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UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00688

GABRIEL TEMAJ LOPEZ,

Petitioner

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

ROBERT HAGAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity,

TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity,

PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

Respondents

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Respondents illegally incarcerate without bond Petitioner Gabriel Temaj Lopez ("Mr. Temaj Lopez") at Immigration and Customs Enforcement's ("ICE") Denver Contract Detention Facility in Aurora, Colorado ("Aurora Facility"). [1] Mr. Temaj Lopez is entitled to a writ of *habeas corpus* to end his unlawful loss of liberty. The issues here are not new. Judges in this District have unanimously found Respondents' novel and unprecedented interpretation of the statute, i.e., 8 U.S.C. §§ 1225(b)(2), 1226(a), subjecting millions of people like Mr. Temaj Lopez to mandatory detention illegal. *E.g.*, *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, *4 (D. Colo. Jan. 15, 2026), ECF 16 (attached as Exh. 1).

2. What is more, Respondents already found Mr. Temaj Lopez subject to 8 U.S.C. § 1226(a), releasing him thereunder his own recognizance in 2019. Respondents change in course is the result of its erroneous interpretation of the statute, an interpretation that "has been rejected in more than 1,500 district court decisions." *Chavez Amrenta v. Noem*, No. 26-cv-00236-PAB, 2026 WL 274634, at *2 (D. Colo. Feb. 3, 2026). It is also contrary to due process, *J.U. v. Maldonado*, 805 F.Supp.3d 482, 498 (E.D.N.Y. 2025), and the settled maxim that "[a]n agency must defend its actions based on the reasons it gave when it acted[,]" *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 24 (2020); *Marrero Yera v. Baltazar et al.*, No. 1:26-cv-00476-SKC-SBP, at *6 (D. Colo. Feb. 19, 2026) (attached as Exh. 2); *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at **5–6 (N.D. Ill. Oct. 24, 2025).

[1] This Petition does not refer to the Aurora Facility or Petitioner's loss of liberty as detention because it does not accurately reflect the conditions at the Aurora Facility. *E.g.*, *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. of Colo. 2024) (citation omitted) (acknowledging that the District of Colorado found that the GEO Facility is "more akin to incarceration than civil confinement"). Indeed, the conditions in the Aurora Facility are "abhorrent." *Arostegui-Maldonado v. Baltazar*, 794 F.supp.3d 926, 940 (D. Colo. 2025).

3. Expeditious action from this Court is needed to address Respondents' continued lawlessness because, despite its best efforts, "ICE is not a law unto itself." *Juan T.R. v. Noem*, 26-cv-0107 (PJS/DLM), 2026 WL 232015, at *1 (D. Minn. Jan. 28, 2026).

II. PARTIES

Mr. Temaj Lopez

4. ICE charges Mr. Temaj Lopez with having entered the United States without inspection on or about February 26, 2019. ICE first jailed Mr. Temaj Lopez after his entry to the United States but then released him on his own recognizance pursuant to 8 U.S.C. § 1226(a) on March 4, 2019. Mr. Temaj Lopez thereafter filed an asylum application which remains pending and for which the Department of Homeland Security ("DHS") granted him an employment authorization document ("EAD") valid until 2030.

5. In November of 2026, Florida law enforcement stopped Mr. Temaj Lopez for failing to drive the truck he was driving for work through a weigh station. Florida law enforcement issued Mr. Temaj Lopez two traffic tickets totaling approximately $305.00 and detained him for ICE. ICE thereafter jailed Mr. Temaj Lopez without notice, without an opportunity to be heard, and now changed course, claiming he is subject to mandatory detention under § 1225(b)(2).

6. ICE first jailed Mr. Temaj Lopez at the infamously dangerous Alligator Alcatraz[2], transferring him to the Aurora Facility in December of 2025. Mr. Temaj Lopez has no criminal contacts that subject him to mandatory detention under 8 U.S.C. § 1226(c).

[2] *Detainees held at Alligator Alcatraz describe cage-like units swarmed by mosquitos*, NBC NEWS (July 22, 2025) available at: https://www.nbcnews.com/news/us-news/alligator-alcatraz-florida-detainees-conditions-fungus-mosquitoes-rcna220205

Respondents

7. Juan Baltazar is the Warden of the Aurora Facility where ICE jails Mr. Temaj Lopez, and is an employee of the GEO Group, the for-profit prison company that operates the facility. Mr. Baltazar is a legal custodian of Mr. Temaj Lopez. He is sued in his official capacity.

8. Robert Hagan is the ICE Field Office Director of the Denver ICE Field Office and is sued in his official capacity. Mr. Hagan is the immediate custodian of Mr. Temaj Lopez and is responsible for Mr. Temaj Lopez's detention and removal.

9. Kristi Noem is the Secretary of DHS. Ms. Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA"). DHS is the parent agency of ICE, and thus Ms. Noem also oversees ICE, which is responsible for Mr. Temaj Lopez's illegal incarceration. Ms. Noem has ultimate custodial authority over Mr. Temaj Lopez and is sued in her official capacity.

10. Todd M. Lyons is the Acting Director of U.S. ICE and is sued in his official capacity. Mr. Lyons is responsible for Mr. Temaj Lopez's illegal detention and has custodial authority over him.

11. Pamela Bondi is the Attorney General of the United States. She is responsible for the actions of the Department of Justice ("DOJ"). The EOIR and the immigration court system it operates are a component agency of DOJ. Ms. Bondi is sued in her official capacity.

III. JURISDICTION AND VENUE

12. Respondents incarcerate Mr. Temaj Lopez at the Aurora Facility in Aurora, Colorado. Mr. Temaj Lopez is currently imprisoned in this District and is under the control of Respondents and their agents.

13. Mr. Temaj Lopez brings this action under 28 U.S.C. § 2241, the INA and its implementing regulations, the Administrative Procedures Act (5 §§ U.S.C. 500-596, 701-706), the All-Writs Act

(8 U.S.C. § 1651), the Declaratory Judgment Act, 28 U.S.C. § 2201, and the U.S. Constitution. District courts have jurisdiction under 28 U.S.C. § 2241 to hear *habeas corpus* actions by noncitizens challenging the lawfulness and constitutionality of their civil immigration detention.

14. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the U.S.

15. Venue is proper under 28 U.S.C. § 1391 because Respondents imprison Mr. Temaj Lopez in Aurora, Colorado, within the jurisdiction of this Court. Likewise, Mr. Temaj Lopez is a resident of this District, his counsel is in this District, and a substantial part of the events giving rise to the claims in this action took place within this District.

IV. FACTUAL BACKGROUND

A. Legal Authority for Immigration Detention.

16. ICE's authority to jail noncitizens is prescribed by statute. Section 1226(a) of 8 U.S.C. establishes discretionary detention for noncitizens ICE arrests "[o]n a warrant issued by the Attorney General" and then place in 8 U.S.C. § 1229a removal proceedings. 8 U.S.C. § 1226(a). Those noncitizens may then move an immigration judge for a custody hearing at any time prior to a final order of removal. *Id.*; 8 C.F.R. §§ 236.1(d)(1), 1003.19(a), (b). During the custody hearing, i.e., bond hearing, the IJ determines whether the noncitizen establishes by the preponderance of the evidence if they are a risk of flight or danger to the community. *See generally Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006). The statute does not require ICE to conduct an initial custody determination before the noncitizen has the right to seek a custody hearing before the IJ. 8 U.S.C. § 1226(a).

17. Section 1226(c) of 8 U.S.C. establishes mandatory detention for noncitizens with certain criminal legal contacts in § 1229a removal proceedings. 8 U.S.C. § 1226(c). IJs do not have the

authority to consider these noncitizens' request for release on bond unless ICE is substantially unlikely to establish that the noncitizen falls within one of § 1226(c)'s mandatory detention provisions. *See generally Matter of Joseph*, 22 I. & N. Dec. 799 (B.I.A. 1999).

18. The statute also provides for mandatory detention of a narrow subset of noncitizens subject to an expedited removal pursuant to § 1225(b) or for other noncitizen "applicants for admission" to the U.S. who are apprehended at the border or port of entry. *See* 8 U.S.C. § 1225(b)(2). Section 1225 focuses on noncitizens "arriv[ing]" "whether or not at a designated port of arrival," and applies to people like those who were "interdicted in international or United States waters" (§ 1225(a)(1)), are "stowaways" (§ 1225(a)(2)), and who are otherwise "applicants for admission" into the U.S. (§ 1225(a)(3)). In contrast to § 1226, § 1225 discusses matters such as "screening" "claims for asylum" (§ 1225(b)(1)(A)(i)-(ii)) at the border, "inspection" by an immigration officer to determine if a noncitizen "is … clearly and beyond a doubt entitled to be admitted" (§ 1225(b)(2) & (d)), and "removal" of "an arriving [noncitizen]" (§ 1225(c)(1)).

19. Finally, the statute provides for detention of noncitizens with final removal orders. 8 U.S.C. § 1231(a), (b).

20. Mr. Temaj Lopez does not have any criminal legal contact rendering him subject to 8 U.S.C. § 1226(c). He is also not subject to § 1231 detention because he does not have a final removal order. Rather, this case concerns the discretionary detention provision at 8 U.S.C. § 1226(a) and Respondents' erroneous assertion that mandatory detention pursuant to § 1225(b)(2) applies.

21. The Supreme Court summarizes 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). The Court has since reiterated this statutory scheme. *E.g.*, *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (Noncitizens "who are arrested and detained may generally apply for release on bond" pursuant to § 1226(a)); *Nielsen v. Preap*, 586 U.S. 392, 395 & 397 (2019) (§ 1226 is the "general rule regarding [noncitizens] arrest and detention" and permits " release . . . on bond").

22. 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. Section 1226(a) was most recently amended in early 2025 by the Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025), with new provisions specifically enacted to jail individuals who entered the United States without inspection and who have certain criminal legal contacts. 8 U.S.C. § 1226(c)(1)(E).

23. Following the enactment of the IIRIRA in 1996, EOIR wrote regulations applicable to proceedings before IJs 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").

24. Thus, in the following decades, people who entered without inspection and did not have certain criminal legal contacts received § 1226(a) bond hearings when placed in § 1229a proceedings. That practice was 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)).

25. This practice – both pre- and post-enactment of the IIRIRA – is consistent with the fact that noncitizens present in the U.S. have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

26. Despite this long-standing practice and the plain text of the statute, the Board of Immigration Appeals ("BIA") issued an unpublished decision on May 22, 2025, holding that noncitizens who entered the United States without inspection were subject to § 1225(b)(2) mandatory detention as "applicants for admission."

27. On July 8, 2025, ICE, "in coordination with" the DOJ announced a new policy consistent with the unpublished BIA decision from May 22, 2025. The new ICE/DOJ policy, titled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all noncitizens present within the U.S. who entered without inspection – no matter how long ago, no matter where, and no matter how – are deemed "applicants for admission" under 8 U.S.C. § 1225, and thus subject to mandatory detention under § 1225(b)(2)(A). The new policy applies regardless of when and where a person was apprehended and affects people who reside in the U.S. for years.

28. The federal courts resoundingly rejected Respondents' position almost immediately. *E.g.*, *Rodriguez-Vazquez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, 804 F.Supp.3d 265 (D. Mass. 2025);

29. Nevertheless, on September 5, 2025, the BIA published a precedential decision finding that people who entered without inspection are subject to § 1225(b)(2). *Matter of Yajure Hurtado*, 29

I. & N. Dec. 216 (BIA 2025). IJs across the country are now required to apply Respondents' unlawful detention regime absent federal court intervention.

30. Since *Yajure Hurtado*, the federal courts have continued to overwhelmingly reject the Respondents' position. *E.g.*, *Sampiao v. Hyde*, 799 F.Supp.3d 14 (D. Mass. 2025); *Pizzaro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden et al.*, 799 F.Supp.3d 59 (D.N.H. 2025); *Lopez Santos v. Noem*, 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Kaiser et al.*, No 25-cv-06924-EMC (EMC), 2025 WL 2637503 (N.D. Ca. Sept. 12, 2025); *Barrera v. Tindall*, No. 3:25-cv-00541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Chafla et al. v. Scott*, 2:25-cv-00437-SDN, 2025 WL 2688541, at *6 (D. Me. Sept. 21, 2025); *Maldonado Vasquez v. Feeley*, 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2631828 (W.D. Tex. Sept. 22, 2025); *Lepe v. Andrews*, 801 F.Supp.3d 1104 (E.D. Cal. 2025); *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923, at *1 (N.D. Cal. Sept. 25, 2025); *Luna Quispe v. Crawford*, 1:25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *da Silva v.* ICE, 1:25-cv-00284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *B.D.V.S. v. Forestal*, 25-cv-01968, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); 2025); *Da Silva v. Bondi*, No. 25-cv-12672-DJC, 2025 WL 269163 (D. Mass. Oct. 21, 2025).

31. This includes the Western District of Washington and the District of Massachusetts' grants of summary judgement to a class of incarcerated noncitizens presenting the same arguments Mr. Temaj Lopez does here. *Rodriguez Vazquez v. Bostock*, 802 F.Supp.3d 1297 (W.D. Wash. Sept. 30, 2025); *Guerrero Orellana v. Moniz*, 802 F.Supp.3d. 297 (D. Mass. 2025).

32. The District of Colorado joined the chorus on September 16, 2025, when Judge Sweeney explained, *inter alia*, that the Government's argument for § 1225(b)(2) detention must fail when a

noncitizen is not "seeking admission" into the United States. *Garcia Cortes v. Noem et al.*, No. 1:25-cv-02677-CNS, 2025 WL 2652880 at *3 (D. of Colo. Sept. 16, 2025). The chorus continues unanimously and unabated in this district. *E.g.*, *Mendoza Gutierrez v. Baltasar et al.,* 1:25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Pineda v. Baltasar et al.*, 1:25-cv-2966, 2025 WL 3516291 (D. Colo. Oct. 20, 2025); *Loa Caballero v. Baltazar et al.*, 25-cv-03120, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Hernandez Vazquez v. Baltasar et al.,* 1:25-cv-3049-GPG, 2025 WL 4083603 (D. Colo. Oct. 23, 2025); *Nava Hernandez v. Baltazar et al.*, 1:25-cv-03094, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Artola Aruaz v. Baltazar, et al.*, 1:25-cv-03260-CNS, 2025 WL 3041840 (D. Colo. Oct. 31, 2025), ECF 16; *Cervantes Arredondo v. Baltazar, et al.*, 1:25-cv-03040-RBJ (D. Colo. Oct. 31, 2025), ECF 21; *De Domingo Campos v. Baltazar*, 25-cv-3062, 2025 WL 4083609 (D. Colo. Nov. 13, 2025), ECF 33; *Ortiz Rosales v. Baltazar, et al.*, 25-cv-03275-GPG (D. Colo. Nov. 16, 2025), ECF 25; *Espinoza Ruiz v. Baltazar, et al.*, 1:25-cv-03642-CNS, 2025 WL 3294762 (D. Colo. Nov. 26, 2025), ECF 18; *Velasquez de Leon v. Baltazar et al.*, 1:25-cv-03805-RBJ, *5 n.4 (D. Colo. Dec. 22, 2025), ECF 19 (collecting cases); *Navas Medina v. Batazar et al.*, 1:25-cv-03919-RMR (D. Colo. Dec. 29, 2025), ECF 17; *Rodriguez Rodriguez v. Baltasar et al.*, 1:25-cv-03961-GPG (D. Colo. Dec. 30, 2025), ECF 20; *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, *4 (D. Colo. Jan. 15, 2026), ECF 16 (collecting cases and acknowledging the District's unanimity); *Portillo-Martinez v. Baltazar*, No. 26-cv-00106-PAB, 2026 WL 194163 (D. Colo. Jan. 26, 2026); *Chavez Amrenta v. Noem*, No. 26-cv-00236-PAB, 2026 WL 274634, (D. Colo. Feb. 3, 2026); *Hernandez v. Baltazar*, 26-cv-0276-WMJ-TPO, 2026 WL 304362 (D. Colo. Feb. 5, 2026).

33. On November 20, 2025, the Central District of California granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class

and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Petitioner-Plaintiffs proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting petitioner's Motion for Partial Summary Judgment).

34. The declaratory judgement held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

35. On December 18, 2025, the *Maldonado Bautista* court issued another order, explicitly vacating DHS' policy of applying § 1225(b) nationwide to members of the class. *Maldonado Bautista v. Santacruz*, ---F.Supp.3.---, 2025 WL 3713987, *22 (C.D. Cal. 2025) ("[B]ecause the Court declares the DHS policy unlawful, the Court must set aside the DHS policy. As such, the Court VACATES the DHS Policy under the APA") (emphasis in original).

36. On February 18, 2026 the *Maldonado Bautista* court went further, vacating *Matter of Yajure Hurtado* in its entirety for the nationwide class. *Madonado Bautista et al. v. Santacruz et al.*,---F.Supp.3d---, 2026 WL 468284, at *10 (C.D. Ca. Feb. 18, 2026).

37. The class is defined as "[a]ll 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), § 1225(b)(1), or § 1231 at the time DHS makes an initial custody determination." *Maldonado Bautista*, --- F. Supp. 3d ----, 2025 WL 3713987, *2.

38. While Mr. Temaj Lopez is not a member of the *Maldonado Bautista* class, the federal courts' overwhelming rejection of Respondents' interpretation that § 1225(b) governs detention in this case is wrong. Indeed, their interpretation "has been rejected in more than 1,500 district court decisions." *Chavez Amrenta*, 2026 WL 274634, at *2. It defies the plain language of the INA, fundamental canons of statutory construction, and the agency's longstanding regulations.

39. The statute's plain text demonstrates § 1226(a) – not § 1225(b) – applies to people like Mr. Temaj Lopez. 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.

40. 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 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

41. Thus, § 1226 applies to noncitizens like Mr. Temaj Lopez who are present without inspection, face inadmissibility charges in removal proceedings due to their entrance without inspection, and who do not have certain criminal legal contacts.

42. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the U.S. and are encountered at or near the border. Section 1225's entire framework is premised around inspection at the border of people who are "seeking admission" to the U.S. 8

U.S.C. § 1225(b)(2)(A). The Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 582 U.S. at 287.

43. Accordingly, contrary to Respondents' erroneous interpretation of the statute, the mandatory detention provisions of § 1225(b)(2) do not apply to people like Mr. Temaj Lopez.

B. Mr. Temaj Lopez's Illegal Detention Without Bond

44. Mr. Temaj Lopez has resided continuously in the United States for approximately seven years. He has no criminal history that triggers mandatory detention. He filed his application for asylum with DHS, which remains pending and for which he received an EAD valid until 2030. He was employed full-time as a driver prior to ICE stripping him of his liberty. Mr. Temaj Lopez is an excellent candidate for release on bond so that he may meaningfully defend his removal proceedings while in the community. *E.g.*, *Matter of Guerra*, 24 I. & N. Dec at 40 (listing factors relevant for bond). Indeed, Respondents released him on his own recognizance about seven years ago, recognizing the same. Nevertheless, Respondents now incarcerate him under the wrong statute without the possibility of requesting bond. Absent intervention by this Court, Mr. Temaj Lopez will illegally remain in Respondents' custody.

C. ICE's Reincarceration of Mr. Temaj Lopez Violated Procedural Due Process.

45. To add insult to injury, ICE's decision to rejail Mr. Temaj Lopez violated procedural due process. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). The "touchstone" of due process is protecting people against arbitrary government action, whether from "denial of a fundamental procedural fairness, or the exercise of power without any reasonable justification in the service of a legitimate government objection." *Cty. of Sacremento v. Lewis*, 532

U.S. 833, 845–46 (1998). "Even those who face significant constraints on their liberty or those over whose liberty the government wields significant discretion retain a protected interest in their liberty." *Rosado v. Figueroa*, CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *11 (D. Ariz. Aug. 11, 2025); *Guillermo M.R. v. Kaiser*, 791 F.Supp.3d 1021, 1030 (N.D. Ca. Jul. 17, 2025) (citations omitted) (same).

46. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty . . . ." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified).

47. Whether government action violates procedural due process is determined by the three-factor balancing test in *Mathews*. *Id.* at 335. The test requires the Court to balance (1) "the private interest that will be affected by the official action"; (2) "the risk of 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." *Id.*

48. Here, ICE's decision to release Mr. Temaj Lopez under § 1226 almost seven years ago means that it concluded that he is neither a risk of flight nor a danger to the community. *See Saravia v. Sessions*, 280 F.Supp.3d 1168, 1176 (N.D. Cal. 2017) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk"); *Alfaro Herrera v. Baltazar*, 1:25-cv-91470-CNS, 2026 WL 91470 at *9 (D. of Colo. Jan. 13, 2026) (noting that it is "implicit" in release under § 1226(a) that there was a "determination that [the person] is neither a danger to the community nor a flight risk"). ICE's decision to reverse course and jail Mr. Temaj

Lopez under § 1225(b)(2) without notice, process, an opportunity to be heard, or a material change in circumstances violates his right to procedural due process. *E.g.*, *J.U.*, 805 F.Supp.3d at 498; *Grigorian v. Bondi*, 25-cv-22914-RAR, 2025 WL 2604573, at *6–10 (S.D.Fla. Sept. 9, 2025); *K.E.O. v. Woosley*, No. 4:25-cv-74-RGJ, 2025 WL 2553394, at *3 (W.D.Ky. Sept. 4, 2025); *Zhu v. Genalo*, 1:25-cv-06523 (JLR), 2025 WL 2452352, at *5–9 (S.D.N.Y. Aug. 26, 2025); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at *5 (D. Mass. June 20, 2025); *Ceesay v. Kurzdorfer*, 781 F.Supp.3d 137, 163–64 (W.D.N.Y. 2025); *Alfaro Herrera*, 2026 WL 91470, at *10–12; *See Cruz Valera v. Baltazar*, 1:25-cv-03744-CNS, 2025 WL 3496174, at *3–4 (D. Colo. Dec. 5, 2025).

49. Moreover, because "the Government has affirmatively decided to treat [Mr. Temaj Lopez] as being detained under Section 1226(a)[,] it cannot now be heard to change its position to claim the he is detained under Section 1225(b)." *Patel*, 2025 WL 2996787, at *6.

50. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). While Respondents' current confinement of Mr. Temaj Lopez is incarceration, Mr. Temaj Lopez seeks habeas relief from *all* forms of illegal ICE custody. *See Jones v. Cunningham*, 371 U.S. 236, 242 (1963) ("While Mr. Temaj Lopez's parole releases him from immediate physical imprisonment, it imposes conditions which significantly confine and restrain his freedom; this is enough to keep him 'in custody' . . . within the meaning of the habeas corpus statute"); *Orellana v. Moniz*, 788 F.Supp.3d 61, 68 (D. Mass. June 11, 2025) (same for a noncitizen with an ankle monitor); *Hogarth v. Santacruz*, 5:25-cv-09472-SPG-MAR, 2025 WL 3211461, *13 (C.D. Cal. Oct. 23, 2025) (same); *Batz Barreno v. Baltasar*, ---F.Supp.3d---, 2026 WL 120253 (D. Colo. Jan. 15, 2026) (same); *Garcia Cortes v.*

Guadian, et al., 1:26-cv-00294-CNS, 2026 WL 265688, * (D. Colo. Feb. 2, 2026) (same). This includes the imposition of GPS monitoring, check-in requirements, in-person or telephonic requirements, retention of identity documents, and any other conditions ICE unilaterally imposes as part of judge-ordered release. As discussed *supra*, Respondent's novel interpretation of the statute is wrong. Its authority to jail Mr. Temaj Lopez is pursuant to § 1226(a) and its refusal to offer him a pre-deprivation custody hearing and refusal to offer him a § 1226(a) custody hearing is unlawful.

V. CLAIMS FOR RELIEF

COUNT I
Respondents Jail Mr. Temaj Lopez in Violation of 8 U.S.C. § 1226(a)

51. Mr. Temaj Lopez incorporates by reference the allegations of fact set forth in the preceding paragraphs.

52. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Mr. Temaj Lopez because when ICE recently rejailed him 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 Mr. Temaj Lopez 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 of § 1226(c) irrelevant here.

53. An IJ's jurisdiction to hear a noncitizen's request for liberty in a custody hearing is not contingent upon ICE conducting an initial custody determination. 8 U.S.C. § 1226(a). Noncitizens subject to § 1226(a) incarceration require access to a bond hearing; the only exceptions are found in § 1226(c) which are not relevant here.

54. Applying § 1225 to Mr. Temaj Lopez unlawfully mandates his continued detention without a custody determination hearing and violates 8 U.S.C. § 1226(a).

COUNT II
Respondents are Detaining Mr. Temaj Lopez in Violation of the INA Bond Regulations (8 C.F.R. §§ 236.1, 1236.1 & 1003.19)

55. Mr. Temaj Lopez incorporates by reference the allegations of fact set forth in the preceding paragraphs.

56. Respondent EOIR and the then Immigration and Naturalization Service issued a rule to interpret and apply the IIRIRA under the heading "Apprehension, Custody, and Detention of [Noncitizens]," which explained: "Despite 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*." 62 Fed. Reg. at 10323 (emphasis added). Respondents thus long-ago made clear that people like Mr. Temaj Lopez who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and the implementing regulations.

57. Nonetheless, Respondents here deemed Mr. Temaj Lopez subject to mandatory detention under § 1225, which unlawfully mandates his continued detention.

58. Respondents' application of § 1225(b)(2) to Mr. Temaj Lopez unlawfully requires his continued detention in violation of 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Respondents are Detaining Mr. Temaj Lopez in Violation of the Administrative Procedures Act (5 U.S.C. § 706(2))

59. Mr. Temaj Lopez incorporates by reference the allegations of fact set forth in the preceding paragraphs.

60. 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).

61. Respondents' detention of Mr. Temaj Lopez pursuant to § 1225 is arbitrary and capricious, and in violation of the Fifth Amendment of the U.S. Constitution. Respondents do not have statutory authority under § 1225 to detain Mr. Temaj Lopez.

62. Respondents' detention of Mr. Temaj Lopez without access to bond is arbitrary, capricious, an abuse of discretion, violative of the U.S. Constitution, the statute, the implementing regulations and therefore in violation of 5 U.S.C. § 706(2).

COUNT IV

Respondents Detain Mr. Temaj Lopez in Violation of his Fifth Amendment Due Process Rights

63. Mr. Temaj Lopez incorporates by reference the allegations of fact set forth in the preceding paragraphs.

64. 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.

65. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty . . . ." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified). The "touchstone" of due process is protecting people against arbitrary government action, whether from "denial of a

fundamental procedural fairness, or the exercise of power without any reasonable justification in the service of a legitimate government objection." *Cty. of Sacremento v. Lewis*, 532 U.S. 833, 845–46 (1998).

66. Whether government action violates procedural due process is determined by the three-factor balancing test in *Mathews*. 424 U.S. at 335. The test requires the Court to balance (1) "the private interest that will be affected by the official action"; (2) "the risk of 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." *Id.*

67. Mr. Temaj Lopez has a fundamental interest in liberty and being free from official restraint, such as imprisonment in the Aurora Facility, *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary government action"), and ICE's unilaterally imposed restrictions including, *inter alia*, 24/7 GPS monitoring, reporting requirements, and restrictions on movement, *Orellana*, 788 F.Supp.3d at 68. The risk of erroneous deprivation is high considering the government is not providing Mr. Temaj Lopez any process at all and the administrative burden on the government to provide him with a custody hearing is negligent.

68. Respondents' detention of Mr. Temaj Lopez without providing him with either an initial custody determination, a pre-deprivation hearing after previously releasing him, or a custody hearing before a neutral adjudicator to determine whether he is a flight risk or danger to others violates his right to Due Process.

COUNT V

Violation of Substantive Due Process

69. Mr. Temaj Lopez incorporates by reference the allegations and facts set forth in the preceding paragraphs.

70. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. at 693.

71. The civil incarceration of noncitizens is only authorized for specific, non-punitive purposes. *Id.* at 690. Those purposes are limited to "certain special and narrow nonpunitive circumstances" including the mitigation of flight and danger to the community. *Id.*

72. Here, Respondents already decided almost seven years ago that Mr. Temaj Lopez is neither a risk of flight nor a danger to the community. Continued incarceration therefore serves no purpose and violates Mr. Temaj Lopez's right to substantive due process.

COUNT VI

Violation of the Fifth Amendment of the U.S. Constitution
Procedural Due Process

73. Mr. Temaj Lopez incorporates by reference the allegations and facts set forth in the preceding paragraphs.

74. Respondents' decision to revoke Mr. Temaj Lopez's liberty interest after previously releasing him on his own recognizance lacked any procedures at all. Respondents did not provide him with notice. Respondents did not provide him with an opportunity to be heard. In fact, it refuses to hear from him, claiming that his incarceration is mandatory.

75. Respondents' revocation of Mr. Temaj Lopez's release on his own recognizance without providing notice and a meaningful opportunity to be heard violates procedural due process under

the Fifth Amendment of the Constitution. Mr. Temaj Lopez has a fundamental interest in liberty and being free from official restraint, such as imprisonment in the Aurora Facility, *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary government action"), and ICE's unilaterally imposed restrictions including, *inter alia*, 24/7 GPS monitoring, reporting requirements, and restrictions on movement, *Orellana*, 788 F.Supp.3d at 68. The risk of erroneous deprivation is high considering the government is not providing Mr. Temaj Lopez any process at all and the administrative burden on the government to provide him with a custody hearing is negligent.

COUNT VII

Violation of the Administrative Procedures Act, 5 U.S.C. § 706(2)(A) Arbitrary and Capricious

76. Mr. Temaj Lopez incorporates by reference the allegations and facts set forth in the preceding paragraphs.

77. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

78. Respondents' revocation of Mr. Temaj Lopez's release on his own recognizance was arbitrary and capricious because it violated the Constitution and agency precedent requiring materially changed circumstances.

PRAYER FOR RELIEF

Mr. Temaj Lopez respectfully asks that this Court take jurisdiction over this matter and grant the following relief:

1. Issue a writ of *habeas corpus* requiring Respondents to release Mr. Temaj Lopez immediately from all forms of custody and enjoin ICE from unilaterally imposing

additional restraints on liberty like 24/7 GPS monitoring, reporting requirements, or restrictions on movement, or in the alternative, schedule him for a custody hearing pursuant to 8 U.S.C. § 1226(a) before this Court within seven days, regardless of whether ICE conducted an initial custody determination, and at which Respondents must demonstrate by clear and convincing evidence that continued custody of any kind is necessary;

2. Or, also in the alternative, order Respondents to schedule him for a custody hearing pursuant to § 1226(a) before a neutral IJ within seven days, regardless of whether ICE conducted an initial custody determination, at which Respondents must demonstrate by clear and convincing evidence that continued custody of any kind is necessary;
3. Enjoin Respondents from unilaterally imposing additional forms of custody like 24/7 GPS monitoring, reporting requirements, or restrictions on movement unless this Court or an IJ orders those conditions after Respondents convince this Court or an IJ by clear and convincing evidence in the custody hearing that they are necessary;
4. If bond is granted, enjoin Respondents from invoking the automatic stay provision in 8 C.F.R. § 1003.19(i)(2) to pursue on appeal its position that 8 U.S.C. § 1225(b)(2) controls Mr. Temaj Lopez's custody;
5. Enjoin Respondents from denying Mr. Temaj Lopez a custody hearing due to DHS' refusal to conduct, claiming a failure to conduct, or failure to evidence, an initial custody determination;
6. Enjoin ICE from delaying the payment or processing of bond once one is issued due to its claim that 8 C.F.R. § 1003.19(i)(2) permits it to do so;
7. Enjoin EOIR from unilaterally exercising 8 C.F.R. § 1003.23(b)(1) to reconsider a bond grant due to its position that 8 U.S.C. § 1225(b)(2) controls Mr. Temaj Lopez's custody;

8. Require the IJ to consider the Respondent's financial circumstances and ability to pay a bond when deciding what bond amount is appropriate;
9. Enjoin Respondents from transferring Mr. Temaj Lopez outside the jurisdiction of the District of Colorado pending resolution of this case;
10. Award Mr. Temaj Lopez attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and,
11. Grant any other and further relief that this Court deems just and proper.

Dated: February 19, 2026

/s/ Conor T. Gleason
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VERIFICATION

I, Lourdes Cervantes, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.:

/s/ Lourdes Cervantes
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CERTIFICATE OF SERVICE

I, Conor T. Gleason, hereby certify that on February 19, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Lourdes Cervantes, hereby certify that I will mail a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail by February 23, 2026, or sooner pursuant to any forthcoming Court order regarding service. Kevin Traskos, attorney for Respondents, confirmed with undersigned counsel that he will accept service on behalf of all Respondents.

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