UNITED STATES DISTRICT COURT
DISTRICT COURT OF COLORADO

Angel Valle-Rodriguez

Petitioner,

v.

Robert Hagan, Field Office Director of Enforcement and Removal Operations, Denver Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Juan Baltazar, Warden of the Aurora Detention Facility

Respondents.

Case No.

PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Petitioner Angel Valle-Rodriguez brings this petition for a writ of habeas corpus to challenge his unlawful detention. Mr. Valle-Rodriguez is one of hundreds of noncitizens currently being subjected by the government to a shifting labyrinth of moving goalposts with the singular objective of prolonging his unlawful detention. Mr. Valle-Rodriguez, was found to be a member of the *Maldonado Bautista* class and granted a bond by the Aurora Immigration Court on January 7, 2026. *Exhibit C: Order of the Immigration Judge. Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr. et al.* 5:25-cv-01873-SSS-BFM. The Court found that he was neither a danger to the community nor a flight risk and ordered him released on a $1,500 bond. *Id.*
2. The Department of Homeland Security timely appealed that order and indicated it intended to invoke the automatic stay provision under 8 CFR § 1003.19(i)(2); 8 CFR § 1003.6(c). *Exhibit D.* The Department's appeal failed to comply with the regulatory requirements to sustain the stay. The Department nonetheless continues to detain Mr. Valle-Rodriguez on the erroneous theory that the bond order is stayed pending the outcome of the Department's appeal. *Exhibit M.*
3. Mr. Valle-Rodriguez paid his bond, and no statute or regulation prevents his immediate release pursuant to the Court's order. *Exhibit C.* Respondents nonetheless continue to detain him during the pendency of the appeal.
4. Mr. Valle-Rodriguez also faces erroneous indefinite detention under 8 U.S.C. §1225(b)(2). The Assistant Chief Immigration Judge for the Aurora Immigration Court purports to have vacated the favorable bond order despite lacking jurisdiction while the case is before the Board of Immigration Appeals. *Exhibit H.* The Department's appeal insists Mr. Valle-

Rodriguez is subject to 8 U.S.C. §1225(b)(2) rather than 8 U.S.C. § 1226(a) despite the fact that he has resided in the United States for decades and is not "seeking admission." *Exhibit D; Exhibit E.* The Department's success at the Board of Immigration Appeals is a foregone conclusion given the Board's own ruling in *Matter of Yajure Hurtado*, 29 I & N. Dec 216 (BIA 2025) and EOIR guidance instructing adjudicators to defy the ruling in *Maldonado Bautista.*

5. Under the law, Mr. Valle-Rodriguez should be detained under 8 U.S.C. 1226(a) and therefore eligible for bond. Since he won and paid that bond, he should be released during the pendency of the appeal since the Department did not properly invoke the automatic stay provision. Petitioner is in the physical custody of Respondents at the ICE Detention Facility in Aurora, Colorado. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) are erroneously denying him release based on the improperly invoked automatic stay, and the debunked theory that he is subject to detention under 8 U.S.C. §1225(b)(2). Petitioner requests that Respondent immediately release him from custody under the conditions already ordered on January 7, 2026.

II. PARTIES

1. Petitioner is a citizen of Mexico who has been detained by ICE since November of 2025. *Exhibit A; Exhibit B.* Petitioner has resided in the United States since September of 2001.
2. Robert Hagan is the ICE Field Office Director of the Denver ICE Field Office and is sued in his official capacity. Mr. Guadian is the immediate custodian of Petitioner and is responsible for Petitioner's detention and removal.

3. 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 (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
4. Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE) and is sued in his official capacity. Mr. Lyons is responsible for Petitioner's illegal detention and has custodial authority over him.
5. 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 it operates is a component agency. She is sued in her official capacity.
6. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.
7. Respondent Juan Baltazar is the Warden of the Aurora Facility where ICE jails Petitioner, and is an employee of the GEO Group, the for-profit prison company that operates the facility. Mr. Baltazar is a legal custodian of Petitioner. He is sued in his official capacity.

III. JURISDICTION AND VENUE

1. Petitioner is in the physical custody of Respondents. Petitioner is detained at the ICE Detention Center in Aurora, Colorado.
2. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

3. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
4. 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 Colorado, the judicial district in which Petitioner currently is detained.
5. 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 District of Colorado.

IV. FACTUAL BACKGROUND

1. Petitioner is a 34-year-old Mexican national. *Exhibit A.* He entered the United States without inspection in September of 2001 when he was about 9 years old. Mr. Valle-Rodriguez, has been married to Claudia Cerceda Martinez, a United States citizen, for 13 years. Together, they have two U.S. citizen children ages 14 and 6. Mr. Valle-Rodriguez's wife suffers from major depressive disorder. Their son was diagnosed with autism. Mr. Valle-Rodriguez and his wife are homeowners and they purchased their home at [redacted] in 2023. Mr. Valle-Rodriguez owns his a small business:AMA Painting Services. In his 24 years of residence in the United States he has a 2019 conviction for DWAI and a traffic violation for driving under restraint from 2022. Mr. Valle-Rodriguez has never failed to appear in court and timely completed probation. *Id.* Mr. Valle-Rodriguez has a recent arrest for DUI in 2025 and that case is pending. Mr. Valle-Rodriguez was released on a $500 bond in that matter and was assessed to has a public safety rate of 97% and appearance rate of 91%. In consideration of these

facts, Mr. Valle-Rodriguez was granted a bond of $1,500 by the Aurora Immigration Court on January 7, 2021. *Exhibit C.*

2. Mr. Valle-Rodriguez was detained on or about November 6, 2025. *Exhibit A; Exhibit B.* Mr. Valle-Rodriguez was detained pursuant to a warrant issued under INA §236 (8 U.S.C. § 1226). *Exhibit B.* His notice to appear charges him as inadmissible for having entered without inspection under INA § 212(a)(6)(A)(i). *Exhibit A.* The notice to appear does not classify him as an arriving alien. *Id.*

3. Mr. Valle-Rodriguez was granted a bond of $1,500 by the Aurora Immigration Court on January 7, 2021. *Exhibit C.* He paid that bond the following day. *Id.* Mr. Valle-Rodriguez, was nonetheless not released because the Department of Homeland security filed a Notice of Intent to Appeal claiming they would invoke the Automatic Stay provisions. *Exhibit D.* The Department's Notice of Appeal failed to include the required senior legal official certification under 8 CFR § 1003.6(c). The Department filed a second notice of Appeal with the required certification on January 22, 2026. *Exhibit E.* 11 business days had passed by the time the Department made its second filing. *Id.*

4. Petitioner has repeatedly informed Respondents that the deficient filing and subsequent late filing are insufficient to have invoked the stay of the court's January 7, 2026, bond order. Respondents insist in detaining Petitioner and will not give effect to the January 7, 2026, order.

5. On January 29, 2026, the Board of Immigration Appeals assumed jurisdiction over the Department's bond appeal, thus divesting the lower court of its jurisdiction. *Exhibit G.* Notwithstanding, the Aurora Immigration Court issued another decision in the bond case on February 4, 2026. *Exhibit H.* The February 4, 2026, order issued by the Assistant Chief

Immigration Judge, purports to reassign the matter to herself, reopen, reconsider, and vacate the January 7, 2026, grant of bond. *Id.*

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Petitioner need not exhaust his administrative remedies. Exhaustion is not required where the Petitioner challenges the constitutionality of the agency procedure itself, "such that the question of the adequacy of the administrative remedy is for all practical purposes identical with the merits of the plaintiff's lawsuit." *McCarthy v. Madigan,* 503 U.S. 140, 148 (1992). In this case, Petitioner challenges the constitutionality of the procedures by which Respondent reviews his custody status – erroneously finding that he is detained under 8 U.S.C. § 1225. A party need not exhaust administrative remedies when the available remedies would "provide no genuine opportunity for adequate relief" or when "administrative appeal would be futile. *Barco Mercado v. Francis*, No. 25-cv-6582, --- F. Supp. 3d ----, 2025 WL 3295903, at *30 (S.D.N.Y. Nov. 26, 2025); *Garza v. Davis*, 596 F.3d 1198, 1204 (10th Cir. 2010).

Petitioner here lacks a genuine administrative remedy. His only avenue for review, the Executive Office for Immigration Review, is bound by the Board of Immigration Judge's precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 224 (BIA 2025)(holding that all noncitizens present without admission are subject to mandatory detention under 8 U.S.C. § 1225). *Barco Mercado v. Fancis,* at 30 ("To force Mr. Barco to request a bond hearing from an immigration judge — which would be denied under the BIA's recent decision and, even if it were held, would result in release being denied under that decision — and then appeal that denial to the same BIA that has prevented immigration judges from hearing bond requests in the first place, all before allowing Mr. Barco to seek judicial review of his arrest and redetention, would be "Kafkaesque." Exhaustion of administrative remedies would be futile.")

VI. DISCUSSION

A. Legal Authority for Immigration Detention

a. Automatic Stay of Release under 8 CFR § 1003.19(i)(2); 8 CFR § 1003.6(c).

A custody redetermination granting bond will be automatically stayed when the Department files a form E-43 Notice of Intent to Appeal Custody Redetermination within one business day of the decision. 8 CFR § 1003.19(i)(2). The stay lapses if the Department fails to file the Notice of Appeal within ten business days. 8 CFR § 1003.6(c). The Notice of Appeal required to sustain the automatic stay has special requirements laid out in 8 CFR § 1003.6(c).

> To preserve the automatic stay, the attorney for DHS *shall* file with the notice of appeal a certification by a senior legal official that—
>
> > **(i)** The official has approved the filing of the notice of appeal according to review procedures established by DHS; and
> >
> > **(ii)** The official is satisfied that the contentions justifying the continued detention of the alien have evidentiary support, and the legal arguments are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent.

Id. (emphasis added). The use of the word "shall" indicates that accompanying the notice of appeal with a certification from a senior legal official is mandatory in order to "preserve the automatic stay." Put differently, if the notice of appeal is not accompanied by the required certification by a senior legal official, the automatic stay is not preserved. The regulation further explains the requirements of the required certification in subsections (i) and (ii). A certification which fails to demonstrate the senior legal official's approval of the notice of appeal "according to the review procedures established by DHS," or fails to show that the official is satisfied with the legal and factual merits of the notice of appeal, is deficient for purposes of preserving the automatic stay. 8 CFR § 1003.6(c)(1)(i), (ii).

b. The Department is illegally preventing the execution of the Court's order granting bond by insisting on the validity of a stay it did not properly invoke.

The Department's notice of appeal is deficient under 8 CFR § 1003.6(c) and cannot serve to preserve the stay. 8 CFR § 1003.6(c). Mr. Valle-Rodriguez was granted a bond by the Aurora Immigration Court on January 7, 2026. *Exhibit C.* On January 8, 2026, the Department timely filed a form E-43 Notice of ICE Intent to Appeal Custody Redetermination. *Exhibit D.* The Department's form states the following:

> The stay *shall lapse* if ICE does not file a notice of appeal *along with appropriate certification* within ten business days of the issuance of the order of the Immigration Judge, or upon ICE's withdrawal of this notice, or as set forth in 8 C.F.R. §1003.6(c)(4) and (5). See 8 C.F.R. §1003.6(c)(1).

Id. (emphasis added). On January 21, 2026, the Department filed its Notice of Appeal. *Exhibit D.* The Notice consists of the standard three-page form E-26 Notice of Appeal. *Id.* The Department marked "yes" to the question of whether it invoked the automatic stay provision. *Id.* The Department's Notice was not filed "along with the appropriate certification" required by 8 CFR § 1003.6(c) and the text of form E-43 itself. Having failed to comply with 8 CFR § 1003.6(c)(1), the Department's Notice necessarily failed to comply with subsections (i) and (ii). Therefore, the stay "shall lapse." *Id.*

January 21, 2026, was the deadline for the Department to file its notice of appeal that would perfect its invocation of the automatic stay provision. 8 C.F.R. §1003.6(c)(1)(fifteen days had elapsed excluding two weekends and Martin Luther King Jr. Day, making January 21st the tenth and final business day.) Evidently recognizing its error, the Department filed a second Notice of Appeal on January 22, 2026. *Exhibit E.* The Board never issued a receipt acknowledging the January 21, 2026, Notice of Appeal. *Exhibit G.* Both receipt notices issued by the Board acknowledge the date of filing as January 22, 2026, 11 business days after the lower court's

favorable bond ruling. *Id.* This successive Notice of Appeal is in all respects identical to the one filed on January 21, 2026, except for one telling addition: "EOIR-43 Senior Legal Official Certification." *Exhibit E.* The certification itself is signed on January 22, 2026, removing all doubt that the Department did not timely meet the requirements of 8 C.F.R. §1003.6(c)(1). *Id.* The stay is therefore lapsed and Mr. Valle-Rodriguez should be released on the bond he already paid during the pendency of the appeal.

Mr. Valle-Rodriguez, paid his bond, the order is valid – though not administratively final – and nothing[1] is staying the execution of that order. In a world where Respondents abide by the law and proceed in good faith, that should be the end of it. Unfortunately, it is not. Respondents are already at work to indefinitely continue Mr. Valle-Rodriguez's unlawful detention through further questionable behavior. See *infra Martinez-Orellana v. Hagan et al.* 1:26-cv-00355, at 9 (describing recent behavior by Respondents as "patently absurd and undertaken in bad faith.")

B. The Assistant Chief Immigration Judge of the Aurora Immigration Court unlawfully purports to have vacated the January 7, 2026, bond order.

The jurisdiction of the Immigration Court and Board of Immigration Appeals is circumscribed by statute and regulation. *Matter of Safraz KHAN,* 26 I&N Dec. 797 (BIA 2016). ("[T]he powers and duties of Immigration Judges to conduct removal hearings under section 240 of the Act, 8 U.S.C. § 1229a (2012), and any other proceedings, is only that authority delegated to them by the Act and by the Attorney General through regulation.")(citing INA § 103(g) , 8 U.S.C. § 1103(g); *Matter of G-K-*, 26 I&N Dec. 88 (BIA 2013); *Matter of Avetiysan*, 25 I&N Dec. 688, 691 (BIA 2012). "Once a party files an appeal with the Board, jurisdiction is vested with the board,

[1] "***Effect of filing an appeal.*** The filing of an appeal from a determination of an immigration judge or district director under this paragraph shall not operate to delay compliance with the order (except as provided in § 1003.19(i)), nor stay the administrative proceedings or removal." 8 C.F.R. § 1236(d)(4) (emphasis in original).

and the Immigration Judge is divested of jurisdiction over the case." *Board of Immigration Appeals Practice Manual, ch. 4.2(a)(ii).* Consequently, once the Board has assumes jurisdiction over a case, the Immigration Judge no longer has jurisdiction to reopen or reconsider the matter. 8 C.F.R. § 1003.23 (allowing an Immigration Judge to reconsider their decision *sua sponte,* "*unless* jurisdiction is vested with the Board of Immigration Appeals")(emphasis added).

Petitioner's favorable custody determination issued January 7, 2026, is currently on appeal before the Board of Immigration Appeals. The Department timely filed that appeal on January 22, 2026. The Board issued a receipt notice acknowledging the filing of the appeal on January 29, 2026. Notwithstanding the Board's assumption of jurisdiction over the bond appeal, on February 4, 2026, the Assistant Chief Immigration Judge for the Aurora Immigration Court issued an order in the custody proceeding. *Order of the Immigration Judge,* Feb. 4, 2026. The order notes that bond was granted by a different Immigration Judge and states that "the undersigned Immigration Judge was assigned to complete the case." *Id.* Who assigned the Judge to "complete" this case which was already on appeal to the Board is not specified. *Id.* The order purports to exercise the court's *sua sponte* authority to vacate the bond order, reopen and reconsider the matter, and deny Mr. Valle-Rodriguez's request for bond due to lack of jurisdiction under *Matter of Yajure-Hurtado.* *Id.* The Department's pending bond appeal is not mentioned in the February 4, 2026, order. *Id.*

The lower court's "reassignment" and *sua sponte* reconsideration of the bond order is unlawful in at least two ways. First, the court lacked jurisdiction over the custody matter at all during the pendency of the Department's appeal. Under 8 C.F.R. § 1003.23, the court was divested of jurisdiction once jurisdiction vested with the Board of Immigration Appeals. The Board received the Department's appeal on January 22, 2026. Therefore, the court had no authority to issue the February 4, 2026, order. Second, once an appeal is filed, the Immigration Judge is

required by regulation to issue a written decision explaining the custody determination. 8 C.F.R. § 1003.6. For reasons unclear to petitioner – as no reason is given in the February 4, 2026, order or elsewhere – the Immigration Judge who granted the bond was "reassigned" off Mr. Valle-Rodriguez's case, thereby preventing her from issuing the decision required under 8 C.F.R. § 1003.6. Without the written decision explaining the custody determination, the parties cannot meaningfully litigate the custody appeal. 8 C.F.R. § 1003.6; See also*: Exhibit E* ("DHS reserves the right to raise additional arguments on appeal upon receipt and review of the Immigration Judge's bond memorandum.") The court's February 4, 2026, order and the unexplained reassignment of the judge who granted the bond prevent Mr. Valle-Rodriguez from fighting his case or demanding that his release order be honored. This is particularly concerning where both the Department's appeal and the court's *ultra vires* February 4, 2026, order assert that Mr. Valle-Rodriguez's is ineligible for bond under 8 U.S.C. § 1225(b)(2) as interpreted in *Matter of Yajure Hurtado.* But Mr. Valle-Rodriguez was granted bond because he is a *Maldonado Bautista* class member notwithstanding the statute of detention. This appears to be a continuation of a pattern of behavior from Respondents to ignore District Court orders in favor of any machination that results in continued detention. As explained below, Mr. Valle-Rodriguez, cannot plausibly be said to be detained under 8 U.S.C. § 1225(b)(2).

C. Detention under 8 U.S.C. §§ 1225 and 1226

The two detention statutes at play in this deeper layer of the petition are 8 U.S.C. § 1226 and 8 U.S.C. § 1225. This issue is one familiar to the Court. *Martinez-Orellana v. Hagan et al.* 1:26-cv-00355, at 2. 8 U.S.C. § 1226 permits release on bond. 8 U.S.C. § 1225 mandates detention during the removal proceedings. Respondent maintains that Mr. Valle-Rodriguez is subject to

mandatory detention under § 1225. Petitioner maintains he should be eligible for discretionary release under § 1226.

Section 1226(a) sets out a default rule: a noncitizen may be detained pending a decision whether they are to be removed from the United States. *Jennings v. Rodriguez*, 583 U.S. 281, 288, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018). 8 U.S.C. § 1226(c) creates an exception to that default rule, explaining that inadmissible aliens with certain criminal histories are subject to mandatory custody and may therefore not seek discretionary release on bond. *Id.; Ramon Rodriguez Vazquez, v. Drew Bostock, et al.*, 3:25-cv-05240 (W.D. Wash. Apr.24, 2025). The exception in § 1226(c) proves the rule that the detention of inadmissible noncitizens such as those present without admission is generally governed under 8 U.S.C. § 1226(a). *Ramon Rodriguez Vazquez, v. Drew Bostock, et al.*, 3:25-cv-05240 (W.D. Wash. Apr.24, 2025), at 52.

> A plain reading of this exception implies that the default discretionary bond procedures in Section 1226(a) apply to a noncitizen who, like Rodriguez, is present without being admitted or paroled but has not been implicated in any crimes as set forth in Section 1226(c). See § 1226(a) (Attorney General may release noncitizen on bond "except as provided in subsection (c)"). As the Supreme Court has recognized, when Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). This lends strong textual support to Rodriguez's position that "inadmissible" noncitizens like himself are included within Section 1226.

A noncitizen subject to 8 U.S.C. § 1225 is detained mandatorily and may only be released on a grant of parole. *Jennings v. Rodriguez*, 583 U.S. 281, 285. As the Supreme Court recognized, § 1225 is concerned "primarily [with those] seeking entry, *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Id.* at 287. Section 1225 is split into two paragraphs (b)(1) and (b)(2) which apply to different subsets of noncitizens. 8 U.S.C. § 1225. Paragraphs (b)(1) and (b)(2) reflect the understanding that § 1225 is concerned

with noncitizens seeking entry. Paragraph (b)(1)—which concerns "expedited removal of inadmissible arriving [noncitizens]"—encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible under section 212(a)(6)(c) or 212(a)(7)." 8 U.S.C. § 1225 (b)(1)(A)(i). These grounds of inadmissibility are for those who misrepresent information to an examining immigration officer or do not have adequate documents to enter the United States. Thus, subsection (b)(1)'s text demonstrates that it is focused only on people *arriving* at a port of entry or who have *recently* entered the United States and not those already residing here. Paragraph (b)(2) is similarly limited to people "seeking admission" when they *arrive* in the United States or very shortly thereafter. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission" but who (b)(1) does not address. Put succinctly, 8 U.S.C § 1225(b)(2) mandates the detention of certain noncitizens who are (1) applicants for admission, (2) seeking admission, and (3) not clearly and beyond a doubt entitled to be admitted. 8 U.S.C § 1225(b)(2); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, at *12 (D. Colo. Oct. 22, 2025); *Barco Mercado v. Francis*, No. 25-cv-6582, --- F. Supp. 3d ----, 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025). "Seeking admission" is a present-tense action[2]. *Id.,* at 12; see also *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc)(An individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States).

[2] "[S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there." *Loa Caballero v. Baltazar,* at 13 (citations omitted).

D. Respondent's recent interpretation of § 1225b defies the plain meaning of the statute, the structure of the statute, Supreme Court precedent, and decades of practice

a. The plain language of § 1225b makes it inapplicable to noncitizens present in the United States without "seeking admission."

8 U.S.C. §1225(b)(2) reads in relevant part:

> (2)Inspection of other aliens
> (A)In general
> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2). By its own terms, this section is limited to persons who are "applicants for admission," "seeking admission," and "not clearly…entitled to be admitted." *Id.; Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, at *12 (D. Colo. Oct. 22, 2025); *Barco Mercado v. Francis*, No. 25-cv-6582, --- F. Supp. 3d ----, 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025). 8 U.S.C. § 1225(a)(1) describes what noncitizens will be "treated as" an applicant for admission for purposes of § 1225.

> A[] [noncitizen] 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 and including a[] [noncitizen] who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission

8 U.S.C. § 1225(a)(1). Respondent's position that all applicants for admission are mandatorily detained under this subsection would render the requirement that they be "seeking admission" superfluous. *Diaz Lopez v. Noem et al*, No. 1:2025cv04089 (D. Colo. 2026), at 6; *Corley v. United States*, 556 U.S. 303, 314, 129 S. Ct. 1558, 173 L. Ed. 2d 443 (2009) ("[O]ne of the most basic interpretive canons" is that "a statute should be construed so that effect is given to all its provisions,

so that no part will be inoperative or superfluous, void or insignificant.") (quoting *Hibbs v. Winn*, 542 U.S. 88, 101, 124 S. Ct. 2276, 159 L. Ed. 2d 172 (2004)); see also *Fuller v. Norton*, 86 F.3d 1016, 1024 (10th Cir. 1996). The phrase "seeking" admission requires the noncitizen to be "presently and actively seeking lawful entry into the United States." *Diaz Lopez v. Noem et al.,* at 6 (citing *Loa Caballero v. Baltazar et al*, No. 1:2025cv03120 - (D. Colo. 2025), at 6)(further citations omitted). Therefore, a noncitizen simply residing in the United States for years without applying for legal status is not "seeking admission"[3] within the meaning of § 1225(b)(2)(A). *Id.*

b. The statutory structure demonstrates that § 1226 not § 1225 generally applies to noncitizens present in the United States without admission.

The structure of the statutes further exposes the limits of Respondent's interpretation. Section 1226(a) is the "default rule" applying to all persons "pending a decision on whether the [noncitizen] is to be removed." *Rodriguez Vazquez*, 779 F.Supp.3d at 1246; *Jennings*, 582 U.S. at 281. Notably, the plain language of § 1226 applies to people charged as inadmissible for entering without inspection. E.g., 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to inadmissible individuals makes clear that, by default, inadmissible individuals not subject to subparagraph (E)(ii) are entitled to a bond hearing under subjection (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 1256-57

[3] The phrase "seeking admission" cannot be subsumed by Petitioner's treatment as an "applicant for admission." Such a finding would "violate[] the meaningful-variation canon of statutory interpretation by assigning the same meaning to an 'applicant for admission' and a person 'seeking admission'." *Diaz Lopez v. Noem et al.,* at 7 (citing *Loa Caballero,* at 6, *Pulsifer v. United States*, 601 U.S. 124, 149 (2024), and *Lopez Benitez*, 795 F. Supp. 3d at 488. This interpretation is further supported the differentiation between the class of persons who are actually applying for admission and those who are merely "treated" or "deemed" as applicants for admission. 8 U.S.C. 1225(a)(1). There would be no need for 8 U.S.C. 1225(a)(1) to specify that this class of noncitizens should be "treated as" an applicant for admission if their mere non-admission operated as an actual application for admission such that they are "seeking admission" by their mere presence.

(citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Respondent's interpretation, if true, would render significant portions of § 1226(c) meaningless.

Section 1225 (b)(1) concerns "expedited removal of inadmissible arriving [noncitizens]"—encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible under section 212(a)(6)(c) or 212(a)(7)." 8 U.S.C. § 1225(b)(1). Subsection (b)(1)'s text demonstrates that it is focused only on people *arriving* at a port of entry or who have *recently* entered the United States and not those already residing here. Paragraph (b)(2) is similarly limited to people "seeking admission" when they *arrive* in the United States or very shortly thereafter. The title explains that this paragraph addresses the "[i]inspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission" but who (b)(1) does not address. Moreover, subparagraph (b)(2)(C) addresses "[t]reatment of [noncitizens] *arriving* from contiguous territory," i.e., those who are "*arriving* on land." 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further underscores Congress' focus in § 1225 on those who are *arriving* in the United States—not those already *residing* here for years. Similarly, the title of § 1225 refers to the "inspection" of "inadmissible *arriving*" noncitizens. *See Dublin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe the statute). Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225 (b)(2)(A), (b)(4), or officers conducting "inspection[s]" of people "*arriving* in the United States," *Id.* § 235(a)(3), (b)(1), (b)(2), (d) (emphasis added); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning").

Respondent's interpretation would further nullify recent congressional acts adding to the mandatory custody exceptions in § 1226(c). *Loa Caballero v. Baltazar,* at 15. Congress' passage of the Laken Riley Act, amending § 1226, reflects a shared understanding that § 1226(a) applies to inadmissible noncitizens and not just removable ones. In January 2025, Congress amended § 1226, adding § 1226(c)(1)(E). *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Section 1226(c)(1)(E) provides that the "Attorney General shall take into custody any alien who-"

> (E)(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and
>
> (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person, when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

8 U.S.C. § 1226(c)(1)(E). This provision would be meaningless if noncitizens already residing in the United States were already subject to mandatory detention under § 1225(b)(2). *Redondo v. Bondi*, 2026 U.S. Dist. LEXIS 23450, *9 citing *Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at *10 (N.D. Cal. Sept. 12, 2025) ("If Congress amended Section 1226 to create mandatory detention for certain inadmissible noncitizens, it follows that those noncitizens were not already subject to mandatory detention.")

c. *Jennings* forecloses Respondent's interpretation of the relationship between § 1226 and §1225

Supreme Court precedent supports Petitioner's reading of 8 U.S.C. § 1225 and 8 U.S.C. § 1226. In *Jennings*, the Supreme Court summarized the interplay between §§ 1226 and 1225 as follows:

> In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] *seeking admission* into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the

> Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).

Jennings v. Rodriguez, 582 U.S. 281, 289 (2018) (Alito, J., emphasis added). This District Court has already stated that to interpret § 1225(b)(2)(A) to mandate detention for all "applicants for admission" would render the "seeking admission" language superfluous. *Lopez v. Noem*, 2026 U.S. Dist. LEXIS 14990, *6 citing 2025 U.S. Dist. LEXIS 208290, [WL2025 U.S. Dist. LEXIS 2082902025 U.S. Dist. LEXIS 208290] at *7. The Supreme Court's framework only makes sense if some noncitizens fall outside the "applicants for admission" category, because treating every noncitizen as such would eliminate any distinction between the two sections.

d. Respondent's abrupt change in interpretation runs contrary to decades of its own practice.

More than a quarter-century of practice supports the interpretation that noncitizens like Petitioner are subject to detention under § 1226 rather than §1225. Both the § 1226 and § 1225 detention provisions 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 the enactment of the IIRIRA in 1996, EOIR wrote regulations applicable to proceedings before Immigration Judges explaining that, in general, people who entered the country without inspection (also known as "present without admission") were not detainable under § 1225 and instead could only be 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 (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination"). Thus, in the following decades, people who entered without inspection and did

not have certain criminal legal contacts received § 1226(a) bond hearings. That practice was itself consistent with additional decades of pre-IIRIRA practice, in which noncitizens who were not "arriving" or seeking entry into the United States 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 the new § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

Until July of 2025, the parties agreed that 8 U.S.C. § 1226(a) applied to noncitizens like petitioner. *Memorandum from Todd Lyons, Acting ICE Dir., to ICE Employees, Interim Guidance Regarding Detention Authority for Applicants for Admission* (July 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission. Respondent adopted the novel interpretation that all noncitizens present without admission are subject to mandatory custody under § 1225 in the context of a "determined campaign to arrest and remove as many noncitizens as possible." *Barco Mercado v. Francis*, at 24 – 25. The Board of Immigration Appeals adopted that position as a precedential decision in September of 2025. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). This Court owes no deference to such an interpretation that is "so inconsistent with the text, structure, and history of the relevant statute as well as precedent and the record in this case." *Barco Mercado v. Francis*, at 24 – 25 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).)

Respondents' treatment of Petitioner contradicts their own legal position as to his detention. *Loa Caballero v. Baltazar,* at 17. ("Respondents' treatment of Petitioner appears to conflict with their assertion that he is detained pursuant to § 1225"). *Lopez Benitez v. Francis*, ---F. Supp. 3d ----, 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025) ("Respondents' own exhibits

unequivocally establish that Mr. Lopez Benitez was detained pursuant to Respondents' discretionary authority under § 1226(a). The warrants for Mr. Lopez Benitez's respective arrests in 2023 and 2025 explicitly authorized those arrests pursuant to 'section 236 of the Immigration and Nationality Act'—i.e., § 1226.") In this case, Mr. Valle-Rodriguez was detained pursuant to a warrant. That warrant indicates that Mr. Valle-Rodriguez being detained under INA § 236 (8 U.S.C. § 1226). His Notice to Appear also classifies him as present without admission rather than as an arriving alien. The Department's own documents thus bely the Government's position that Petitioner is detained under § 1225.

E. This District Court and approximately fifty others around the Country have agreed that Respondent's interpretation results in the unlawful mandatory detention of petitioners similarly situated to Mr. Valle-Rodriguez.

As this Court found in *Lopez v. Noem,* "[t]his Court following the clear weight of persuasive authority, has already rejected Respondents' position." *Lopez v. Noem,* at 5 (citing *Loa Caballero v. Baltazar,* at 5 ("[F]ederal courts have overwhelmingly rejected Respondents' 'broad interpretation of section 1225(b)(2).'"). Petitioners like Mr. Valle-Rodriguez, have prevailed in more than 350 cases decided by more than 160 judges in courts all across the country. *Barco Mercado v. Francis,* at 9 – 10 (appendix A, citations omitted); see also *Morales Lopez v. Baltazar*, 2026 WL 25161 (D. Colo. Jan. 5, 2026); *Nava Hernandez v. Baltazar, et al.*, 2025 WL 2996643, at *4 (D. Colo. Oct. 24, 2025); *Garcia Abanil v. Baltazar*, — F.Supp.3d —, 2026 WL 100587, at *4 (D. Colo. Jan. 14, 2026). As it pertains to the § 1225 § 1226 issue "[t]his issue is not materially different from an issue this Court has resolved in a prior ruling in another case." *Martinez-Orellana v. Hagan et al.* 1:26-cv-00355, at 3.

F. Petitioner's continued mandatory detention under Respondent's erroneous interpretation of § 1225 violates his substantive, due process, and statutory rights.

Petitioner has been in the United States since 2001. His first interaction with immigration authorities was when he was detained in November of 2025. Petitioner's mere presence does not amount to "seeking admission" within the meaning of 8 U.S.C. § 1225. Petitioner is therefore properly detained under § 1226(a) and his mandatory detention is unlawful. His continued deprivation of liberty violates his substantive constitutional rights against unlawful restraint. The unlawful stay of execution of his favorable bond order violates his due process rights and the text of 8 C.F.R. § 1003.6. His continued detention under § 1225 where that statute does not apply to him, violates § 1226 and § 1225.

G. Petitioner is a member of the *Maldonado-Bautista* national class action, but Respondents refuse to follow that ruling.

The U.S. District Court for the Central District of California certified a nationwide class action for noncitizens who were refused a bond hearing whose detention should be governed by § 1226. The certified bond eligible class includes all noncitizens in the United States without lawful status who:

1) Have entered or will enter the United States without inspection;
2) Were not or will not be apprehended upon arrival; and,
3) Are not or will not be subject to detention under 8 U.S. C. § 1226(c), §1255(b)(1), or §1231 at the time the Department of homeland Security makes an initial custody determination.

Id. The District Court in *Maldonado Bautista* found that *Yajure Hurtado* is no longer controlling as the legal conclusion underlying the decision is no longer tenable. It further ordered that all noncitizens that are class members be issued a bond hearing. Petitioner is straightforwardly a

covered class member. 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. Specifically, despite granting Petitioner a bond, the court has purported to *sua sponte* reverse its own decision and order Petitioner detained under § 1225. These acts were undertaken by the Immigration Court despite jurisdiction being with the Board of Immigration Appeals. Respondents therefore assert the right to defy the order in *Maldonado-Bautista* and their own jurisdictional statutes, so long as the result is Mr. Valle-Rodriguez remains detained.

H. CONCLUSION AND REMEDY

The appropriate remedy in this case is immediate release. *Martinez-Orellana v. Hagan et al.*, 10. Typically, the appropriate remedy would be provision of a bond hearing before a neutral decisionmaker. *Loa Caballero v. Baltazar,* at 19 – 20. In this case the Aurora Immigration Court already held a bond at which Mr. Valle-Rodriguez prevailed. That court determined that Mr. Valle-Rodriguez was (1) not a danger to the community and (2) not a flight risk. *Exhibit C*; See also, *Exhibit D, E.* He was granted a $1,500 bond. *Id.* This Court therefore need not engage in any factfinding to determine that immediate release is appropriate. Furthermore, Mr. Valle-Rodriguez's bond order is being unlawfully stayed despite Respondents non-compliance with statutory and regulatory requirements for invocation of the stay during the pendency of the appeal. This Court can and should order the stay lifted and the order effectuated during the pendency of the appeal. This Court can and should also declare that Mr. Valle-Rodriguez is not subject to mandatory detention under § 1225 as Respondents continue to insist.

Another bond hearing is not likely to vindicate Mr. Valle-Rodriguez's rights. Three recent trends indicate that the Executive Office for Immigration Review is either unwilling or unable to provide the requisite neutrality. First, despite losing hundreds of cases on the same issue – raising the same arguments – and being subject to a national class action that forecloses its interpretation, Respondent insists on unlawfully detaining hundreds of noncitizens under 8 U.S.C. § 1225's. *Cortes v. Guadian*, 2026 U.S. Dist. LEXIS 21264, *5 ("Respondents' undaunted efforts to improperly detain other habeas petitioners under 8 U.S.C. § 1225's mandatory detention provisions.") Second, Immigration Judges at the Aurora Immigration Court are now finding that they lack jurisdiction to consider bonds on the theory that the Department has not filed a form I-286. *See e.g. Exhibit K, L; Martinez-Orellana v. Hagan et al.* 1:26-cv-00355, at 9 (describing this interpretation as "patently absurd and undertaken in bad faith.") Though there is no statutory requirement for such a form to be filed, the court is finding that the lack of such a form deprives if of jurisdiction because there is no initial custody determination to redetermine. *Id.* Never mind that Petitioner and others similarly situated are literally in the custody of the Department and in proceedings before the Aurora Immigration Court at the Aurora ICE Detention Facility. Since the Department is refusing to issue a form I-286 as a matter of policy, this novel requirement represents an effective Departmental veto on bond hearings. *Exhibit J:Memorandum from Rodney S. Scott, U.S. Customs and Border Protection Commisioner* (July 10, 2026)("Effective immediately, it is the position of DHS that applicants for admission are…treated in the same manner that 'arriving aliens' have historically been treated…Use of the…Notice of Custody Determination (I-286)…will no longer be an option."). This moving of the goal posts is not unlike the Executive Office for Immigration Review's decision to ignore the nationwide class action in *Maldonado-Bautista.* If the Respondents can concoct an artifice to prolong this unlawful detention, experience

shows that they will do so. Third, the Assistant Chief Immigration Judge for the Aurora Immigration Court is *sua sponte* referring cases to herself in which bond was granted and reversing those decisions despite jurisdiction for those matters being with the Board of Immigration Appeals. Mr. Valle-Rodriguez is one noncitizen suffering from this arbitrary and capricious treatment. Such self-referral for the purpose of denial lays bare that the Executive Office for Immigration Review has abandoned any pretense of neutrality and is instead participating in this "determined campaign to arrest and remove as many noncitizens as possible." *Barco Mercado v. Francis*, at 24. The judge who granted Mr. Valle-Rodriguez's bond was mysteriously reassigned from her post so that another judge could intervene and reverse her decision. Petitioner is thus concerned that any future decision at a bond hearing will be informed by the political goal of removing noncitizens rather than a legal analysis of Petitioner's danger to the community and flight risk. A bond hearing, though a putative remedy to detention without due process is not likely to resolve Petitioner's unlawful detention under these circumstances. "Respondents' interpretation of § 1225 is "contrary to the agency's own implementing regulations; its published guidance; the decisions of its immigration judges (until very recently); decades of practice; the Supreme Court's gloss on the statutory scheme; and the overall logic of our immigration system." *Loa Caballero v. Baltazar,* at 18 (citations omitted). This Court should order Petitioner released.

I. Conclusion

Respondents' interpretation of 1225 and 1226 is erroneous and results in the illegal, mandatory detention of millions of noncitizens. The plain language of the statute does not support Respondents' position, Further, this District Court, joined by many others, have already rejected other arguments raised by Respondents. Namely, they have rejected that *Jennings* allows the mandatory detention of noncitizens as it distinguishes between the two statutory sections.

Longstanding precedent both pre- and post- IRIRA reaffirms the principle that people who are present without admission are detained under 1226 and are eligible for bond. Accordingly, this Court should find that Petitioner is detained under 1226(a). To ensure that the Court do right by Petitioner, the Court should order Petitioner's immediate release. In the alternative, the Court should require Respondents provide a bond hearing to Petitioner. We ask the Court to place the burden to justify continued detention on Respondents[4].

CLAIM FOR RELIEF

COUNT I

Respondents are Unlawfully Preventing the Execution of the Jan. 7, 2026, Bond order in violation of 8 C.F.R. § 1003.6

1. Petitioner incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.
2. To properly invoke the automatic stay provision at 8 C.F.R. § 1003.6, the Department must timely file a notice of appeal with the required certification from a senior legal official. Such notice must be filed within 10 business days of the bond order.
3. The Department here filed a noncompliant notice within 10 business days of January 21, 2026. That notice laced the required certification. On the 11th business day, the Department filed a successive notice of appeal with the corresponding certification.

[4] It is the Government's burden to "justify[] a noncitizen's continued detention at a bond hearing." *Arauz v. Baltazar*, 2025 U.S. Dist. LEXIS 215430, 2025 WL 3041840, at *4 n.3 (D. Colo. Oct. 31, 2025); *see also Espinoza Ruiz v. Baltazar*, 2025 U.S. Dist. LEXIS 232747, 2025 WL 3294762, at *2 (D. Colo. Nov. 26, 2025) (ordering that the Government would carry the burden for bond hearing under § 1226(a)); *Loa Caballero*, 2025 U.S. Dist. LEXIS 208290, 2025 WL 2977650, at *9 ("During such [§ 1226(a) hearing, the Respondents bear the burden of justifying detention."); *Mendoza Gutierrez*, 2025 U.S. Dist. LEXIS 208448, 2025 WL 2962908, at *14 ("the Government shall bear the burden of justifying [detention] by clear and convincing evidence of dangerousness of risk of flight"); *Garcia Cortes v. Noem*, 2025 U.S. Dist. LEXIS 181582, 2025 WL 2652880, at *5 (D. Colo. Sept. 16, 2025) (same). *Garcia Abanil v. Baltazar*, 2026 U.S. Dist. LEXIS 7440, *21

The "corrected notice" was too late to perfect the automatic stay. The stay therefore lapsed and the order should be executed.

4. Preventing the execution of the January 7, 2026, order violates statute, regulation, and Mr. Valle-Rodriguez constitutional rights not to be deprived of his liberty without due process.

COUNT II

Respondents Jail Petitioner in Violation of U.S.C. §1226(a)

5. Petitioner incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

6. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Petitioner because he was present and residing in the U.S., has been placed in § 1229a removal proceedings, and charged with inadmissibility pursuant to 8 U.S.C. § 1182. Simply, § 1225 does not apply to people like Petitioner who previously entered the country and reside in the U.S. prior to being detained and placed in removal proceedings. Such noncitizens may only be detained pursuant to § 1226(a), unless they are subject to mandatory detention provisions irrelevant here. Detention under § 1226(a) requires access to bond.

7. Applying § 1225 to Petitioner unlawfully mandates his continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).

COUNT III

Respondents are Detaining Petitioner in Violation of the Administrative Procedures Act (5 U.S.C. § 706(2))

8. Petitioner incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

9. Under the APA, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).
10. Respondents' detention of Petitioner pursuant to § 1225 is arbitrary and capricious,
11. and in violation of the Fifth Amendment of the U.S. Constitution. Respondents do not have statutory authority under § 1225 to detain Petitioner.
12. Respondents' detention of Petitioner without access to bond is arbitrary, capricious, an abuse of discretion, violative of the U.S. Constitution, and without statutory authority, all in violation of 5 U.S.C. § 706(2).

COUNT IV

Respondents Detain Petitioner in Violation of his Fifth Amendment Due Process Rights

1. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
2. 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 [Fifth Amendment's due process] Clause protects." Zadvydas, 533 U.S. at 690.
3. Petitioner has a fundamental interest in liberty and being free from official restraint, such as imprisonment in the Aurora Facility.

4. Respondents' detention of Petitioner without providing him a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to Due Process.

COUNT V

Respondents Detain Petitioner Despite the Fact that he is a Member of the *Maldonado Bautista* Class Action

1. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).
2. The order in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.
3. 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."
4. 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).
5. 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*.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Ensure that Petitioner remain in the state of Colorado

c. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;

d. Declare that Petitioner is not subject to detention under 8 U.S.C. § 1226(a).

e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

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

DATED this 16th of February, 2026.

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CERTIFICATE OF SERVICE

I, Tiago Guevara, hereby certify that on February 16, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and I hereby further certify that I mailed the document or paper to the following persons via first class mail on February 16, 2026:

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