

Jonathon Bell (CO SB 61562)
Campos Law Firm, LLC
6020 Greenwood Plaza Blvd., Suite B
Greenwood Village, CO 80111
Phone: (720) 607-9245
Email: jonathon@camposlawfirm.com
Attorney for Petitioner

UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLORADO

ISAIAS RAFAEL MORENO-GUERRERO
Petitioner,

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

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

ARTHUR WILSON, in his official capacity as
ICE Field Officer Director,

JOHNNY CHOATE, in his official capacity as
the warden of the Aurora Immigration
Detention Facility,

PAMALA BONDI, in her official capacity as
the United States Attorney General,

The Executive Office for Immigration Review,

United States Immigration and Customs
Enforcement,

The Board of Immigration Appeals,

Respondents.

Case No. _____

**VERIFIED PETITION FOR HABEAS
CORPUS**

IMMIGRATION HABEAS CASE

INTRODUCTION

Petitioner ISAIAS RAFAEL MORENO-GUERRERO a national of Venezuela, by and through his undersigned counsel, hereby files this petition for a writ of habeas corpus. Petitioner is in the physical custody of Respondents at the Denver Contract Detention Facility (*Exhibit 1*). Petitioner is detained during the pendency of removal proceedings pursuant to 8 U.S.C. § 1226(a). Despite the statute's express authorization of release on bond or conditional parole, Petitioner has not been afforded a bond hearing and remains in custody without an individualized determination of flight risk or danger.

Petitioner entered the United States near the southern border on or about August 25, 2022. He was encountered by U.S. Border Patrol, processed by DHS, and subsequently processed and released on parole subject to conditions (*Exhibit 2*). Although Petitioner was initially apprehended near the border and subsequently paroled into the United States, DHS thereafter placed him into removal proceedings pursuant to 8 U.S.C. § 1229a. Petitioner is therefore not subject to expedited removal under 8 U.S.C. § 1225(b). Because Petitioner is presently in standard removal proceedings, detention authority arises under 8 U.S.C. § 1226 rather than § 1225(b).

Petitioner does not have a final order of removal and remains in ongoing removal proceedings. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c) and has no criminal grounds triggering mandatory custody. Accordingly, Petitioner's detention is governed by 8 U.S.C. § 1226(a), a discretionary detention provision that expressly authorizes release on bond or conditional parole. Despite being detained under § 1226(a), Petitioner has not been provided any bond redetermination hearing before an Immigration Judge since being taken

into custody on December 13, 2025. As a result, Petitioner remains detained without any neutral adjudicator having evaluated whether continued detention is necessary to mitigate flight risk or danger.

Petitioner's detention on this basis violates the Fifth Amendment's Due Process Clause. Section 1226(a) permits discretionary detention during removal proceedings, but it does not authorize detention without meaningful access to the bond procedures contemplated by the statute.

Respondents' continued detention of Petitioner without affording a bond hearing is contrary to the statutory framework and fundamental principles of due process governing civil immigration detention.

Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a prompt bond hearing under 8 U.S.C. § 1226(a), at which the government bears the burden of justifying continued detention.

JURISDICTION AND VENUE

This Court has subject-matter jurisdiction over the present action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 2241. Section 2241 confers upon federal district courts the authority to grant habeas relief to individuals held "in custody in violation of the Constitution or laws or treaties of the United States." Petitioner's claim falls squarely within this grant of jurisdiction because he challenges the legality of his present physical detention by federal executive authorities. The Petition does not seek review of any removal order. Petitioner does not contest the validity of the pending removal proceedings, nor does he request that this Court disturb or reconsider the merits of the immigration charges. Instead, Petitioner challenges only the legality of his continued confinement during the pendency of those proceedings. Such claims, which

concern the fact of detention rather than the removal determination itself, lie at the core of habeas corpus jurisdiction.

Federal courts have long recognized that habeas jurisdiction remains available to review the legality of immigration detention. The Supreme Court has repeatedly confirmed that detention challenges are distinct from removal challenges and remain subject to judicial review. Respondents' detention authority derives from federal statute, specifically 8 U.S.C. § 1226(a), and the legality of that detention presents a federal question. Accordingly, jurisdiction is proper under § 1331.

The jurisdiction-channeling provisions of 8 U.S.C. § 1252 do not eliminate this Court's authority to review Petitioner's custody challenge. Section 1252 primarily governs judicial review of removal orders and related determinations. However, courts have consistently held that § 1252 does not strip district courts of jurisdiction over challenges to the lawfulness of immigration detention itself. Petitioner's claim concerns whether Respondents' continued detention without affording a bond hearing complies with the statutory and constitutional limitations governing pre-removal custody. This inquiry does not require the Court to review or invalidate any removal decision. Rather, it requires only a determination of whether present confinement remains lawful under federal law and the Due Process Clause.

Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(e). Petitioner is detained within this District at the Denver Contract Detention Facility. The immediate custodian responsible for Petitioner's physical confinement resides within this jurisdiction. In habeas proceedings, venue is properly laid in the district of confinement, where the Court possesses territorial jurisdiction over the custodian. Additionally, Respondents are officers or agencies of the United States acting in their official capacities. The challenged conduct, Petitioner's

continued detention, is occurring within this District. No real property is implicated in this action.

For these reasons, both jurisdiction and venue are proper before this Court.

PARTIES

PETITIONER

Petitioner ISAIAS RAFAEL MORENO-GUERRERO is a citizen of Venezuela who has been in immigration detention since December 13, 2025. After taking Petitioner into custody in Wyoming, U.S. Immigration and Customs Enforcement did not set bond or otherwise provide an opportunity for release. Petitioner is presently detained at the Denver Contract Detention Facility in Aurora, Colorado and remains in removal proceedings before the Denver Immigration Court. Petitioner has resided in the United States since January 25, 2022.

RESPONDENTS

Respondent Kristi Noem (“Secretary Noem”) is the Secretary of the Department of Homeland Security, the parent agency of Immigration and Customs Enforcement, which is currently engaging in the prolonged and unlawful detention of the Petitioner. Respondent Kristi Noem is sued in her official capacity as an agent of the United States Government.

Respondent Todd Lyons is the Acting Director of the United States Immigration and Customs Enforcement and has the authority over the actions of respondent Arthur Wilson, Johnny Choate, and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

Respondent Arthur Wilson is the Field Office Director of Immigration and Customs Enforcement. He is in charge of the custody of all Immigration and Customs Enforcement detainees currently pending removal proceedings and determinations in the Colorado District

Court. Respondent Arthur Wilson is sued in his official capacity as an agent of the United States Government.

Respondent Pamela Bondi is the Attorney General of the United States and, as such, has authority over the Department of Justice and is entrusted with the pivotal task of faithfully administering the immigration laws of the United States. Pamela Bondi is sued in her official capacity as an agent of the United States.

Respondent Executive Office for Immigration Review is the federal agency responsible for custody redeterminations relating to non-citizens charged with being removable from the United States.

Respondent Johnny Choate is the warden of the Denver Contract Detention Facility and thus has custody over the Petitioner. Respondent Johnny Choate is sued in his official capacity as an agent of the United States.

Respondent United States Immigration and Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States – including the arrest, detention, and custody status of non-citizens.

Respondent The Board of Immigration Appeals is the federal agency responsible for appeals of custody redeterminations relating to non-citizens charged with being removable from the United States.

LEGAL FRAMEWORK

The INA establishes distinct statutory frameworks governing immigration detention, depending on the procedural posture of the noncitizen and the stage of removal proceedings.

First, 8 U.S.C. § 1226 governs the detention of noncitizens placed in removal proceedings under 8 U.S.C. § 1229a. Section 1226(a) authorizes discretionary detention

“pending a decision on whether the [noncitizen] is to be removed from the United States” and expressly permits release on bond or conditional parole. See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 1003.19(a), 1236.1(d). By contrast, § 1226(c) mandates detention of certain noncitizens with specified criminal convictions.

Second, 8 U.S.C. § 1225(b) governs detention of individuals who are “applicants for admission,” including certain recent arrivals and persons encountered at or near the border who are undergoing inspection. Section 1225(b)(2)(A) provides for mandatory detention of such applicants during the pendency of admissibility determinations.

Third, 8 U.S.C. § 1231(a) governs detention following the entry of a final order of removal and applies during the statutory removal period and, in limited circumstances, thereafter.

This case concerns the proper application of 8 U.S.C. § 1226(a) and the procedures required for detention during removal proceedings.

Congress enacted these provisions as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546. The statutory scheme distinguishes between individuals seeking admission at the border and individuals who have entered and are placed in standard removal proceedings under § 1229a.

Under this framework, individuals who were not apprehended at a port of entry and who were placed in standard removal proceedings are entitled to seek bond before an Immigration Judge unless subject to mandatory detention under § 1226(c).

Section 1226(a) applies by default to noncitizens “pending a decision on whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a). Those removal

proceedings are conducted under § 1229a for the purpose of determining inadmissibility or deportability.

The text of § 1226 confirms that it applies to individuals charged as inadmissible, including those present without admission or parole. Nothing in § 1226 excludes such individuals from eligibility for a bond determination unless a separate mandatory detention provision applies.

The statutory structure thus reflects Congress's deliberate distinction between applicants for admission undergoing inspection and noncitizens placed in removal proceedings under § 1229a. Although DHS may contend that individuals apprehended near the border remain subject to detention under 8 U.S.C. § 1225(b), that framework does not apply where DHS has elected to place the noncitizen in full removal proceedings under 8 U.S.C. § 1229a following parole into the United States. Once standard removal proceedings are initiated, detention authority derives from 8 U.S.C. § 1226 rather than § 1225(b). Interpreting the statute otherwise would convert discretionary detention under § 1226(a) into categorical no-bond custody for individuals already placed in § 1229a proceedings.

Where a noncitizen has been placed in standard removal proceedings and is not subject to § 1226(c), detention is governed by § 1226(a), which contemplates the availability of bond.

Section 1226(a) contemplates an individualized custody determination and does not authorize continued detention absent meaningful access to bond procedures.

Petitioner's continued detention without access to bond is inconsistent with the statutory structure governing pre-removal custody.

Petitioner has been placed in removal proceedings and does not have a final order of removal. Absent a valid statutory basis for mandatory detention, he is entitled to seek release under § 1226(a).

The failure to provide a bond hearing deprives Petitioner of the procedural protections contemplated by § 1226(a).

The Court must therefore determine which detention provision governs Petitioner's custody and whether Respondents' interpretation comports with the INA and the Constitution.

FACTS

Petitioner was apprehended by U.S. Border Patrol on or about August 25, 2022, near the southern border of the United States and was subsequently processed and released on parole subject to conditions.

Petitioner has resided in the United States since 2022 and lives in Payson, Utah.

On December 13, 2025, Petitioner was taken into immigration custody by U.S. Immigration and Customs Enforcement. Petitioner is presently detained at the Denver Contract Detention Facility in Aurora, Colorado.

DHS has placed Petitioner in removal proceedings before the Denver Immigration Court pursuant to 8 U.S.C. § 1229a. DHS alleges that Petitioner is inadmissible as a noncitizen present without admission or parole. Petitioner is not in expedited removal proceedings and is not subject to reinstatement of a prior removal order.

Petitioner has significant ties to the United States. He resides with and maintains close relationships with family members in the United States, has established community connections, and has been employed while residing here. Petitioner has no criminal history that would trigger mandatory detention and poses neither a danger to the community nor a risk of flight.

Following Petitioner's arrest and transfer to the Denver Contract Detention Facility, ICE continued Petitioner's detention and did not set bond or otherwise provide an opportunity for release pursuant to 8 U.S.C. § 1226(a). Section 1226(a) permits release on bond or conditional parole pending removal proceedings.

Petitioner has not received a bond hearing since being taken into custody on December 13, 2025. As a result, Petitioner remains in immigration detention without any individualized determination as to whether continued confinement is necessary to mitigate flight risk or danger.

ADMINISTRATIVE EXHAUSTION IS NOT REQUIRED AND, IN ANY EVENT, WOULD BE FUTILE

Although courts in this Circuit recognize a judicially created prudential exhaustion requirement in certain § 2241 cases, that requirement is not jurisdictional and may be excused where exhaustion would be futile, where administrative remedies are inadequate, or where the petitioner raises a substantial constitutional question. *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010).

Section 2241 contains no statutory exhaustion mandate. Nor does the Immigration and Nationality Act impose a statutory requirement that a detainee first seek bond redetermination before pursuing habeas relief. Where the challenge concerns the government's statutory authority to detain and the denial of access to bond procedures contemplated by Congress, habeas review is appropriate. Petitioner challenges the legality of his continued detention without access to a bond hearing under 8 U.S.C. § 1226(a). This presents a legal question concerning the scope of detention authority under the INA and the procedural protections required by the Fifth Amendment.

Requiring Petitioner to initiate bond proceedings before an Immigration Judge would not

provide timely or meaningful relief. In *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the Board of Immigration Appeals held that certain noncitizens who entered without inspection and were later detained may be treated as applicants for admission under 8 U.S.C. § 1225(b), and that Immigration Judges lack jurisdiction to conduct bond hearings in such circumstances. As a precedential decision of the Board, *Q. Li* binds Immigration Judges nationwide unless and until overturned by higher authority.

However, *Q. Li* does not resolve the statutory detention question presented here. Petitioner has been placed in full removal proceedings under 8 U.S.C. § 1229a following parole into the United States. Once DHS elects to initiate standard removal proceedings rather than expedited removal, detention authority arises under § 1226 rather than § 1225(b). Interpreting the statute otherwise would permit DHS to place a noncitizen in § 1229a proceedings while simultaneously denying access to the custody framework Congress established for those proceedings.

Petitioner entered without inspection and was later detained during the pendency of removal proceedings, circumstances under which DHS may attempt to invoke the reasoning discussed in *Q. Li*. In light of this binding agency precedent, initiating bond proceedings would likely result in a jurisdictional denial rather than a merits-based custody determination. Prudential exhaustion does not require a detainee to engage in proceedings that are unlikely to result in substantive review while liberty remains restrained.

Moreover, Petitioner's challenge concerns the statutory and constitutional limits of detention authority. Such legal questions are particularly appropriate for habeas review and do not depend upon further factual development within the administrative process.

Accordingly, exhaustion should be excused.

FIRST CAUSE OF ACTION

Violation of the Fifth Amendment Due Process Clause

Petitioner incorporates and realleges the foregoing allegations as though fully set forth herein.

The Fifth Amendment prohibits the federal government from depriving any person of liberty without due process of law. That protection extends to noncitizens in civil immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Petitioner is presently detained during the pendency of removal proceedings. He does not have a final order of removal. He is not subject to mandatory detention under 8 U.S.C. § 1226(c). No Immigration Judge has determined that he poses a danger to the community or a risk of flight. He has not received a bond hearing. His confinement therefore rests solely on executive determination, without neutral review. Civil immigration detention is regulatory, not punitive. It is constitutionally permissible only to the extent it serves its limited purposes, ensuring appearance at proceedings and protecting public safety, and only when accompanied by adequate procedural safeguards. Where detention authority is discretionary, due process requires a meaningful opportunity to seek release through an individualized custody determination.

Section 1226(a) establishes a discretionary detention framework. It expressly authorizes release on bond or conditional parole. The statutory structure presumes individualized review unless Congress has clearly mandated otherwise. Petitioner does not fall within any mandatory detention category. If Respondents contend that Petitioner is categorically ineligible for bond review based on their interpretation of the detention statutes, that position effectively converts discretionary civil detention into automatic confinement without individualized findings. The Constitution does not permit such a result.

The deprivation here is concrete and ongoing. Petitioner has been detained since December 13, 2025. He has substantial ties to the United States. He has no criminal history triggering mandatory detention. Yet he remains confined without any adjudicator having determined whether continued detention is necessary.

Under the balancing principles articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976), the constitutional violation is clear. The private interest at stake "freedom from physical restraint" is fundamental. The risk of erroneous deprivation is substantial where detention continues without a hearing. The government's legitimate interests are fully protected through a bond hearing at which it may present evidence of flight risk or danger. Providing such a hearing imposes minimal administrative burden and is already contemplated by the governing regulations.

What due process forbids is detention by executive designation alone, without access to a neutral decisionmaker. By continuing to detain Petitioner without affording him a bond hearing, Respondents have deprived him of liberty without due process of law in violation of the Fifth Amendment. Petitioner is therefore entitled to habeas relief requiring a prompt bond hearing at which the government bears the burden of justifying continued detention.

SECOND CAUSE OF ACTION

Violation of the Immigration and Nationality Act

Petitioner incorporates and re-alleges the foregoing paragraphs as though fully set forth herein.

The INA delineates specific statutory authority for immigration detention. Individuals placed in removal proceedings under 8 U.S.C. § 1229a and lacking a final order of removal are detained pursuant to 8 U.S.C. § 1226.

Section 1226(a) authorizes the Attorney General to arrest and detain a noncitizen “pending a decision on whether the [noncitizen] is to be removed from the United States.” Unlike § 1226(c), which mandates detention for certain criminal noncitizens, § 1226(a) establishes a discretionary detention framework that expressly permits release on bond or conditional parole.

Petitioner does not fall within any mandatory detention category. He has no criminal history triggering § 1226(c), and he does not have a final order of removal implicating § 1231.

Under § 1226(a), detention is permissible only within the discretionary structure established by Congress. That structure includes access to individualized custody review before an Immigration Judge pursuant to governing regulations.

Continued detention without access to the bond procedures contemplated by § 1226(a) exceeds the authority granted by the statute. The INA does not authorize executive detention that effectively operates as mandatory custody absent a statutory basis.

To the extent Respondents contend that Petitioner is ineligible for bond under a different statutory provision, such interpretation would conflict with the statutory framework governing individuals placed in standard removal proceedings under § 1229a.

Because Petitioner does not fall within any statutory class subject to mandatory detention, his continued confinement without access to bond is ultra vires and contrary to the Immigration and Nationality Act.

Habeas relief is therefore warranted.

RESERVATION OF RIGHTS

Petitioner reserves the right to add additional allegations of agency error and related causes of action upon receiving the certified administrative record.

PRAYER FOR RELIEF

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

- A. Assume jurisdiction over the matter pursuant to 28 U.S.C. §§ 2241 and 1331.
- B. Declare Petitioner's detention without a possibility of bond unlawful pursuant to the Due Process clause of the Fifth Amendment of the United States Constitution, and the Immigration and Nationality Act.
- C. Order Respondents to provide a prompt bond hearing before an Immigration Judge at which the government bears the burden of proof.
- D. Award Petitioner costs of suit and attorney's fees under the Equal Access to Justice Act and any other applicable law.
- E. Enter all necessary relief, injunctions, and orders as justice and equity as appropriate to remedy the harms to Petitioner.
- F. Grant such further relief as this Court deems just and proper.

DATED this 3rd day of March 2026.

/s/Jonathon Bell

Counsel for Petitioner

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

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I have discussed with Petitioner's family the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 3rd. day of March 2026.

Respectfully Submitted,

/s/Jonathon Bell