UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
ALBUQUERQUE DIVISION

PABLO ADRIAN GUAMAN-TOBAY

Petitioner,

-against-

KRISTI NOEM, IN HER OFFICIAL CAPACITY, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY;

PAMELA BONDI, IN HER OFFICIAL CAPACITY, U.S. ATTORNEY GENERAL;

TODD LYONS, IN HIS OFFICIAL CAPACITY, ACTING DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT;

MARY DE ANDA-YBARRA, IN HER OFFICIAL CAPACITY ICE FIELD OFFICE DIRECTOR DETENTION AND REMOVAL;

GEORGE DEDOS, WARDEN, CIBOLA COUNTY CORRECTIONAL CENTER

Respondents.

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PETITION FOR WRIT OF HABEAS CORPUS

Case No. 1:26-cv-00377

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR PRELIMINARY INJUNCTIVE RELIEF

1. Petitioner, Mr. Pablo Adrian Guaman-Tobay ("Mr. Guaman-Tobay"), is a 30-year-old citizen and national of Ecuador.

2. Mr. Guaman-Tobay entered without inspection to the United States on or about April 4, 2023, after leaving Ecuador.
3. On April 8, 2023, the Department of Homeland Security, initiated removal proceedings by issuing a Notice to Appear pursuant to 8 U.S.C. § 1229a; INA § 240. *See See* Exhibit 1 - Notice to Appear
4. The Notice to Appear charges Petitioner as a noncitizen who was not admitted or paroled, and alleges removability under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I) . *See* Exhibit 1- Notice to Appear
5. Additionally, the Department of Homeland Security, carried out a detention assessment pursuant to 8 U.S.C. 8 U.S.C. § 1226(a). *See* Exhibit 1- Notice to Appear
6. Officers of DHS conducted a flight and risk assessment. *See* Exhibit 2- Order of Release on Recognizance
7. On April 9, 2023, Officers of DHS issued an Order of Release on Recognizance. *See* Exhibit 2- Order of Release on Recognizance
8. Based on that assessment, Officer released Mr. Guaman-Tobay on his own recognizance. *See* Exhibit 2- Order of Release on Recognizance
9. Mr. Guaman-Tobay was ordered to appear before the Immigration Court at 450 Main St., Room 628 Hartford, CT 061033015 on December 17, 2024. *See* Exhibit 1 - Notice to Appear
10. On December 18, 2024, Mr. Guaman-Tobay applied for relief and lawful presence in the United States by filing an asylum/withholding of removal application under 8 U.S.C. § 1158 and 8 U.S.C. § 1231(b)(3).

11. Mr. Guaman-Tobay applied for and was granted employment authorization. Petitioner's Employment Authorization Document is valid from June 26, 2025, through June 25, 2030. Exhibit 3 - Work Authorization, Texas ID, and Social Security Card.
12. On January 12, 2026, Petitioner was enroute to take his wife to a doctor's visit regarding her pregnancy when he was stopped and detained by immigration authorities. Petitioner's wife is expected to give birth sometime in February of this year.
13. Mr. Guaman-Tobay was transported to CIBOLA COUNTY CORRECTIONAL CENTER in El Milan, NM. *See* Exhibit 4- ICE Locator
14. Mr. Guaman-Tobay asks this Court to find that Respondents have deprived him of his due process rights by re-detaining him after release on recognizance, and have violated the Immigration and Nationality Act by subjecting him to detention without the possibility of a bond hearing under 8 U.S.C. § 1226(a).
15. Mr. Guaman-Tobay therefore seeks immediate release from custody, and requests that this Court issue an Order to Show Cause within three days directing Respondents to explain why Petitioner is being unlawfully detained.
16. Mr. Guaman-Tobay complied with all conditions imposed by ICE, including reporting as directed.
17. Mr. Guaman-Tobay is set for his Master Calendar Hearing (*i.e.* pre-trial hearing) on February 17, 2026 at 8:30 am at 2000 Cibola Loop, Milan, New Mexico. *See* Exhibit 5 - EOIR Automated Case Information.
18. Petitioner preserves the statutory argument rejected in *Buenrostro* for purposes of further review. The question of whether detention authority arises under INA § 235, 8 U.S.C. § 1225, or INA § 236, 8 U.S.C. § 1226, for noncitizens already present in the United States

remains the subject of ongoing litigation in multiple courts of appeals. Because the Fifth Circuit sitting en banc or the Supreme Court may revisit or reject the panel's conclusion in *Buenrostro*, Petitioner raises this statutory claim to preserve the issue and ensure eligibility for relief should the governing law change.

19. On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement (Hereinafter "ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (Hereinafter "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), available at AILA Doc. No. 25071607, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

20. The BIA's September 5, 2025, precedential decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) held that the plain language of 8 U.S.C. § 1225(b)(2)(A) mandates that all aliens who have entered the United States without admission are subject to mandatory detention. . This decision is in contravention with the DHS's longstanding interpretation that noncitizens already present in the country such as Respondent were detained pursuant to 8 U.S.C. § 1226(a) and not §1225(b)(2)(A).

21. Mr. Guaman-Tobay's instant removal case is still pending.

22. Mr. Guaman-Tobay's detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Mr. Guaman-Tobay, 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 continue to be detained pursuant to 8 U.S.C. § 1226(a), which was DHS's initial determination for Petitioner and allows for release on conditional on an order of release on recognizance.

23. Through this petition, Mr. Guaman-Tobay asks this Court to find that Respondents have unlawfully detained him under § 1225(b)(2)(A), that his detention is appropriate under § 1226(a), which DHS processed him under on April 9, 2023, and immediately release Mr. Guaman-Tobay from custody in accordance with the initial custody determination made on April 9, 2023. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

CUSTODY

24. Petitioner is in the physical custody of Defendant-Respondent MARY DE ANDA-YBARRA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent, GEORGE DEDOS, Warden of the CIBOLA COUNTY CORRECTIONAL CENTER. At the time of the filing of this petition, Petitioner is detained at the CIBOLA COUNTY CORRECTIONAL CENTER in Milan, NM. The CIBOLA COUNTY CORRECTIONAL CENTER is run by DHS to detain noncitizens such as Petitioner. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

25. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. 1131 (federal question), 28 USC 1346 (original jurisdiction), 5 USC 702 (waiver of sovereign immunity), 28 USC 2241 (habeas corpus jurisdiction), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

VENUE

26. Venue is proper because Petitioner is currently detained in Milan, NM, and now remains detained at the CIBOLA COUNTY CORRECTIONAL CENTER. *See also generally* *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (generally, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States," he must file the petition in the district of confinement and name his immediate custodian as the respondent), *see also* *Braden v. 30th Judicial Circuit of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of New Mexico, the judicial district in which petitioner is currently detained.

PARTIES

Petitioner

27. Petitioner is a citizen and national of Ecuador. He is currently in ICE custody and detained at the CIBOLA COUNTY CORRECTIONAL CENTER, 2000 Cibola Loop PO Box 3540, Milan, NM 87021.

Respondents

28. Respondent Kristi NOEM is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and

Nationality Act and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of New Mexico; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. She is sued in her official capacity. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

29. Respondent Pamela BONDI is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system operates as a component agency. She routinely transacts business in the District of New Mexico in this capacity; is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(g) (2007); and as such is a custodian of the Petitioner. She is sued in her official capacity. At all times relevant hereto, Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001.

30. Respondent Todd M. LYONS is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of District of New Mexico, Albuquerque Division, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. ICE's responsibilities include operating the immigration detention system. In his capacity as ICE Acting Director, Respondent Lyons exercises control over and is custodian of persons held at ICE facilities nationally. He is the

Petitioners's immediate custodian and responsible for Petitioner's detention. He is sued in his official capacity. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

31. Respondent MARY DE ANDA-YBARRA is the Field Office Director for Detention and Removal, ICE, DHS. She is the custodial official acting within the boundaries of the judicial district of the United States District Court for the District of District of New Mexico - Albuquerque Division. Pursuant to Respondent's orders, Petitioner remains in custody. Respondent is sued in his official capacity. Her address is 8915 Montana Ave. El Paso, TX 79925.
32. Respondent, GEORGE DEDOS, Warden at the CIBOLA COUNTY CORRECTIONAL CENTER, 2000 Cibola Loop PO Box 3540 Milan, NM 87021 where the petitioner is detained. The Warden has immediate physical custody of Petitioner. He is sued in his official capacity.

STATEMENT OF THE FACTS

33. Petitioner, Mr. Pablo Adrian Guaman-Tobay ("Mr. Guaman-Tobay"), is a 30-year-old citizen and national of Ecuador.
34. Mr. Guaman-Tobay entered without inspection to the United States on or about April 4, 2023, after leaving Ecuador.

35. On April 8, 2023, the Department of Homeland Security, initiated removal proceedings by issuing a Notice to Appear pursuant to 8 U.S.C. § 1229a; INA § 240. *See See* Exhibit 1 - Notice to Appear

36. The Notice to Appear charges Petitioner as a noncitizen who was not admitted or paroled, and alleges removability under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I) . *See* Exhibit 1- Notice to Appear

37. Additionally, the Department of Homeland Security, carried out a detention assessment pursuant to 8 U.S.C. 8 U.S.C. § 1226(a). *See* Exhibit 1- Notice to Appear

38. Officers of DHS conducted a flight and risk assessment. *See* Exhibit 2- Order of Release on Recognizance

39. On April 9, 2023, Officers of DHS issued an Order of Release on Recognizance. *See* Exhibit 2- Order of Release on Recognizance

40. Based on that assessment, Officer released Mr. Guaman-Tobay on his own recognizance. *See* Exhibit 2- Order of Release on Recognizance

41. Mr. Guaman-Tobay was ordered to appear before the Immigration Court at 450 Main St., Room 628 Hartford, CT 061033015 on December 17, 2024. *See* Exhibit 1 - Notice to Appear

42. On December 18, 2024, Mr. Guaman-Tobay applied for relief and lawful presence in the United States by filing an asylum/withholding of removal application under 8 U.S.C. § 1158 and 8 U.S.C. § 1231(b)(3).

43. Mr. Guaman-Tobay applied for and was granted employment authorization. Petitioner's Employment Authorization Document is valid from June 26, 2025, through June 25, 2030. Exhibit 3 - Work Authorization, Texas ID, and Social Security Card.

44. On January 12, 2026, Petitioner was enroute to take his wife to a doctor's visit regarding her pregnancy when he was stopped and detained by immigration authorities.

45. Mr. Guaman-Tobay was transported to ERO EL PASO CAMP EAST MONTANA in El Paso, TX and then to CIBOLA COUNTY CORRECTIONAL CENTER in Milan, NM, where he remains detained. *See* Exhibit 4 - ICE Locator

46. Mr. Guaman-Tobay asks this Court to find that Respondents have deprived him of his due process rights by re-detaining him after release on recognizance, and have violated the Immigration and Nationality Act by subjecting him to detention without the possibility of a bond hearing under 8 U.S.C. § 1226(a).

47. Mr. Guaman-Tobay therefore seeks immediate release from custody, and requests that this Court issue an Order to Show Cause within three days directing Respondents to explain why Petitioner is being unlawfully detained.

48. Mr. Guaman-Tobay complied with all conditions imposed by ICE, including reporting as directed.

49. Mr. Guaman-Tobay is set for his Master Calendar Hearing (*i.e.* pre-trial hearing) for February 24, 2026 at 8:30 am. *See* Exhibit 5 - EOIR Automated Case Information

50. Petitioner therefore seeks immediate release from custody, and requests that this Court issue an Order to Show Cause within three days directing Respondents to explain why Petitioner is being unlawfully detained.

51. Without relief from this court, Petitioner faces continued detention in violation of his due process rights with no possibility of an individualized bond hearing.

LEGAL BACKGROUND

52. Section 2241 of 28 United States Code provides in relevant part that "[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions" when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3); *see also* I.N.S. v. St. Cyr, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).

53. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).

54. Habeas corpus "entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." Boumediene v. Bush, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (*quoting*, St. Cyr, 533 U.S. at 302.

55. The Fifth Amendment's Due Process Clause protects the right of all persons to be free from "depriv[ation] of life, liberty, or property, without due process of law." U.S. Const. amend. V.

56. "It is well established that the Fifth Amendment entitles aliens to due process of law[.]" Trump v. J. G. G., 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (*quoting* Reno v. Flores, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).

57. "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, 533 U.S. at 690.

58. The INA prescribes three basic mechanisms for detention for non-citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for admission, § 1226 the default detention statute, and § 1231 for post–final order detention.

59. 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).

60. 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").

61. 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 ("IJ"), 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)).

62. For decades, noncitizens in the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to 8 U.S.C. § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

63. On July 8, 2025, however, DHS stated a new position with regard to custody determinations as follows:

> An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole**. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**
>
> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-foapplications-for-admission (emphasis original).

64. As a result, according to DHS all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S.

residents, are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c)." *Id*.

65. Prior to July 8, 2025, the predominant form of detention authority for anyone arrested in the interior of the United States was 8 U.S.C. § 1226(a). Further, the Petitioner in this case was initially arrested and released pursuant to 8 U.S.C. § 1226(a), and is demonstrated by DHS's own forms.

66. Under § 1226(a) the Attorney General may release a detainee on bond on the authority of ICE or by an Immigration Judge. There are standards for release: bond is available if the detainee "demonstrate[s] . . . that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding." 8 C.F.R. § 36.1(c)(8). "[T]he immigration judge is authorized to exercise the authority . . . to detain the alien in custody, release the alien, and determine the amount of bond." Id. § 236.1(d)(1). If denied release at the initial bond hearing, a § 1226(a) detainee may request a custody redetermination hearing before an IJ. That request will "be considered only upon a showing that the alien's circumstances have changed materially." *Id*. § 1003.19(e).

67. Through this petition, Petitioner asks this Court to find that Respondents have unlawfully detained him under 8 U.S.C.§ 1225(b)(2)(A), that his detention is appropriate under 8 U.S.C. § 1226(a).

CAUSES OF ACTION

CLAIMS FOR RELIEF

COUNT I

MATHEWS V. ELDRIDGE PROCEDURAL DUE PROCESS CLAIM

68. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Those factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335, 96 S.Ct. 893; *see also Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 at *8 (W.D. Tex. Oct. 21, 2025).

1. PRIVATE INTEREST

69. "'The interest in being free from physical detention' is 'the most elemental of liberty interests.'" Martinez v. Noem, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) (quoting Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004)). Federal courts in Texas have found that noncitizens have a protected liberty interest in their freedom, regardless of citizenship status, when they have spent time living, working, or supporting a family in the interior of the United States. See, e.g., Lopez Miranda v. Flores, No. EP-25-CV-584-KC, 2025 WL 3901908, at *3 (W.D. Tex. Dec. 10, 2025); Chinchilla v. De Anda-Ybarra, No. EP-25-CV-00548-DB, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025) (finding noncitizen has protectable liberty interest because he was "living in the United States for over four years and attends his local church");

Hernandez-Fernandez, 2025 WL 2976923 at *9 ("Because he spent nearly three years at liberty in the United States, [petitioner] possesses a cognizable interest in his freedom from detention.").

70. Mr. Moiseev has been living in the United States for over 3 years. He was released on his own recognizance on January 14, 2023 and always complied with the conditions of his release. Mr. Moiseev applied for relief and lawful presence in the United States by filing an asylum/withholding of removal application under 8 U.S.C. § 1158 and 8 U.S.C. § 1231(b)(3). Through his pending application, Mr. Iglesias-Gomez will have the opportunity to become a lawful permanent resident, and his removal is not reasonably foreseeable due to a pending application for relief. Mr. Moiseev also applied for and was also granted a work authorization document.

2. RISK OF ERRONEOUS DEPRIVATION

71. The government's refusal to provide bond hearings creates a high risk of erroneous deprivation, since the process afforded in removal proceedings does "not ameliorate the risk that [a petitioner] will be erroneously deprived of his liberty while his removability is assessed." *See Rojas v. Noem*, 2025 WL 3038262 at *3-*4. Bond hearings that "conduct individualized custody determinations considering flight risk and dangerousness" are the precise "type of proceeding that would give [a noncitizen] an opportunity to be heard and to receive a meaningful assessment of whether he is dangerous or likely to abscond." *Id.* at *4.

72. Mr. Moiseev's history of compliance with release conditions, longstanding residence and employment in the United States, and strong family and community ties demonstrate that individualized review is particularly important to reduce the risk of erroneous detention.

3. GOVERNMENT'S INTEREST

73. Regardless of the government's purported interest in enforcing its interpretation of the immigration detention statutes, a habeas petitioner's "constitutional interest in his liberty exists above and apart from the INA." Rojas, 2025 WL 3038262 at *4 (citing A.A.R.P. v. Trump, 605 U.S. 91, 94 (2025) ("[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.")). Further, while the government "has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community," such interest "would be squarely addressed through a bond hearing." Id. (citing Martinez v. Noem, 2025 WL 2598379 at *4 (W.D. Tex. Sep. 8, 2025)).

Fifth Circuit Precedent on Procedural Due Process

74. Federal courts in the Fifth Circuit have repeatedly granted release on procedural due process grounds. Here is a list of a few helpful cases to reference in drafting a procedural due process argument:

- *Hassen v. Noem,* 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026)[1]
- *Clemente Ceballos v. Garite,* 3:26-cv-00312-DB (W.D. Tex. Feb 10, 2026)[2]
- *Santiago v. Noem*, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025)
- *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025)
- *Parada-Hernandez v. Johnson*, 2025 WL 3465958 (N.D. Tex. Oct. 29, 2025), *report and recommendation adopted*, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025)
- *Rojas v. Noem*, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025)

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1 Granting habeas relief after acknowledging the Fifth Circuit's precedential decision in Buenrostro-Mendez v. Bondi and noting the case "does not change the case's outcome on procedural due process grounds."

2 Same as footnote 1.

- *De Leon Hernandez v. Bondi*, 2025 WL 3217037 (W.D. La. Nov. 18, 2025)
- *Chinchilla v. De Anda-Ybarra*, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025)
- *Vieira v. De Anda-Ybarra,* 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025)
- *Cruz-Reyes v. Bondi*, (S.D. Tex. Feb. 3, 2026)
- *Singh v. Taylor,* 2026 WL 360913 (W.D. Tex. Feb. 9, 2026)
- *Aguila v. Warden, ERO El Paso Camp East Montana,* (W.D. Tex. Feb. 9, 2026)

COUNT II

VIOLATION OF 8 U.S.C. § 1226(a)

UNLAWFUL DENIAL OF RELEASE ON BOND

75. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.
76. 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, § 1225(b)(2) does not apply to those persons Respondents previously determined should be detained and released under § 1226(a). Further, 8 U.S.C. § 1225(b)(2) does not justify cancellation of a bond or release order issued under 8 U.S.C. § 1226(a).
77. Nonetheless, Respondents have adopted a policy and practice of re-interpreting the detention and release statutory scheme in the INA.
78. The unlawful application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT III

VIOLATION OF BOND REGULATIONS

8 C.F.R. §§ 236.1, 1232.1 and 1003.19

UNLAWFUL DENIAL OF RELEASE ON BOND

79. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

80. 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 (emphasis added). 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.

81. Nonetheless, Respondents have adopted a policy and practice of applying 8 U.S.C. § 1225(b)(2) to noncitizens like Petitioner whom Respondents previously determined should be detained and released pursuant to § 1226(a).

82. The unlawful application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1232.1 and 1003.19.

COUNT IV

VIOLATION OF THE APA CONTRARY TO LAW AND ARBITRARY AND CAPRICIOUS AGENCY POLICY

83. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

84. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

85. 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 whom Defendants-Respondents previously determined should be detained and released under 8 U.S.C. § 1226(a). Such noncitizens are detained (and released) under 8 U.S.C. § 1226(a) and are eligible for release on bond, unless they were initially placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1) or (b), or were detained under 8 U.S.C. § 1226(c) or § 1231.

86. Nonetheless, Respondents have adopted a policy and practice of applying 8 U.S.C. § 1225(b)(2) to noncitizens like Petitioner whom Respondents previously determined should be detained and released pursuant to 8 U.S.C. § 1226(a).

87. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important

aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

88. The application of 8 U.S.C. § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT V
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

89. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

90. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty. His continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

91. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall…be deprived of life, liberty, or property without due process of law." As a noncitizen who shows well over "two years" physical presence in the United States (indeed he has nearly 3 years), Mr. Guaman-Tobay is entitled to Due Process Clause protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 ("[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."). Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id*. at 690.

92. This Respondent's new policy, along with the BIA's decision in *Yajure-Hurtado* violates the procedural due process rights of noncitizen detainees, both facially and as applied. It lacks any reference to or establishment of any procedure for challenging its invocation. The Court should find that there can be no possible application of this policy that would satisfy due process where it purports to authorize the most severe and recognized deprivation of liberty without a hint of a process to challenge such deprivation. In contrast, as the Supreme Court in *Demore* highlighted in upholding the mandatory detention of a noncitizen convicted of a crime under § 1226(c), "process" has been built into that mandatory detention scheme. For example, § 1226(c) applies to detainees whose convictions were generally "obtained following the full procedural protections [the] criminal justice system offers." *Demore v. Kim*, 538 U.S. 510, 513 (2003); *id.* at 525 n.9, (noting that "respondent became 'deportable' under § 1226(c) only following criminal convictions that were secured following full procedural protections"). And if mandatory detention becomes unnecessarily prolonged in that context, the due process' prohibition of arbitrary government detention could entitle a detainee "to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified." Id. at 532 (Kennedy, J., concurring). Detention pursuant to the automatic stay after the government already failed to establish a justification for it, with no process afforded to challenge the detention as arbitrary, is facially violative of procedural due process.

93. The Fifth Amendment guarantees that no person shall be deprived of liberty 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

Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). "Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances 'where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint.' " *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (*quoting Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

94. Here, the DHS, affirmed by the BIA, has determined, improperly, that all persons present in the U.S. who entered without admission are ineligible for bond. It is thus a foregone conclusion that the BIA will affirm the IJ's decision here, and find Petitioner ineligible for bond. Like the accused in criminal cases, habeas is proper. *See Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson*, 346 U.S. 137, 154 (1953).

COUNT VI
INJUNCTIVE RELIEF

95. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in the above paragraphs of this Petition.

96. This Court has the discretion to enter a temporary restraining order and a preliminary injunction. *See Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-1562 (11th Cir. 1989). "To be entitled to a preliminary injunction, the applicants must show (1) a substantial likelihood that they will prevail on the merits, (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted, (3) their substantial injury outweighs the threatened harm to the party whom they seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest." *Tex. Med. Providers*

Performing Abortion Servs. v. Lakey, 667 F.3d 570, 574 (5th Cir. 2012). All four elements must be demonstrated to obtain injunctive relief. *Id.*

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Declare that Respondents' new mandatory detention policy that all noncitizens that entered the U.S. without admission or inspection are "applicants for admission" and charged with removability under § 1182 are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b) is unlawful and in violation of the INA;
3. Order Respondents to file with the Court a complete copy of the administrative file from the Dept. of Justice and the Dept. of Homeland Security;
4. Order Respondents to return back to Petitioner his wallet along with its contents;
5. Enjoin ICE from transferring Petitioner outside of the District of New Mexico while this matter is pending;
6. Issue an order directing Respondents to show cause why the writ should not be granted within seventy-two hours;
7. Find that a custody redetermination pursuant to 8 C.F.R. 236.1(d) is an inadequate remedy because of DHS's lack of initial decision to review.
8. Find that DHS exercised no discretion under 8 C.F.R. § 236.1(d).

9. Find that redetaining Petitioner under the wrong statute, DHS afforded him no due process, after all bond hearings before an Immigration Judge are held after DHS makes an initial determination to detain[3].
10. Find that Petitioner's detention under 8 U.S.C. § 1226 absent an individualized assessment is a violation of his due process rights.
11. Find that DHS's failure to follow its own regulations and its failure to afford Petitioner the minimal due process under the 5th Amendment violated his rights.
12. Order Respondents to immediately release Petitioner.
13. In the alternative, Respondents should provide Petitioner a fair bond redetermination hearing before an Immigration Judge as provided by 8 U.S.C. § 1226 and enjoin his further detention under 8 U.S.C. § 1225(b). Many courts, have placed the burden on Respondents to bear the burden of justifying Petitioner's continued detention by clear and convincing evidence at the bond redetermination hearing. *See* *Vieira v. Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, 2025 U.S. Dist. LEXIS 203930 (W.D. Tex. Oct. 16, 2025) (collecting cases); *Erazo Rojas v. Noem*, No. EP-25-CV-442-KC, 2025 WL 3038262, 2025 U.S. Dist. LEXIS 217585 (W.D. Tex. Oct. 30, 2025).
14. Grant any other relief that this Court deems just and proper.

[3] The BIA and Immigration judges lack jurisdiction to decide constitutional challenges to the Immigration and Nationality Act or its implementing regulations. In *Cantu-Delgadillo v. Holder*, the Fifth Circuit held that "the BIA lacked jurisdiction to consider" an alien's due process claims, citing the BIA's own precedent in *Matter of C-*, which established that "it is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations" (*Cantu-Delgadillo v. Holder*, 584 F.3d 682 (2009))
This principle applies to both facial and as-applied constitutional challenges, as "any error was harmless because the BIA lacked jurisdiction to consider those challenges" (*Cantu-Delgadillo v. Holder*, 584 F.3d 682 (2009)

Respectfully submitted,

/s/ David H. Square_____
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, PABLO ADRIAN GUAMAN-TOBAY 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 February 13th, 2026.

/s/ David H. Square
David H. Square, Esq.