UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JOSUE GONZALO MANRIQUEZ HERNANDEZ, Petitioner, v. JUAN BALTAZAR, *in his official capacity* as Warden of the Aurora ICE Processing Center; ROBERT HAGAN, *in his official capacity* as Field Office Director of the Aurora Field Office of Enforcement and Removal Operations, U.S. Immigrations and Customs Enforcement; TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and PAMELA JO BONDI, in her official capacity as Attorney General of the United States; Respondents.	Case No. 1:26-cv-00529 PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF [redacted]

INTRODUCTION

1. Petitioner, Mr. Josue Gonzalo Manriquez Hernandez, is a citizen of Mexico. Based on information and belief, U.S. Immigration and Customs Enforcement ("ICE") officers apprehended him on or about July 31, 2025, in Loveland, Colorado. ICE is now unlawfully detaining him pursuant to 8 U.S.C. Section 1225(b).
2. Petitioner is currently detained at the GEO Contract Detention Facility in Aurora, Colorado. Although he does not appear on ICE's online Detainee Locator, Counsel has confirmed with the GEO facility on February 5, 2026, that Petitioner is detained there.
3. Petitioner entered the United States without inspection in 2005 through the border in Arizona, when he was ten years old. Based on information and belief, U.S. Immigration and Customs Enforcement ("ICE") officers initially apprehended him in 2015, and he was subsequently released on bond on March 26, 2015. *See* Immigration Bond, Exhibit 2.
4. A Notice to Appear was issued and Petitioner was placed in removal proceedings. *See* Executive Office for Immigration Review Automated Case Information for Petitioner, Exhibit 1.
5. In removal proceedings, Petitioner applied for asylum and cancellation of removal. His applications were denied and an Immigration Judge ("IJ") ordered him removed from the United States on June 28, 2019. *See* Exhibit 1.
6. Petitioner appealed the decision of the IJ to the Board of Immigration Appeals ("BIA"). His case later reached the United States Court of Appeals, was remanded to the BIA, and remains pending there. *See* Exhibit 1.
7. Petitioner filed a brief in support of his appeal with the BIA on June 30, 2025. *See* Exhibit 1.

8. On information and belief, on or about July 31, 2025, Petitioner was detained by ICE following a traffic stop.

9. Petitioner has no further hearings scheduled. *See* Exhibit 1.

10. On July 8, 2025, the U.S. Department of Homeland Security ("DHS") issued a new policy memorandum to all employees of ICE stating that "this message serves as notice that DHS, in coordination with the Department of Justice ("DOJ"), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act ("INA"), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." Memorandum, U.S. Immigration & Customs Enf't, Interim Guidance Regarding Detention Authority for Applications for Admission (July 8, 2025), https://www.aila.org/ice-memo-interim guidance-regarding-detention-authority-for-applications-for-admission (last visited on November 15, 2025), attached hereto as Exhibit 3.

11. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision that unlawfully reinterpreted the INA. See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), attached hereto as Exhibit 4. Prior to this decision, noncitizens like Petitioner who had lived in the U.S. for many years, and were apprehended by ICE in the interior of the country, were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges ("IJs"). Instead, in conflict with nearly thirty years of legal precedent, Petitioner is now considered subject to mandatory detention

under 8 U.S.C. § 1225(b)(2)(A) through Respondents policies and has no opportunity for release on bond while his removal proceedings are pending.

12. Following his detention in July 2025, Petitioner requested bond before an IJ, but was denied on the grounds that the IJ lacked jurisdiction to grand bond under *Yajure Hurtado*.

13. Petitioner's detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who has resided in the U.S. and who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Rather, he should be detained, if at all, pursuant 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond.

14. Through this petition, Mr. Manriquez Hernandez asks this Court to find that Respondents have unlawfully detained him under § 1225(b)(2)(A), that his detention, if any, is appropriate under §1226(a). Further, Mr. Manriquez Hernandez asks this Court to reinstate DHS's initial custody determination made in 2015, and immediately release Petitioner from custody. *See Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

15. If the Court does not order Petitioner's immediate release, Petitioner seeks, in the alternative, enforcement of his rights as a member of the Bond-Eligible Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner is in the physical custody of Respondents at the GEO Contract Detention ICE Facility in Aurora, Colorado. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR), through DOJ policy memorandums and BIA decisions, refuse to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*. *See* Aurora Immigration Court Decision (December 11, 2025), Exhibit 5.

16. On November 20, 2025, the United States District Court for the Central District of California granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *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) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment), attached hereto as Exhibits 6 and 7.

17. On December 18, 2025, the United States District Court for the Central District of California entered final judgment in *Maldonado Bautista*, declaring that the class members "are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2)," and "are entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge." *See* Exhibit 8.

18. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus **may not be denied consideration for release on bond** under § 1225(b)(2)(A). *See* Exhibits 6 and 8.

19. Nonetheless, the Executive Office for Immigration Review and its subagency, the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be

denied the opportunity to be released on bond. Immigration judges have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *See e.g.* Exhibits 5 and 9.

20. On Thursday, December 11, 2025, the Aurora Immigration Court issued a denial of a detainee's request for a bond hearing, despite that detainee being a member of the *Maldonado* class, and in the denial stated a "lack of jurisdiction" because the respondent was:

> "detained pursuant to section 235 of the Act. While the District Court in the Bautista litigation granted class certification and partial summary judgment for the plaintiffs in that case, it did not issue a class-wide declaratory judgment. Nor did the District Court issue a class-wide injunction. Until and unless the District Court issues a class-wide declaratory judgment or injunction, the District Court's order and partial grant of summary judgment does not constitute a judgment. See Fed. R. Civ. P. 54(b). Accordingly, the District Court's order in the Bautista litigation does not currently apply to the respondent in the instant matter because there is currently no declaratory relief for other cases filed by individuals who are now Bautista class members. As such, the Bautista litigation does not impact the Board of Immigration Appeal's application of its precedential decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025). In this case, the respondent entered the United States without admission or parole and the court therefore lacks jurisdiction to address custody in this matter." *See* Exhibit 5.

21. On January 13, 2026, Chief Immigration Judge Teresa L. Riley issued a "Guidance" to all Assistant Chief Immigration Judges declaring that

> "Maldonado Bautista is not a nationwide injunction and does purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore, *Yajure Hurtado* remains binding legal precedent on agency adjudicators. For clarification, declaratory judgments differ from injunctions in that the former clarifies parties' legal rights and relationship without ordering specific action, while the latter is a court order compelling a party to do or stop doing a specific act. A declaratory judgement is not an equitable remedy and does not, by itself, have the effect of compelling specific action by a party." *See e.g.* Guidance to all Immigration Judges as sent by Chief Immigration Judge (January 13, 2026), Exhibit 9.

22. In this case, Petitioner is a member of the Bond Eligible Class, as he:

    i. does not have lawful status in the United States and is currently detained at the GEO Contract Detention Facility in Aurora, Colorado. He was apprehended by immigration authorities on or about July 31, 2025

    ii. entered the United States without inspection in 2005 and was not apprehended upon arrival, *cf. id.*; and

    iii. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. *See* Exhibit 7.

23. As Petitioner is clearly a class member certified by the court in *Maldonaldo Bautista*, this Court should expeditiously grant this petition.

24. Respondents are bound by the class certification in *Maldonado Bautista*, as, contrary to the Chief IJ's assertion, the District Court for the Central District of California's declaration of the rights of the class has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

25. Even if the Chief Immigration Judge and the EOIR maintain the position that *Maldonado Bautista* does not compel a specific action, in the "Guidance" email the Chief Immigration Judge acknowledges that, at the least, *Maldonado Bautista* "clarifies parties' legal rights and relationships." *See* Exhibit 9. In this case, the legal rights and relationship being clarified are that Petitioner is not subject to mandatory detention and may not be denied consideration for release on bond under Section 1225(b)(2)(A). *See* Exhibits 6 through 8.

26. Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member. Even if Respondents were not bound by the earlier rulings in *Maldonado Bautista*, they are now bound by the

final judgment of December 18, 2025, which stated that Petitioners situated in the same position as Maldonado Bautista may not be denied consideration for release on bond. *See* Exhibit 8.

27. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista,* the Court should accordingly order that within one day, Respondent DHS must release Petitioner.

28. In the alternative, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

CUSTODY

29. Petitioner is currently in the custody of ICE at the GEO Aurora Contract Detention Facility, as Counsel has confirmed with the facility by phone on February 5, 2026. He is therefore in "'custody' of the Department of Homeland Security, ICE, within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

30. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq*.

31. 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).

32. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

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

33. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. *See* 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

34. Petitioner is "in custody" for the purpose of § 2241 because he was arrested and remains detained by Respondents.

35. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already been resolved for class members in *Maldonado Bautista. See* 2025 WL 3289861, at *11 and 2025 WL 3288403, at *9; *See* Exhibits 6 through 8.

VENUE

36. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the District of Colorado. Petitioner is under the jurisdiction of ICE's Denver Field Office, and he is currently detained in Aurora, Colorado, at the GEO Aurora Contract Detention Facility.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

37. Administrative exhaustion is unnecessary as it would be futile. *See, e.g., Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

38. It would be futile for Petitioner to seek another custody redetermination hearing before an IJ because of the BIA recent decision holding that anyone who has entered the U.S. without inspection is now considered an "applicant for admission" who is "seeking admission" and

therefore subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders exhaustion futile).

39. It would also be futile for Petitioner to seek a custody redetermination hearing before an IJ, because the Executive Office for Immigration Review and its IJs are refusing to abide by the District Court for the Central District of California's decisions in *Maldonado Bautista*. 2025 WL 3289861, at *11. Having failed to abide by that District Court's prior rulings, contrary to 28 U.S.C. § 2201(a), EOIR now continues to refuse to abide by the final judgment in *Maldonado Bautista* as well. *See* Exhibit 9.

40. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

41. Petitioner is from Mexico and has resided in the U.S. since 2005. He is currently detained in the Aurora Contract Detention Facility in Aurora, Colorado.

42. Respondent Juan Baltazar is sued in his official capacity as Warden of the Aurora ICE Processing Center. In his official capacity, Juan Baltazar is Petitioner's immediate custodian.

43. Respondent Robert Hagan is sued in his official capacity as Field Office Director, Denver Field Office, Enforcement and Removal Operations, ICE. In his official capacity, Respondent Robert Hagan is the legal custodian of Petitioner.

44. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

45. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

46. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

47. The INA prescribes basic forms of detention for noncitizens in removal proceedings.

48. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

49. Juvenile delinquency adjudications are not "convictions" for immigration purposes under the INA. *See Matter of Devison*, 22 I. & N. Dec. 1362, 1366, 1369 (BIA 2000).

50. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

51. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231 (a)-(b).

52. 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, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

53. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formed referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

54. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to

release on parole. See 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

55. For decades, long-term residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

56. In July 2025, however, ICE began asserting that all individuals who entered without inspection should be considered "seeking admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

57. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the INA's text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), attached hereto as Exhibit 4.

58. Defendants' new legal interpretation is plainly contrary to the statutory framework and its implementing regulations. Indeed, for decades, Defendants had applied § 1226(a) to people like the Petitioner. Defendants' new policies are thus not only contrary to law, but are arbitrary and capricious in violation of the Administrative Procedure Act ("APA"). *See* 5 U.S.C. §706(2)(A). They were also adopted without complying with the procedural requirements of the APA. 5 U.S.C. §706(2)(D).

59. Numerous federal courts have rejected this interpretation and instead have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See e.g.*, *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's

disagreement with BIA's analysis in *Yajure Hurtado*); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025); see also Lepe v. Andrews, No. 1:25-cv-01163-KES-SKO (HC) (E.D. Cal. Sept. 23, 2025), Lopez v. Hardin, No. 2:25-cv-830-KCD-NPM (M.D. Fla. Sept. 25, 2025); and Chafla v. Scott, No. 2:25-cv-00437-SDN (D. Maine Sept. 21, 2025).*

60. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024).

61. 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. Following IIRIRA, the Executive Office for Immigration Review ("EOIR") issued regulations clarifying that individuals who entered the country without inspection were not considered detained under § 1225, but rather 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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

62. The statutory context and structure also make clear that § 1226 applies to individuals who have not been admitted and entered without inspection. In 2025, Congress added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See* The Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (8 U.S.C. § 1226(c)(1)(E)).

63. By specifically referencing inadmissibility for entry without inspection under 8 U.S.C. § 1182(6)(A), Congress made clear that such individuals are otherwise covered by § 1226(a). Thus, § 1226 plainly applies to noncitizens charged as inadmissible, including those present without admission or parole.

64. The Supreme Court has explained that § 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." *Jennings v. Rodriguez*, 583 U.S. 281, 297, 2987 (2018). In contrast, Section 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphases added).

65. Furthermore, § 1225(b)(2) specifically applies only to those "seeking admission," and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are "coming or attempting to come into the United States." The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer "seeking admission" or "coming […] into the United States." *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro*

Lado v. McAleenan, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in INA § 235(b)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

66. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner, who had entered the U.S. years before he was apprehended. Additionally, Petitioner's appeal in his removal proceedings remains pending with the BIA, he filed a brief in his appeal over seven months ago, and there is no certainty about when the BIA will make a decision in his case. Petitioner could be waiting for years for the decision with no certainty, which will be an illegal detention.

67. Further, Petitioner is not a danger to the community, as an IJ already assessed his case in 2015 and made an initial custody determination, releasing him on bond. *See* Immigration Bond, Exhibit 2. That prior release from custody, "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *See Saravia v. Sessions*, 280 F. Supp. 3d. 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Session*s, 905 F.3d 1137 (9th Cir. 2018).

68. Mr. Manriquez Hernandez's prior release creates a protected liberty interest that has long been recognized in the criminal detention context, and an "implied promise" that the person will not be re-detained unless they fail to live up to their conditions of release. *See Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972); *see also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973). This doctrine, although it developed in criminal legal context, has also been applied in the immigration context. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Pinchi v. Noem*, -F. Supp.3d-, 2025 WL 2084921 (N.D. Cal. July 24, 2025).

69. Petitioner did not violate the terms of his release and has not committed any criminal offenses since his release in 2015. Therefore, his detention is unlawful.

STATEMENT OF FACTS

70. Petitioner is a citizen of Mexico.

71. Upon information and belief, Petitioner has resided in the U.S. since 2005.

72. Petitioner, when he was a juvenile, was adjudicated guilty of marijuana possession under one ounce under CRS §18-18-406(1), driver's license not on person under CRS §42-2-101(3), drug paraphernalia possession under CRS §18-18-428(1), Trespass 2 - enclosed fence property under CRS §18-4-503, underage possession of alcohol under CRS §18-13-122, robbery under CRS §18-4-302(1)(d), and violent juvenile offender under CRS §19-2-516(3). As an adult, he was convicted of criminal possession of an identification document – single victim under CRS §18-4-903.5(1), driving under restraint – alcohol related under CRS §42-2-138(1)(d), and Trespass 1 – auto with intent to commit a crime of harassment under CRS §18-4-502. These convictions all occurred between 2010 and 2014, prior to Petitioner's initial detention by ICE and subsequent release on bond. *See* Exhibit 2. Juvenile delinquency adjudications are not "convictions" for immigration purposes under the INA. *See Matter of Devison*, 22 I. & N. Dec. 1362, 1366, 1369 (BIA 2000).

73. ICE initially detained Petitioner in 2015, and released him on March 26, 2015, on an $8,000 bond pursuant to 8 CFR 236.1(c). *See* Exhibit 2.

74. Petitioner sought relief in the form of Cancellation of Removal, Asylum, and Withholding of Removal.

75. Petitioner's applications were denied and an Immigration Judge ("IJ") ordered him removed from the United States on June 28, 2019. *See* Exhibit 1.

76. Petitioner appealed the decision of the IJ to the Board of Immigration Appeals ("BIA"). His case later reached the United States Court of Appeals, was remanded to the BIA, and remains pending there. *See* Exhibit 1.

77. Petitioner has complied with the terms of his release and has not committed any crimes since his custody redetermination hearing held in 2015.

78. Petitioner was arrested by ICE on or about July 31, 2025, and had been in immigration custody since.

79. He is now detained at the GEO Contract Detention Center in Aurora, CO, as Counsel has confirmed by phone on February 5, 2026.

80. An Immigration Judge is currently unable to consider the Petitioner's bond request as the Immigration Court's jurisdiction to grant bond has been effectively stripped under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), attached hereto as Exhibit 4, and the agency's failure to abide by the District Court for the Central District of California's rulings in *Maldonado Bautista. See* Exhibits 5 through 9.

81. Without relief from this Court, Petitioner faces continued detention without release.

COUNT I

Violation of 8 U.S.C. § 1226(a)

Unlawful Denial of Release on Bond

82. Petitioner restates and re-alleges all paragraphs 1 to 81 as if fully set forth herein.

83. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

84. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

85. Petitioner's continuing detention is therefore unlawful.

COUNT II

Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19 Unlawful Denial of Release on Bond

86. Petitioner restates and realleges paragraphs 1 to 81 as if fully set forth here.

87. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

88. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Violation of Fifth Amendment Right to Due Process

89. Petitioner restates and realleges paragraphs 1 to 81 as if fully set forth here.

90. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

91. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

92. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release. 424 U.S. 319, 334-335 (1976).

93. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("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.").

94. The risk of erroneous deprivation is exceptionally high. Petitioner has ties to the community, including his U.S. citizen spouse, children, and siblings, and his permanent resident parents.

95. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

96. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

97. Petitioner has already had a bond hearing and was granted a bond. *See* Exhibit 2. His prior release from custody reflects the government's determination that he is not a danger to the community and not a flight risk.

COUNT IV

Violation of the INA:

Request for Relief Pursuant to *Maldonado Bautista*

98. Petitioner restates and re-alleges all paragraphs 1 to 81 as if fully set forth herein.

99. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

100. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members, such as Petitioner. *See* Exhibit 6.

101. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *See* Exhibits 6 and 7.

102. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). They are also bound by the final judgment issued on December 18, 2025. *See* Exhibit 8.

103. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista.*

104. Considering these factors, Petitioner respectfully requests that this Court order his immediate release from custody or provide him with a bond hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

(1) Assume jurisdiction over this matter;

(2) Order that he not be transferred outside of this District;

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

(4) Declare that his detention is unlawful;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release him from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days;

(6) Award him his attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

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

Date: February 10, 2026

Respectfully Submitted,

/s/Scott Brian Petiya

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Attorney for the Petitioner

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

I, Scott Brian Petiya, hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this 10th day of February, 2026.

/s/ Scott Brian Petiya. Esq.