

UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO  
DENVER DIVISION

JOSE LUIS RUIZ DIAZ :

*Petitioner,* :

-against- :

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

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

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

KELEI WALKER, IN HIS OFFICIAL CAPACITY ICE  
FIELD OFFICE DIRECTOR DETENTION AND  
REMOVAL; :

WARDEN, WARDEN, DENVER CONTRACT  
DETENTION FACILITY :

*Respondents.*

-----X

**PETITION FOR  
WRIT OF HABEAS CORPUS**

Case No. 1:26-cv-00782-SKC

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

1. Petitioner, Jose Luis Ruiz-Diaz (“Mr. Ruiz-Diaz”), is a 42 year-old citizen and national of Mexico.
2. Mr. Ruiz-Diaz entered without inspection to the United States at an unknown location on or about July, 2001, after leaving Mexico. See Exh. 1 – Notice to Appear.
3. On November 17, 2025, Mr. Ruiz-Diaz was served with a Notice to Appear, charged as inadmissible under INA § 212(a)(6)(A)(i). See Exh. 1 – Notice to Appear.
4. Mr. Ruiz-Diaz was ordered to appear before an immigration judge at 500 N. Orange Avenue, STE 1100, Orlando, FL 32801, on August 30, 2028, at 8:30 AM. See Exh. 1 – Notice to Appear.
5. On November 17, 2025, Mr. Ruiz-Diaz applied for relief and lawful presence in the United States by filing an asylum/withholding of removal application under 8 U.S.C. § 1158 and 8 U.S.C. § 1231(b)(3).
6. Mr. Ruiz-Diaz is the father of (2) United States citizen children, both of whom depend on him for financial and emotional support.
7. On January 4, 2026, at approximately 9:00 a.m., Mr. Ruiz-Diaz was driving in the Hillsborough–Manatee–Pinellas County area when he made a U-turn and was stopped by a local police officer. The officer activated his emergency lights and approached Petitioner’s vehicle, indicating that he intended to issue a warning for an expired driver’s license. Shortly thereafter, immigration officers arrived at the scene, detained Mr. Ruiz-Diaz, and took him into custody.
8. Mr. Ruiz-Diaz’s Master Calendar Hearing (i.e., pre-trial merits) was scheduled for March 26, 2026, in Aurora, CO. See Exhibit 2 - Automated Case Information.

9. Mr. Ruiz-Diaz was ultimately sent to DENVER CONTRACT DETENTION FACILITY where he remains in custody. *See* Exhibit 3 - ICE Locator.
10. On March 4, 2026, Petitioner appeared for a bond redetermination hearing before the Immigration Court. The Immigration Judge granted Petitioner's request for bond, finding that Petitioner does not pose a danger to persons or property in the United States and that any risk of flight is mitigated by his intent to pursue cancellation of removal, his consistent employment history, and his strong family and community ties. The Immigration Judge set bond in the amount of \$40,000 and authorized the Department of Homeland Security to impose any additional conditions of supervision deemed appropriate. *See* Exhibit 4 - Order of the Immigration Judge.
11. That same day, U.S. Immigration and Customs Enforcement (ICE) notified Petitioner of its Intent to Appeal the Custody Redetermination Decision, thereby temporarily staying the Immigration Judge's bond order. *See* Exhibit 5 – Notice of Intent to Appeal Custody Redetermination.
12. Without relief from this court, Mr. Ruiz-Diaz faces continued detention without the possibility of an individualized bond hearing.
13. Petitioner is a class member in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873SSS-BFM (C.D. Cal.). In *Maldonado Bautista* the court certified the Bond Eligible Class, defined as: 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), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *Maldonado Bautista v. Santacruz*, No.

5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at \*9 (C.D. Cal. Nov. 25, 2025). Petitioner is a noncitizen without lawful status detained at the Denver Contract Detention Facility who (1) entered the United States without inspection, (2) was not apprehended upon arrival, and (3) is not subject to mandatory detention pursuant to 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. Accordingly, as a member of the Bond Eligible Class, Petitioner is entitled to the application of the law as stated in the Maldonado Bautista orders.

14. Petitioner preserves the statutory argument rejected in Buenrostro-Mendez v. Bondi, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026) for purposes of further review. The question of whether detention authority arises under INA § 235, 8 U.S.C. § 1225, or INA § 236, 8 U.S.C. § 1226, for noncitizens already present in the United States remains the subject of ongoing litigation in multiple courts of appeals. Because the Fifth Circuit sitting en banc or the Supreme Court may revisit or reject the panel's conclusion in Buenrostro, Petitioner raises this statutory claim to preserve the issue and ensure eligibility for relief should the governing law change.

15. On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement (Hereinafter "ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (Hereinafter "DOJ"), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." Memorandum,

U.S. Immigration & Customs Enf't, *Interim Guidance Regarding Detention Authority for Applications for Admission* (July 8, 2025), available at AILA Doc. No. 25071607, <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

16. The BIA's September 5, 2025, precedential decision in *Matter of Yajure-Hurtado*, held that the plain language of 8 U.S.C. § 1225(b)(2)(A) mandates that all aliens who have entered the United States without admission are subject to mandatory detention. 29 I&N Dec. 216 (BIA 2025). This decision is in contravention with the DHS's longstanding interpretation that noncitizens already present in the country such as Respondent were detained pursuant to 8 U.S.C. § 1226(a) and not §1225(b)(2)(A).
17. Mr. Ruiz-Diaz's instant removal case is still pending.
18. Mr. Ruiz-Diaz's detention pursuant to § 1225(b)(2)(A) violates his due process rights, he was processed under 8 U.S.C. § 1226(a), which was DHS's initial determination for Petitioner and allowed for release on conditional parole or bond.
19. Through this petition, Mr. Ruiz-Diaz asks this Court to find that Respondents have unlawfully detained him under § 1225(b)(2)(A), that his detention is appropriate under § 1226(a), which DHS processed her under on January 2024, and immediately release Petitioner from custody in accordance with the initial custody determination made on March 25, 2024. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

#### **CUSTODY**

20. Petitioner is in the physical custody of Defendant-Respondent Kelei Walker, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent Warden, Warden of the DENVER CONTRACT

DETENTION FACILITY. At the time of the filing of this petition, Plaintiff-Petitioner is detained at the DENVER CONTRACT DETENTION FACILITY in Denver, CO. The DENVER CONTRACT DETENTION FACILITY is run by DHS to detain noncitizens such as Petitioner. Petitioner is under the direct control of Respondents and their agents.

### **JURISDICTION**

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

### **VENUE**

22. Venue is proper because Petitioner is currently detained in Denver, CO and now remains detained at the DENVER CONTRACT DETENTION FACILITY. *See also generally Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (generally, “[w]henver a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States,” he must file the petition in the district of confinement and name his immediate custodian as the respondent), *see also Braden v. 30th Judicial Circuit of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court of Colorado, the judicial district in which petitioner is currently detained.

### **PARTIES**

#### **Petitioner**

23. Petitioner is a citizen and national of Mexico. He is currently in ICE custody and detained at the DENVER CONTRACT DETENTION FACILITY, 3130 Oakland St., Aurora, CO, 80010.

**Respondents**

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

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

26. Respondent TODD M. LYONS is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of Colorado, Denver Division, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. ICE's responsibilities include operating the immigration detention system. In his capacity as ICE Acting Director, Respondent Lyons exercises control over and is custodian of persons held at ICE facilities nationally. He is the Petitioner's immediate custodian and responsible for Petitioner's detention. He is sued in his official capacity. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.
27. Respondent KELEI WALKER is the Field Office Director for Detention and Removal, ICE, DHS. She is the custodial official acting within the boundaries of the judicial district of the United States District Court for the District of Colorado - Denver Division. Pursuant to Respondent's orders, Petitioner remains in custody. Respondent is sued in his official capacity. His address is 12445 E. Caley Avenue, Centennial, CO 80111.
28. Respondent WARDEN, Warden at the DENVER CONTRACT DETENTION FACILITY, 3130 Oakland St., Aurora, CO, 80010, where the petitioner is detained. The Warden has immediate physical custody of Petitioner. He is sued in his official capacity.

**STATEMENT OF THE FACTS**

29. Petitioner, Jose Luis Ruiz-Diaz ("Mr. Ruiz-Diaz"), is a 42 year-old citizen and national of Mexico.

30. Mr. Ruiz-Diaz entered without inspection to the United States at an unknown location on or about July, 2001, after leaving Mexico. See Exh. 1 – Notice to Appear.
31. On November 17, 2025, Mr. Ruiz-Diaz was served with a Notice to Appear, charged as inadmissible under INA § 212(a)(6)(A)(i). See Exh. 1 – Notice to Appear.
32. Mr. Ruiz-Diaz was ordered to appear before an immigration judge at 500 N. Orange Avenue, STE 1100, Orlando, FL 32801, on August 30, 2028, at 8:30 AM. See Exh. 1 – Notice to Appear.
33. On March 3, 2025, Mr. Ruiz-Diaz applied for relief and lawful presence in the United States by filing an asylum/withholding of removal application under 8 U.S.C. § 1158 and 8 U.S.C. § 1231(b)(3).
34. Mr. Ruiz-Diaz is the father of (2) United States citizen children, both of whom depend on him for financial and emotional support.
35. On January 4, 2026, at approximately 9:00 a.m., Mr. Ruiz-Diaz was driving in the Hillsborough–Manatee–Pinellas County area when he made a U-turn and was stopped by a local police officer. The officer activated his emergency lights and approached Petitioner’s vehicle, indicating that he intended to issue a warning for an expired driver’s license. Shortly thereafter, immigration officers arrived at the scene, detained Mr. Ruiz-Diaz, and took him into custody.
36. Mr. Ruiz-Diaz’s Master Calendar Hearing (i.e., pre-trial merits) was scheduled for August 30, 2028, in Orlando, FL. See Exhibit 2 - Automated Case Information.
37. Mr. Ruiz-Diaz was ultimately sent to DENVER CONTRACT DETENTION FACILITY where he remains in custody. See Exhibit 3 - ICE Locator.

38. Without relief from this court, Mr. Ruiz-Diaz faces continued detention without the possibility of an individualized bond hearing.

39. Mr. Ruiz-Diaz's instant removal case is still pending.

#### **CUSTODY**

40. Petitioner is in the physical custody of Defendant-Respondent Kelei Walker, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent Warden, Warden of the DENVER CONTRACT DETENTION FACILITY. At the time of the filing of this petition, Plaintiff-Petitioner is detained at the DENVER CONTRACT DETENTION FACILITY in Denver, CO. The DENVER CONTRACT DETENTION FACILITY is run by DHS to detain noncitizens such as Petitioner. Petitioner is under the direct control of Respondents and their agents.

41. Without relief from this court, Mr. Ruiz-Diaz faces continued detention without the possibility of an individualized bond hearing.

#### **LEGAL BACKGROUND**

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

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

44. Habeas corpus “entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to ‘the erroneous application or interpretation’ of relevant law.” *Boumediene v. Bush*, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (quoting, *St. Cyr*, 533 U.S. at 302).
45. The Fifth Amendment’s Due Process Clause protects the right of all persons to be free from “depriv[ation] of life, liberty, or property, without due process of law.” U.S. Const. amend. V.
46. “It is well established that the Fifth Amendment entitles aliens to due process of law[.]” *Trump v. J. G. G.*, 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).
47. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.
48. The INA prescribes three basic mechanisms for detention for non-citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for admission, § 1226 the default detention statute, and § 1231 for post-final order detention.
49. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
50. Following the enactment of the IIRIRA, the U.S. Department of Justice’s Executive Office of Immigration Review (“EOIR”) drafted new regulations explaining that, in

general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formed referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination”).

51. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge (“IJ”), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).
52. For decades, residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.
53. On July 8, 2025, however, DHS stated a new position with regard to custody determinations as follows:

An “applicant for admission” is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**

Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. See <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (emphasis original).

54. As a result, according to DHS all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).” *Id.*

55. Prior to July 8, 2025, the predominant form of detention authority for anyone arrested in the interior of the United States was 8 U.S.C. § 1226(a). Further, the Petitioner in this

case was initially arrested and released pursuant to 8 U.S.C. § 1226(a), and is demonstrated by DHS's own forms.

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

### **CLAIMS FOR RELIEF**

#### **COUNT I**

#### **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT**

#### **OF THE UNITED STATES CONSTITUTION AND *MATHEWS V. ELDRIDGE***

#### **FACTORS PROCEDURAL DUE PROCESS CLAIM**

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

58. The Due Process Clause asks whether the government’s deprivation of a person’s life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty. His continued detention violates his

right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

59. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that “[n]o person shall...be deprived of life, liberty, or property without due process of law.” As a noncitizen who shows well over “two years” physical presence in the United States (indeed he has over 7 years), Petitioner is entitled to Due Process Clause protections against deprivation of liberty and property. See Zadvydas, 533 U.S. at 693 (“[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”). Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a “sufficiently strong special justification” to outweigh the significant deprivation of liberty. *Id.* at 690.
60. This Respondent’s new policy, along with the BIA’s decision in Yajure-Hurtado violates the procedural due process rights of noncitizen detainees, both facially and as applied. It lacks any reference to or establishment of any procedure for challenging its invocation. The Court should find that there can be no possible application of this policy that would satisfy due process where it purports to authorize the most severe and recognized deprivation of liberty without a hint of a process to challenge such deprivation. In contrast, as the Supreme Court in Demore highlighted in upholding the mandatory detention of a noncitizen convicted of a crime under § 1226(c), “process” has been built into that mandatory detention scheme. For example, § 1226(c) applies to detainees whose convictions were generally “obtained following the full procedural protections [the] criminal justice system offers.” Demore v. Kim, 538 U.S. 510, 513 (2003); *id.* at 525 n.9,

(noting that “respondent became ‘deportable’ under § 1226(c) only following criminal convictions that were secured following full procedural protections”). And if mandatory detention becomes unnecessarily prolonged in that context, the due process’ prohibition of arbitrary government detention could entitle a detainee “to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified.” Id. at 532 (Kennedy, J., concurring). Detention pursuant to the automatic stay after the government already failed to establish a justification for it, with no process afforded to challenge the detention as arbitrary, is facially violative of procedural due process.

61. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. U.S. Const. Amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). “Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances ‘where a special justification ... outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’ ” *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

62. Here, the DHS, affirmed by the BIA, has determined, improperly, that all persons present in the U.S. who entered without admission are ineligible for bond. It is thus a foregone conclusion that the BIA will affirm the IJ’s decision here, and find Petitioner ineligible for bond. Like the accused in criminal cases, habeas is proper. See *Moore v. Dempsey*,

261 U.S. 86 (1923); Johnson v. Zerbst, 304 U.S. 458 (1938); Burns v. Wilson, 346 U.S. 137, 154 (1953).

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

#### 1. PRIVATE INTEREST

64. “‘The interest in being free from physical detention’ is ‘the most elemental of liberty interests.’” Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004)).

65. Mr. Ruiz-Diaz has been living in the United States for over 24 years. He has remained physically present in the United States and has established his life in this country. Mr. Ruiz-Diaz is the father of (2) United States citizen children, both of whom depend on him for financial and emotional support. Mr. Ruiz-Diaz applied for relief and lawful presence in the United States by filing an asylum/withholding of removal application under 8 U.S.C. § 1158 and 8 U.S.C. § 1231(b)(3). On March 4, 2026, Petitioner appeared for a bond redetermination hearing before the Immigration Court. The Immigration Judge granted Petitioner's request for bond, finding that Petitioner does not pose a danger to persons or property in the United States and that any risk of flight is mitigated by his

intent to pursue cancellation of removal, his consistent employment history, and his strong family and community ties. The Immigration Judge set bond in the amount of \$40,000 and authorized the Department of Homeland Security to impose any additional conditions of supervision deemed appropriate. *See* Exhibit 4 - Order of the Immigration Judge.

## **2. RISK OF ERRONEOUS DEPRIVATION**

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

67. Mr. Ruiz-Diaz's history of longstanding residence in the United States, and strong family and community ties demonstrate that individualized review is particularly important to reduce the risk of erroneous detention.

## **3. GOVERNMENT'S INTEREST**

68. Regardless of the government's purported interest in enforcing its interpretation of the immigration detention statutes, a habeas petitioner's "constitutional interest in his liberty exists above and apart from the INA." *Rojas*, 2025 WL 3038262 at \*4 (citing *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) ("[T]he Fifth Amendment entitles aliens to due process of

law in the context of removal proceedings.”)). Further, while the government “has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community,” such interest “would be squarely addressed through a bond hearing.” Id. (citing Martinez v. Noem, 2025 WL 2598379 at \*4 (W.D. Tex. Sep. 8, 2025)).

## COUNT II

### VIOLATION OF 8 U.S.C. § 1226(a)

#### UNLAWFUL DENIAL OF RELEASE ON BOND

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

70. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, § 1225(b)(2) does not apply to those persons Respondents previously determined should be detained and released under § 1226(a). Further, 8 U.S.C. § 1225(b)(2) does not justify cancellation of a bond or release order issued under 8 U.S.C. § 1226(a).

71. Nonetheless, Respondents have adopted a policy and practice of re-interpreting the detention and release statutory scheme in the INA.

72. The unlawful application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

## COUNT III

### VIOLATION OF BOND REGULATIONS

**8 C.F.R. §§ 236.1, 1232.1 and 1003.19**

**UNLAWFUL DENIAL OF RELEASE ON BOND**

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

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

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

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

**COUNT IV**

**VIOLATION OF THE APA CONTRARY TO LAW AND ARBITRARY AND**

**CAPRICIOUS AGENCY POLICY**

77. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.
78. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).
79. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those whom Defendants-Respondents previously determined should be detained and released under 8 U.S.C. § 1226(a). Such noncitizens are detained (and released) under 8 U.S.C. § 1226(a) and are eligible for release on bond, unless they were initially placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1) or (b), or were detained under 8 U.S.C. § 1226(c) or § 1231.
80. Nonetheless, Respondents have adopted a policy and practice of applying 8 U.S.C. § 1225(b)(2) to noncitizens like Petitioner whom Respondents previously determined should be detained and released pursuant to 8 U.S.C. § 1226(a).
81. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies’ policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.
82. The application of 8 U.S.C. § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

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

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

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

85. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall...be deprived of life, liberty, or property without due process of law." As a noncitizen who shows well over "two years" physical presence in the United States (indeed he has over 24 years), Mr. Ruiz-Diaz is entitled to Due Process Clause protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id.* at 690.

86. This Respondent's new policy, along with the BIA's decision in *Yajure-Hurtado* violates the procedural due process rights of noncitizen detainees, both facially and as applied. It lacks any reference to or establishment of any procedure for challenging its invocation. The Court should find that there can be no possible application of this policy that would satisfy due process where it purports to authorize the most severe and recognized

deprivation of liberty without a hint of a process to challenge such deprivation. In contrast, as the Supreme Court in *Demore* highlighted in upholding the mandatory detention of a noncitizen convicted of a crime under § 1226(c), “process” has been built into that mandatory detention scheme. For example, § 1226(c) applies to detainees whose convictions were generally “obtained following the full procedural protections [the] criminal justice system offers.” *Demore v. Kim*, 538 U.S. 510, 513 (2003); *id.* at 525 n.9, (noting that “respondent became ‘deportable’ under § 1226(c) only following criminal convictions that were secured following full procedural protections”). And if mandatory detention becomes unnecessarily prolonged in that context, the due process’ prohibition of arbitrary government detention could entitle a detainee “to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified.” *Id.* at 532 (Kennedy, J., concurring). Detention pursuant to the automatic stay after the government already failed to establish a justification for it, with no process afforded to challenge the detention as arbitrary, is facially violative of procedural due process.

87. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. U.S. Const. Amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). “Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances ‘where a special justification ... outweighs the individual's constitutionally protected

interest in avoiding physical restraint.’ ” Zavala v. Ridge, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (quoting Kansas v. Hendricks, 521 U.S. 346, 356 (1997)).

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

**COUNT VI**  
**INJUNCTIVE RELIEF**

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

90. This Court has the discretion to enter a temporary restraining order and a preliminary injunction. See Haitian Refugee Center v. Nelson, 872 F.2d 1555, 1561-1562 (11th Cir. 1989). “To be entitled to a preliminary injunction, the applicants must show (1) a substantial likelihood that they will prevail on the merits, (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted, (3) their substantial injury outweighs the threatened harm to the party whom they seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest.” Tex. Med. Providers Performing Abortion Servs. v. Lakey, 667 F.3d 570, 574 (5th Cir. 2012). All four elements must be demonstrated to obtain injunctive relief. *Id.*

**COUNT VII**  
**MALDONADO BAUTISTA V. SANTACRUZ**

91. Under *Maldonado Bautista v. Santacruz*, the relevant inquiry for determining the statutory basis of detention is the Petitioner’s most recent arrest and custody determination, not the historical fact of his entry into the United States.
92. Here, Petitioner entered the United States without inspection on or about January 6, 2024, after leaving Guatemala. Critically, however, DHS did not apprehend Petitioner upon arrival. Instead, DHS issued a Notice to Appear under 8 U.S.C. § 1229a and affirmatively exercised its discretion to detain and release Petitioner pursuant to 8 U.S.C. § 1226(a) after conducting a danger and flight risk assessment and determining that Petitioner posed neither a risk of flight nor a danger to the community.
93. Following her release, Petitioner lived openly in the United States, complied with all conditions imposed by ICE, pursued asylum and withholding of removal, applied for work authorization, and reported as required. At no point during this period was Petitioner “seeking admission” or subject to inspection at the border.
94. Petitioner’s current detention arises solely from DHS’s subsequent re-arrest in the interior of the United States, long after her entry and after a period of lawful supervision and compliance. Under *Maldonado Bautista*, detention authority must be assessed based on the circumstances of this most recent arrest, which constitutes the operative deprivation of liberty.
95. Section 1225(b)(2) applies only to individuals who are apprehended “upon arrival” or who are “seeking admission” at the time DHS exercises custody authority. Applying § 1225(b)(2) to Petitioner—who was previously released under § 1226(a) and later re-detained in the interior—impermissibly transforms “apprehended upon arrival” into a perpetual status, a reading expressly rejected by *Maldonado Bautista*.

96. Accordingly, because Petitioner's current detention is based on a re-detention in the interior following a prior release under § 1226(a), Petitioner remains detained, if at all, under 8 U.S.C. § 1226(a) and is entitled to an individualized bond hearing before an Immigration Judge.

**COUNT VIII**  
**ULTRA VIRES INVOCATION OF AUTOMATIC STAY UNDER EOIR-43 AND**  
**CONSTITUTIONAL VIOLATIONS**

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

98. On March 4, 2026, an Immigration Judge granted Petitioner's request for bond in the amount of \$40,000, finding Petitioner does not pose a danger to persons or property and that any risk of flight is mitigated by his intent to pursue cancellation of removal, his employment history, and strong family and community ties, and authorizing DHS to impose additional conditions of supervision.<sup>1</sup>

99. That same day, ICE filed a Notice of Intent to Appeal the Custody Redetermination, which temporarily stayed the Immigration Judge's bond order through the automatic stay mechanism implemented via EOIR-43.<sup>2</sup>

100. DHS's invocation of an automatic stay with the filing of EOIR-43 is ultra vires because it operates to nullify a final and reasoned custody redetermination made under 8 C.F.R. § 236.1(d)(1) without statutory authorization in 8 U.S.C. § 1226(a) and contrary to the longstanding regulatory framework that vests Immigration Judges with authority to set bond for noncitizens detained under § 1226(a).

101. Following IIRIRA, EOIR and INS explained that noncitizens present without admission or parole would be eligible for bond and bond redetermination notwithstanding

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<sup>1</sup> ECF 1-3

<sup>2</sup> Id.

applicant-for-admission status, confirming that custody for such individuals proceeds under § 1226(a) with IJ bond authority; the automatic stay invoked via EOIR-43 frustrates and effectively repeals this regime without congressional authorization or reasoned rulemaking.

102. DHS's July 8, 2025 shift asserting § 1225(b) detention and eliminating IJ bond hearings for applicants for admission does not confer authority to impose an automatic stay that overrides an IJ's § 1226(a) bond order; rather, it contradicts decades of practice under § 1226(a) and seeks to cancel existing custody determinations, which underscores that EOIR-43's automatic stay is an unlawful exercise of power not granted by statute.
103. As applied here, DHS's automatic stay mechanism deprives Petitioner of the liberty interest recognized by the IJ's individualized findings without any contemporaneous, adversarial process to justify continued detention, imposing detention solely by filing EOIR-43, which is arbitrary and capricious and exceeds agency authority.
104. The automatic stay also violates the Fifth Amendment's Due Process Clause because it authorizes significant physical restraint without adequate procedures, converting the IJ's favorable determination into detention by default filing, and thereby creating a high risk of erroneous deprivation not cured by ordinary removal proceedings; the Constitution requires meaningful, individualized custody process, which the automatic stay denies.
105. The legal and constitutional infirmities are heightened given DHS's current policy stance and the BIA's decision in Matter of Yajure-Hurtado, which together foreclose bond eligibility for interior arrestees characterized as applicants for admission<sup>3</sup>; the automatic

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<sup>3</sup> Matter of Yajure-Hurtado, 29 I. & N. Dec. 53 (B.I.A. 2025).

stay functions as a categorical detention device without the “process” historically embedded in detention schemes, rendering it unconstitutional as applied and in operation.

106. Under these circumstances, DHS’s reliance on EOIR-43 to impose an automatic stay is an ultra vires act that (a) contravenes § 1226(a) and its implementing regulations assigning bond authority to IJs, (b) conflicts with post-IIRIRA agency explanations guaranteeing eligibility for bond and bond redetermination to noncitizens present without admission, and (c) violates the Due Process Clause by sanctioning continued detention based solely on the filing of a form, absent individualized judicial process.
107. Colorado decisions addressing automatic-stay practices in immigration bond contexts underscore the serious due process concerns and the absence of statutory authorization for mechanisms that summarily displace IJ bond determinations through agency filings; Aleman Hernandez v. Baltazar, among other Colorado authorities, recognizes that automatic administrative stays that prolong detention without individualized process raise constitutional infirmities and exceed delegated authority.<sup>4</sup>
108. Colorado District Courts have expressed concern about DHS's recent implementation of the automatic stay provision. In Merchan-Pacheco v. Noem, the court noted that despite the Attorney General's statement that the automatic stay exists to enable DHS "to invoke the automatic stay with respect to aliens whom it believes are potentially dangerous, or are at risk of absconding prior to the conclusion of removal proceedings," no such concerns were cited in that case. *See Merchan-Pacheco v. Noem*, 2026 WL 88526 (2026)<sup>5</sup>. The court observed that "over the last few months, the automatic stay provision has been invoked across a much broader array of cases than this language would support" and that

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<sup>4</sup> Aleman Hernandez v. Baltazar, \*No. 1:25-cv-03688-SKC-SBP, 2025 WL 3718159, at 1 (D. Colo. Dec. 23, 2025).

<sup>5</sup> Merchan-Pacheco v. Noem, \*No. 1:25-cv-03703-NYW, 2025 WL 3718162, at 1 (D. Colo. Dec. 23, 2025).

"DHS now appears to be nearly universally implementing the automatic stay with regard to immigration judges' rulings granting petitioners bond." See Merchan-Pacheo v. Noem, 2026 WL 88526 (2026).<sup>6</sup>

109. Petitioner respectfully requests a declaration that DHS's invocation of an automatic stay via EOIR-43 in this case is ultra vires and unconstitutional; an order vacating the automatic stay as applied to Petitioner; and immediate reinstatement and implementation of the Immigration Judge's March 4, 2026 bond order with any reasonable conditions of supervision authorized by the IJ.

**PRAYER FOR RELIEF**

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

4. Assume jurisdiction over this matter;
5. Declare that Respondents' new mandatory detention policy that all noncitizens that entered the U.S. without admission or inspection are "applicants for admission" and charged with removability under § 1182 are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b) is unlawful and in violation of the INA;
6. Order Respondents to file with the Court a complete copy of the administrative file from the Dept. of Justice and the Dept. of Homeland Security;
7. Order Respondents to immediately release Petitioner;
8. Order Respondents to return back to Petitioner her wallet along with its contents including but not limited to Identity Documents, Bank Cards;
9. Enjoin ICE from transferring Petitioner outside of the District of Colorado- Denver Division while this matter is pending;

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<sup>6</sup> Id.

10. Issue an order directing Respondents to show cause why the writ should not be granted within seventy-two hours;
11. Find that a custody redetermination pursuant to 8 C.F.R. 236.1(d) is an inadequate remedy because of DHS's lack of initial decision to review.
12. Find that DHS exercised no discretion under 8 C.F.R. § 236.1(d).
13. Find that Petitioner's detention under 8 U.S.C. § 1226 absent an individualized assessment is a violation of her due process rights.
14. Find that DHS's failure to follow its own regulations and its failure to afford Petitioner the minimal due process under the 5th Amendment violated his rights.
15. Respondents should provide a bond redetermination hearing in which the government bears the burden of proof.
16. In the alternative, Respondents should provide Petitioner a fair bond redetermination hearing before an Immigration Judge as provided by 8 U.S.C. § 1226 and enjoin his further detention under 8 U.S.C. § 1225(b).
17. Grant any other relief that this Court deems just and proper.

Dated: March 9, 2026

Respectfully submitted,

/s/ David H. Square  
DAVID H. SQUARE, ESQ.  
SD TX FED. No. 1155619  
TX S. Ct. 24076013  
LAW OFFICE OF DAVID H. SQUARE, PLLC  
225 PALM BLVD.  
BROWNSVILLE, TX 78520  
T: (956) 421-1010  
E: DAVID@LAWOFFICEOFDHS.COM

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

I represent Petitioner, Jose Luis Ruiz-Diaz, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Amended Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this March 9, 2026.

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

**CERTIFICATE OF SERVICE**

I hereby certify that on March 9, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for Colorado- Denver Division.

/s/ David H. Square  
David H. Square