

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

BINOR GOYTOM ADEM,

Petitioner,

v.

KRISTI NOEM, Secretary of Homeland Security in her official capacity,
TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement in his official
capacity,
ROBERT GUARDIAN, Denver Field Office Director, U.S. Immigration and Customs
Enforcement in his official capacity,
PAMELA BONDI, Attorney General in her official capacity, and
JUAN BALTASAR, Warden, Denver Contract Detention Facility in his official capacity,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Binor Goytom Adem is a native and citizen of Ethiopia. He entered the United States without inspection between ports of entry on the U.S.-Mexico border in 2023. Petitioner was detained upon entry and issued a Notice to Appear that placed him under removal proceedings and was later released. Almost three years later, Petitioner was arrested by U.S. Immigration and Customs Enforcement (“ICE”). Petitioner is now detained by ICE, under facts and circumstances that place them squarely within ICE’s general detention authority 8 U.S.C. § 1226(a). Under that statute, Petitioner is eligible to seek discretionary release on bond from an Immigration Judge (“IJ”). However, due to a policy reversal announced by ICE in July 2025, and a September 2025

Board of Immigration Appeals (BIA) decision that similarly overturns decades of settled law, Respondents contend that Petitioner is actually detained under 8 U.S.C. § 1225(b)(2). While § 1225(b) requires mandatory detention and does not allow release on bond, it only applies to noncitizens apprehended at the border “seeking admission.” Petitioner therefore brings this action to enjoin Respondents from holding him in mandatory detention without access to a bond hearing; and seeking an order for immediate release, or that Respondents schedule a discretionary bond hearing pursuant to § 1226(a) before an Immigration Judge within 7 days.


JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241 and 28 U.S.C. § 1331, Federal Question Jurisdiction. In addition, the individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

2. This Court also has federal question jurisdiction, through the APA, to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA review of a final agency action may proceed, absent a special statutory review proceeding, by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction.” 5 U.S.C. § 703.

3. Venue lies in this District because Petitioner is detained in the custody of U.S. Immigration and Customs Enforcement (ICE) at the Denver Contract Detention Facility, located within this division of this judicial district. Each Respondent is an officer of the United States sued in his or her official capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1). In addition, Respondent Robert Guardian, Denver ICE Field Office Director, maintains his principal place of business in Denver, CO.

THE PARTIES

4. Petitioner Binor Goytom Adem () is a citizen and native of Ethiopia and is currently detained by Respondents at the Denver Contract Detention Facility within the territorial jurisdiction of this Court.

5. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (“DHS”). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

6. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”). He is the head of the federal agency responsible for all immigration enforcement in the United States.

7. Respondent Robert Guardian is the Director of the Denver ICE Field Office. He is the head of the ICE office that is unlawfully detaining Petitioner, and such detention is taking place under his direction and supervision. He is the immediate legal custodian of the Petitioner.

8. Respondent Pamela Bondi is the Attorney General of the United States. She is the head of the U.S. Department of Justice, which oversees the Executive Office for Immigration Review, including the Board of Immigration Appeals and the Immigration Court judges, who decide removal cases and applications for bond as her designees.

9. Respondent Juan Baltasar is the warden of the Denver Contract Detention Facility in Aurora, Co., where Petitioner is currently detained. He is the immediate custodian who is currently holding the Petitioner in physical custody. He is sued in his official capacity.

10. All government Respondents are sued in their official capacities.

LEGAL BACKGROUND

A. Immigration Detention Legal Framework

11. When a noncitizen is alleged to have violated immigration laws, they are generally placed into traditional removal proceedings, during which an immigration judge will determine whether they are removable and then whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.

12. Detention is authorized for “certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and 1126(c).” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The statute provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a) generally, or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Discretionary detention under § 1226(a) has been described as the “default” provision for immigration detention for those subject to traditional removal proceedings. *Id.* at 288. Under § 1226(a), “[e]xcept as provided in subsection (c) of this section,’ the Attorney General ‘may release’ an alien detained under § 1226(a) ‘on ...bond’ or ‘conditional parole.’” *Id.*

13. Alternatively, mandatory detention is authorized for “certain aliens *seeking admission* into the country under §§ 1225(b)(1) and 1225(b)(2),” [emphasis added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and determined to be “applicants for admission” may be subject to mandatory detention under two separate subsections. Applicants for admission include someone:

“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 an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for the purposes of this chapter to be an applicant for admission.”

§ 1225(a)(1).

14. The first subset, under 8 U.S.C. § 1225(b)(1), may be subject to expedited removal and mandatory detention if they are determined to be an “arriving alien,” and if they have not been physically present in the United States continuously for a two-year period immediately prior. Regulations define an “arriving alien” as:

“an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.”

8 C.F.R. § 1.2.

15. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of “applicant for admission” specifically when “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,” i.e. for traditional removal proceedings [emphasis added].

16. An “arriving alien” or an applicant for admission “seeking admission” may only be released from detention on parole (which is a form of release on recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no bond available to an arriving alien or applicant for admission seeking admission. *Id.* There is no such thing as a “parole bond” – a release must be either parole under § 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*

17. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE’s initial custody determination before the IJ (a “custody review hearing”), who has the authority to modify ICE’s custody determination and set bond in a

case in which ICE has designated no bond, lower bond when ICE has set a cash bond amount, or deny bond completely. 8 C.F.R. § 1003.19.

18. Custody review hearings are separate from hearings in the underlying removal proceedings. 8 C.F.R. § 1003.19(d). If a noncitizen is granted bond by the IJ, she must still appear in immigration court for the IJ to determine her removability and hear any claim for relief from removal. At a custody review hearing, once jurisdiction over bond is established, the IJ's inquiry is limited to whether the detainee is a danger to the community or a flight risk, and bond may only be granted when an IJ has determined that the detainee meets his burden of proof that he is neither. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

19. For decades, it has been Respondents' practice to afford § 1226(a) discretionary bond hearings and custody review hearings to those individuals who have been encountered neither at a point of entry nor seeking admission to the United States. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) ("Respondents' proposed application of § 1226 is also belied by the Department of Homeland Security's 'longstanding practice' of treating noncitizens taken into custody while living in the United States, including those detained and found inadmissible upon inspection and then released into the United States with the government's acquiescence, who have committed no crime after release, as detained under § 1226(a)." citing *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)).

B. BIA Decision in *Matter of Q. Li*

20. On May 15, 2025, the BIA issued its decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), which held that an applicant for admission "who was arrested without a warrant

while arriving in the United States and thereafter placed in removal proceedings, is detained under section 235(b)(2)(A), until the conclusion of removal proceedings.” *Id.* at 71.

21. Q. Li was encountered upon entry into the United States, she was arrested by immigration officers, and paroled into the U.S. under 8 U.S.C. § 1182(d)(5). *Id.* at 67. Part of the condition of her §1182(d)(5) parole was to report regularly to ICE. *Id.* Following a subsequent alert as to an international arrest warrant, she was taken back into custody, issued a Notice to Appear commencing removal proceedings, and issued a new Notice of Custody Determination and detained. *Id.* She requested a custody redetermination before an IJ and was denied for lack of jurisdiction, because she was subject to mandatory detention under § 1225(b)(2). *Id.*

22. In particular, the BIA reasoned that the termination of parole restored Q. Li to her prior custody status. *Id.* at 69. (“When parole granted by DHS is terminated, “the alien shall forthwith return or be returned to the custody from which he was paroled.” INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i).”). Additionally, Q. Li had been arrested without a warrant, and had never been subject to 8 U.S.C. § 1226(a) authority. *Id.* at 70. Ultimately, the BIA agreed that she was subject to § 1225(b)(2) and ineligible for bond. *Id.* at 71.

23. While Respondents have attempted to apply *Q. Li* more broadly to individuals encountered at the interior of the country – or in the absence of a parole under § 1182(d)(5) – this argument has been consistently rejected. *See Valerio v. Joyce*, No. CV 25-17225 (ZNQ), 2025 WL 3251445, at *3 (D.N.J. Nov. 21, 2025); *Diaz Rudecindo v. Florentino*, No. CV 25-16942 (ES), 2025 WL 3470299, at *2 (D.N.J. Dec. 3, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *9-11 (D. Md. Aug. 24, 2025); *Vasque Romero v. Noem*, No. CV 3:25-524, 2026 WL 116379, at *1 (W.D. Pa. Jan. 15, 2026); and *Hasan v. Crawford*, 800 F. Supp. 3d 641, 657, n.11 (E.D. Va. 2025).

C. New ICE memo reinterpreting 8 U.S.C. § 1225(b)(2)

24. On July 8, 2025, Respondent ICE issued new interim guidance that announced a breathtakingly broad interpretation of 8 U.S.C. § 1225(b)(2). *See* ICE memorandum “Interim Guidance Regarding Detention Authority for Applications for Admission.”¹ This memo concerns the detention of “applicants for admission” as defined by § 1225(a)(1). “Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)].” *Id.* DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id.* (“For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated.”)

25. In addition to the announcement re-interpreting § 1225(b)(2), the memo further clarifies that “[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1227], with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].” *Id.*

26. Moreover, ICE maintains that “DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position.” *Id.* ICE fails to clarify under what legal authority, then, those prior releases were effectuated. Rather, ICE signals the resulting lack of “correct”

¹ Available at: <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last visited Sept. 25, 2025).

paperwork is nonetheless permissible. *Id.* (“Accordingly, ERO and HIS are not required to ‘correct’ the release paperwork by issuing INA § 212(d)(5) parole paperwork.”)

27. Nationwide implementation of the ICE § 1225(b)(2) mass detention policy ensued.

D. BIA decision *Matter of Yajure Hurtado*

28. On September 5, 2025, the Board of Immigration Appeals (BIA), which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE’s re-interpretation of § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

29. The BIA held that the respondent was an “applicant for admission” within the scope of § 1225(b), and therefore subject to mandatory detention.

30. The BIA characterized the issue before it as “one of statutory construction: Does the INA require that *all* applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?” [emphasis added]. *Id.* at 220.

31. The BIA reasoned that individuals “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer.” *Id.* at 228.

32. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id.* at 225, FN6 (“We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service,

previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled ‘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), reflects that the Immigration and Naturalization Service took the position at that time that ‘[d]espite 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.’”)

33. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229.

34. The BIA decision is binding on all immigration judges nationwide.

35. Respondents’ new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at *11 (“It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.”)

36. Though the Fifth Circuit affirmed *Yajure Hurtado* in its decision in *Buenrostro-Mendez v. Bondi*, 2026 WL 323330 (5th Cir. Feb. 6, 2026), that decision is neither binding in authority on this Court nor persuasive in reasoning.² See *Buenrostro-Mendez*, 2026 WL 323330, at *10–18 (Douglas, J., dissenting) (explaining how the majority opinion creates surplusage in

² Moreover, *Buenrostro-Mendez* is distinguishable from this case in that *Buenrostro-Mendez* dealt with noncitizens whom DHS encountered for the first time more than a decade after their entry into the United States, while in this case, DHS encountered Petitioner at the border, arrested her pursuant to an administrative warrant, released her under its authority under Section 1226, and then re-arrested her almost two years later. Compare *Buenrostro-Mendez*, 2026 WL 323330 at *3 with *infra*, ¶¶ 37–45.

statutory language, renders other parts of the Immigration and Nationality Act superfluous, ignores constitutionally significant differences between a noncitizen caught at the border and a noncitizen who has spent years in the United States prior to apprehension, and hinges its interpretation of “seeking admission” on a logically tenuous comparison to applying to college).

FACTS

37. Petitioner Binor Goytom Adem is a citizen of Ethiopia. He entered the United States on or about July 10, 2023, without inspection between ports of entry, across the U.S.-Mexico border, and, upon information and belief, he was encountered by immigration officials at that time.

38. Shortly after entry, Petitioner was encountered by immigration officials near San Ysidro, CA, who detained him briefly, issued an I-862 Notice to Appear placing him into traditional removal proceedings under 8 U.S.C. § 1229a, and released him. Upon information and belief, there is no evidence, nor allegation that he was paroled into the United States. Nor was he required to pay a bond, upon information and belief, by either DHS or an immigration judge. As such, his release could only have been a release on recognizance under 8 U.S.C. § 1226(a).

39. Sometime thereafter, Petitioner made his way to the Colorado area where he established a life. He currently resides in Denver, Colorado. Upon information and belief, Petitioner timely filed an I-589 application for asylum on April 18, 2024.

40. Petitioner does not have criminal history, nor has he been charged with any and has been faithfully abiding with his regular check-in appointments with ICE, reflecting his respect for the law and good-faith compliance with legal obligations.

41. On December 5, 2025, Petitioner went to his regular ICE check-in and was taken into custody without previous notice or warning.

42. Petitioner is currently detained at the Denver Contract Detention Facility, in Aurora, Colorado, within the territorial jurisdiction of this Court. *See* ICE Detainee Locator information (*available at*: <https://locator.ice.gov/> (last visited on February 17, 2026)):



43. On January 13, 2026, the Immigration Judge pretermitted Petitioner's applications for relief and ordered his removal. An appeal was timely filed before the Board of Immigration Appeals on January 19, 2026, and is currently pending. Therefore, he is not subject to a final order of removal and remains in removal proceedings. *See* Ex. 2, EOIR Payment Receipt for Appeal. *See also* EOIR Automated Case Information, *available at* <https://acis.eoir.justice.gov/> (last visited February 17, 2026):

acis.eoir.justice.gov/en/caseInformation

Court Closures Today February 9, 2026 | Please check <https://www.justice.gov/eoir-operational-status> for up to date closures.

Home > ADEM, BINOR GOYTOM

Automated Case Information

Name: ADEM, BINOR GOYTOM | Docket Date: 8/1/2023

Next Hearing Information

There are no future hearings for this case.

Court Decision and Motion Information

The immigration judge ordered **REMOVAL**.

DECISION DATE
January 13, 2026

COURT ADDRESS
3130 N. OAKLAND ST.
AURORA, CO 80010

BIA Case Information

A case appeal was received on **January 19, 2026**. It is currently pending.

ALIEN BRIEF STATUS
No brief due date exists at this time.

DHS BRIEF STATUS
No brief due date exists at this time.

Court Contact Information

If you require further information regarding your case, or wish to file additional documents, please contact the Board of Immigration Appeals.

COURT ADDRESS
OFFICE OF THE CHIEF CLERK
5107 LEESBURG PIKE, SUITE 2000
FALLS CHURCH, VA 22041

PHONE NUMBER
(703) 605-1007

44. Petitioner has been issued an Employment Authorization Document under category C08, valid through March January 24, 2029, demonstrating his ongoing compliance with U.S. immigration laws and his lawful authorization to work in the United States. See Ex. 3, USCIS Employment Authorization Document.

45. Petitioner entered the United States in 2023 and promptly sought asylum protection. He holds valid employment authorization, which does not expire until 2029. Prior to his detention, Petitioner was lawfully employed at Denver International Airport as a wheelchair assistant, providing direct assistance to elderly passengers and individuals with disabilities. Through this work, he played a vital role in ensuring the safety, dignity, and mobility of vulnerable members of the public. In addition to his employment, Petitioner actively participated in cultural events within his community and encouraged the involvement of younger members, demonstrating his

commitment to community engagement and positive social development. His continued detention has interrupted his lawful employment and community involvement, causing significant personal and professional hardship and depriving the community of a valuable and contributing member.

46. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). Accordingly, based on the BIA decisions in *Matter of Q. Li* and *Matter of Yajure Hurtado*, it would be futile for Petitioner to appeal the bond denial to the Board of Immigration Appeals. Exhaustion of administrative remedies would therefore be futile.

**FIRST CLAIM FOR RELIEF:
No-Bond Detention in Violation of 8 U.S.C. § 1226(a)**

47. Petitioner re-alleges and incorporate by reference the preceding paragraphs 1-45.

48. Since Petitioner is not an “applicant for admission seeking admission” or “arriving alien[s]” subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2), and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), he is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

49. Absent a showing of parole under 8 U.S.C. § 1182(d)(5), Petitioner’s release only could have occurred pursuant to 8 U.S.C. § 1226(a). Release on recognizance is considered a conditional parole. “Release on recognizance is not a ‘humanitarian’ or ‘public benefit’ ‘parole into the United States’ under section 1182(d)(5)(A) but rather a form of ‘conditional parole’ from detention upon a charge of removability, authorized under section 1226.” *Hasan v. Crawford*, 800 F. Supp. 3d 641, 655 (E.D. Va. 2025) (citing *Martinez v. Hyde*, 792 F.Supp.3d 211, 215 (D. Mass. July 24, 2025) (internal quotations omitted)). *See also Quispe-Ardiles v. Noem*, No. 1:25-CV-01382-MSN-WEF, 2025 WL 2783800, at *6 (E.D. Va. Sept. 30, 2025) (same).

50. Moreover, when Petitioner’s conditional parole was *de facto* revoked, he was then rearrested under the original authority (typically reflected in an I-200 warrant). 8 U.S.C. §

1226(b). Accordingly, he remains entitled to a bond hearing under § 1226(a).

51. Respondents' actions, as set forth herein, violate Petitioner's statutory right to a bond redetermination hearing in front of an immigration judge.

**SECOND CLAIM FOR RELIEF:
Detention in Violation of Due Process**

52. Petitioners re-allege and incorporate by reference the preceding paragraphs 1-45.

53. While the government's authority to revoke a conditional parole is in their sole discretion, it must still comport with due process. Immigration detention is civil, not criminal, in nature. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community. "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*." *Lopez-Arevalo v. Ripa*, 801 F. Supp. 3d 668, 685 (W.D. Tex. 2025), citing 424 U.S. 319 (1976).

54. Petitioner has a strong private interest in his liberty at stake. As held in *Lopez-Arevalo*, another case involving a detainee who was rearrested following a prior release, "the interest in being free from physical detention by [the] government" is "the most elemental of liberty interests[.]" 801 F. Supp. 3d at 685 (quoting *Martinez v. Noem*, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) and *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Moreover, "it is well-established that parolees have a strong interest in their conditional release, ... and courts have held they cannot be re-arrested without a due process hearing in which they can challenge their re-incarceration." *Rodriguez Diaz v. Kaiser*, No. 25-CV-05071-TLT, 2025 WL 3011852, at *9 (N.D. Cal. Sept. 16, 2025) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481-2 (1972)). Petitioner was released on recognizance by ICE. Accordingly, his liberty interest is *at least as great* as those serving criminal sentences on parole. *Id.* Moreover, Petitioner's liberty interest has only grown in

the time since her prior immigration custody in 2024. *Id.* at *10. *See also Lopez Arevalo*, 801 F. Supp. 3d at 686 (same).

55. Next, the risk of erroneous deprivation of said liberty to Petitioner is high. Upon information and belief, Respondents have not provided a reason for Petitioner's rearrest nor do they believe they are required to do so. *See* July 2025 ICE Memo, *supra* at ¶¶ 22-25. *See also Rodriguez Diaz*, 2025 WL 3011852, at *11, citing *Guillermo M.R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677, at *8 (N.D. Cal. Jul. 17, 2025). ("Respondents' new position would grant ICE unlimited authority to disregard any bond determination made by an IJ for any reason, which is 'a recipe for arbitrary and erroneous deprivations of liberty.'"). Moreover, seeking a bond hearing before an immigration judge without a ruling from this Court would be equally as futile as appeal to the BIA, as it is sure to be denied for lack of jurisdiction. *Lopez Arevalo*, 801 F. Supp. 3d at 686. ("[G]iven the BIA's interpretation of mandatory detention in *Yajure Hurtado*, that appeal is almost certainly a futile exercise."). *See also Rodriguez-Diaz*, 2025 WL 3011852, at *12 (same).

56. The government could only present minimal interests in continuing to detain Petitioner without affording her a bond hearing. The government has not presented evidence that Petitioner is a flight risk or that he is a danger to the community. Any resource arguments fall flat because the cost of a mere bond hearing is surely dwarfed by accruing expenditures to finance his ongoing detention. *Lopez-Arevalo*, 801 F. Supp. 3d at 687. Moreover, the costs of a bond hearing are those that the government has allotted for decades without issue in these contexts. *Id.* Most importantly, "Petitioner-Plaintiff is not asking the Court to enjoin detention altogether, [s]he only requests that Respondents justify his re-detention at a pre-deprivation hearing." *Rodriguez-Diaz*, 2025 WL 3011852, at *13. The same is true here.

57. Accordingly, all *Mathews* factors militate in favor of Petitioner, and Respondents' actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate have therefore deprived Petitioner of his rights without due process of law. Therefore, the writ should issue, and the Court should order her release.

REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully requests that the Court enters an order:

- a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioner's detention in fact and in law, forthwith;
- b) Enjoin Petitioner's transfer outside of this judicial district pending this litigation;
- c) Enjoin Respondents from holding Petitioner is subject to detention under 8 U.S.C. § 1225(b)(2) and denying him a bond hearing on that basis;
- d) Enjoin Respondents from re-arresting Petitioner subject to § 1225(b)(2);
- e) Order Petitioner's immediate release from custody;
- f) Order, in the alternative, Petitioner's immediate release and that Respondents conduct a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a) within 7 days;
- g) Grant the writ of habeas corpus and order Respondents to release Petitioner forthwith, upon payment of the bond as ordered by the Immigration Judge;
- h) Award Petitioner his costs of suit; and
- i) Grant any other relief that this Court deems just and proper.

Respectfully submitted,

Date: February 17, 2026

/s/ Stephanie E. Gibbs
STEPHANIE E. GIBBS
New Jersey State Bar No. 047482013
Senior Litigation Attorney
Murray Osorio PLLC
50 Park Place, Mezzanine Level,
Newark, NJ 07102
Tel.: (571) 455-1915, Ext. 1168
Email: sgibbs@murrayosorio.com

Counsel for Petitioner

LIST OF EXHIBITS

Ex. 1, EOIR Payment Receipt for Appeal;

Ex. 2, USCIS Employment Authorization Document.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. Upon order from the Court, I will furthermore send a copy by certified U.S. mail, return receipt requested, to:

Civil Process Clerk
U.S. Attorney's Office for the District
of Colorado
1801 California Street, Suite 1600
Denver, CO 80202

Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW, Mail Stop 0485
Washington, DC 20528-0485

Pamela Bondi, Attorney General of the
United States
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Office of the Principal Legal Advisor
U.S. Immigration and Customs
Enforcement
500 12th Street SW, Mail Stop 5902
Washington, DC 20536-5902

Juan Baltasar, Warden
Denver Contract Detention Center
3130 N. Oakland St.
Aurora, CO 80010

Respectfully submitted,

Date: February 17, 2026

/s/ Stephanie E. Gibbs
STEPHANIE E. GIBBS
New Jersey State Bar No. 047482013
Senior Litigation Attorney
Murray Osorio PLLC
50 Park Place, Mezzanine Level,
Newark, NJ 07102
Tel.: (571) 455-1915
Email: sgibbs@murrayosorio.com