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)).
42. 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.
43. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[4] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.
44. 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

[4] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

45. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

46. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

47. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL

2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

48. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

49. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

50. The text of § 1226 also explicitly applies to people 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 people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

51. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

52. By contrast, § 1225(b) applies to people 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 people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

53. 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).
54. The courts have distilled two central principles:
    a. Geographic/temporal limits: § 1225 applies only to noncitizens apprehended at or near the border and in the act of entry (*see Thuraissigiam*, 591 U.S. 103, 114, 139 (2020)), not to those apprehended years later in the interior.
    b. Statutory structure: Reading § 1225 as covering all noncitizens who were never lawfully "admitted" would render § 1226 largely meaningless, contrary to the rule against surplusage. *See Martinez*, 2025 WL 2084238, at *7; *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *6–8 (D. Mass. July 7, 2025).
55. A contrary reading renders superfluous recent amendments in the *Laken Riley Act*, Pub. L. No. 119-1, 139 Stat. 3 (2025), which added INA § 236(c)(1)(E) mandating detention for noncitizens inadmissible under § 212(a)(6)(A)(present without admission) who are implicated in enumerated crimes. If all such noncitizens were already mandatorily detained under § 235(b)(2)(A), Congress's addition would be meaningless. *See Corley v. United States*, 556 U.S. 303, 314 (2009) (statutes must be construed to give effect to all provisions).
56. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.
57. Finally, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) is a landmark decision overruling *Chevron* deference thereby permitting this Honorable Court to come to its own conclusion on the interpretation of the relevant statutes without relying on Board precedent in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which was wrongly decided.

## CLAIMS FOR RELIEF

### COUNT I
### UNLAWFUL DETENTION UNDER 8 U.S.C. § 1225; CUSTODY PROPERLY GOVERNED BY 8 U.S.C. § 1226
### (Misapplication of Mandatory Detention Statute)

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

59. 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 previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

60. Petitioner is currently being detained without the possibility of bond under 8 U.S.C. § 1225(b)(2)(A), based on DHS's argument that she is "an Applicant seeking Admission under the provisions of Sec. 235(b)(2)(A) of the Immigration and Nationality Act ('INA')."

61. This argument is legally erroneous. Section 1225 applies to noncitizens actively "seeking admission" at the border or its immediate functional equivalent. By contrast, § 1226 governs the arrest and detention of those "already in the country" pursuant to a warrant issued by the Attorney General. The two provisions are mutually exclusive. *See Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018); *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G. 2019).

62. Petitioner plainly falls within § 1226. He has resided in the United States for over seven (7) years, with deep community ties, employment, and no criminal record. He was stopped and detained by ICE and transferred from South Florida where he has lived his entire stay in the United States to the Denver Contract Detention facility, thousands of miles from his friends, family, and loved ones, where DHS proceeded to issue the charging documents including a Notice to Appear.

63. The charging document itself expressly alleges that Petitioner is "present in the United States without admission or parole," language that presumes residence in the interior and confirms that he was not in the process of seeking admission. Taken together, these

contradictions underscore the arbitrariness of Petitioner's detention and the government's mischaracterization of his case.

64. To hold otherwise would effectively erase the statutory line between §§ 1225 and 1226, converting virtually all noncitizens present without admission into mandatory detainees and rendering § 1226(a) a dead letter. Courts have consistently rejected this outcome. See Martinez, 2025 WL 2084238, at *7 (rejecting interpretation that would "nullify" Congress's amendment to § 1226(c)); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (noting that §§ 1225 and 1226 "apply to different classes" of noncitizens).

65. In sum, Petitioner was not "seeking admission" within the meaning of § 1225(b) but was "already in the country" within the meaning of Jennings, 583 U.S. at 288–89. His custody is governed by § 1226(a), under which detention is discretionary and subject to individualized bond hearings. DHS's argument is contrary to law, unsupported by the record, and must be set aside.

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

**COUNT II**
**Violation of Due Process**

67. Petitioner re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.
68. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
69. Petitioner has a fundamental interest in liberty and being free from official restraint.
70. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

71. Here, Respondents have made no finding that Petitioner is a danger to the community as an individual with no criminal history whatsoever. In fact, he has had no opportunity whatsoever to present the equities of his case because the judge declined to hear his custody redetermination request.

72. Respondents have made no finding that Petitioner is a flight risk. On the contrary, Petitioner has provided a litany of evidence including a sworn affidavit from a sponsor willing to ensure he attends all of his immigration proceedings.

## COUNT III
## Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution (Procedural Due Process); 5 U.S.C. §§ 702, 706

73. Petitioner re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.

74. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law."

75. The Due Process Clause entitles Petitioner to meaningful process assessing whether his current detention is justified. The arrest and detention of Petitioner without an opportunity for him to contest his detention in front of a neutral decision-maker after he had been living and working in the United States for over six (6) years provide insufficient due process and violates the Due Process Clause of the Fifth Amendment of the Constitution.

## PRAYER FOR RELIEF

**WHEREFORE**, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be transferred outside the District of Colorado;

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

(4) Declare that the Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.

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

*/s/ Jan Peter Weiss*

Jan Peter Weiss, Esquire
Counsel for Petitioner
Law Office of Jan Peter Weiss
1926 10th Avenue North, Suite 400
Lake Worth, Florida 33461
Phone: (561) 582-6401
Fax: (561) 582-5458
Email: jan@janpweissesq.com
Florida Bar No.: 297887

VASQUEZ GOMEZ, Brusly Aubdias )
Alien Number: [redacted] )
)
Petitioner, )
v. ) Case No.: 1:26-cv-00489
)
PAMELA BONDI, U.S. Attorney General, et al. )

**INDEX OF SUPPORTING DOCUMENTS**

| Attachment No. | Document Title |
|---|---|
| 1 | Civil Cover Sheet |
| 2 | Evidentiary Exhibits A – G |
| 3 | Summons to the Attorney General of the United States |
| 4 | Summons to the U.S. Department of Homeland Security |
| 5 | Summons to the Denver Contract Detention Facility |
| 6 | Summons to the U.S. Immigration and Customs Enforcement |
| 7 | Summons to the ICE Field Office |
| 8 | Summons to the U.S. Attorney's Office |
| 9 | Motion to Show Cause and Proposed Order |

*Counsel for Petitioner*

Dated: February 9, 2026

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

I represent Petitioner, Brusly Aubdias Vasquez Gomez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 9th day of February, 2026.

***/s/ Jan Peter Weiss***

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Petition for Writ of Habeas Corpus with Attachments and Summons was served by certified mail to **PAMELA BONDI**, Attorney General of the United States, U.S. Department of Justice, 950 Pennsylvania avenue, NW, Washington, DC 20530-0001.

I hereby certify that a true and correct copy of the Petition for Writ of Habeas Corpus with Attachments and Summons was served by certified mail to **ROBERT GUADIAN**, Denver Field Office Director, 12445 E. Caley Avenue, Centennial, CO 80111.

I hereby certify that a true and correct copy of the Petition for Writ of Habeas Corpus with Attachments and Summons was served by certified mail to **KRISTI NOEM**, Secretary of Homeland Security, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0485, Washington, DC 20528-0485.

I hereby certify that a true and correct copy of the Petition for Writ of Habeas Corpus with Attachments and Summons was served by certified mail to **TODD LYONS**, Acting Director U.S. Immigration and Customs, Office of the Principal Legal Advisor, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536.

I hereby certify that a true and correct copy of the Petition for Writ of Habeas Corpus with Attachments and Summons was served by certified mail to **JUAN BALTAZAR**, Warden of Aurora ICE Processing Center, 3130 Oakland St, Aurora, CO 80010.