IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-01065-RTG

OLEKSANDR SHAPOVAL, Petitioner,

v.

MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security, in his official capacity;

JUAN BALTAZAR, Warden, GEO Aurora Contract Detention Facility, in his official capacity;

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

TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, in his official capacity;

TODD BLANCHE, Acting Attorney General of the United States, in his official capacity,

Respondents.

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

PURSUANT TO 28 U.S.C. § 2241

AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

Oleksandr Sharapov is an asylum seeker from Ukraine who was paroled into the United States pursuant to Ukrainian Humanitarian Parole ("UHP"). He is filing this petition for a writ of habeas corpus, as an **amended** petition after retaining undersigned counsel, challenging his unlawful detention under 8 U.S.C. § 1225(b)(2)(A) and (B) as applied to him by the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Petitioner was admitted into the United States on January 11th 2024 pursuant to Ukrainian Humanitarian Parole, ("UHP") and has resided continuously in the United States since that date. He was apprehended in the interior of the United States—**not at the border**—and is being held without a bond.

Immigration and Customs Enforcement ("ICE") of the Department of Homeland Security ("DHS") has detained Petitioner since February 7, 2026 without any individualized bond hearing to determine whether he is dangerous or a flight risk. The Petitioner is detained at the GEO Group Aurora detention facility. ICE has contracted with the facility to house detainees such as Petitioner. Petitioner is under the control of the Respondents and their agents without the intervention of this Court, Petitioner believes that Respondents will continue to detain him indefinitely, without regard for the mandates of the U.S. Constitution, the Immigration and Nationality Act, and the agencies' own rules and regulations.

The predicate of Petitioner's detention claim is found in the plain text of the statute, corroborated by overwhelming judicial precedent, and is now well settled law in this District. For example, the United States District Court for the District of Colorado held in *Grijalva Esquivel v. Baltazar*, No. 1:25-cv-04187-SKC (D. Colo. Jan. 29, 2026), that § 1225(b)(2) does not apply to an individual 'already resid[ing] in the United States'—that sections 1225 and 1226 'cover noncitizens

presenting at arrival (under § 1225) and then everybody else (under § 1226).' Petitioner is 'everybody else.' His detention is unlawful, and the writ should be granted.

Mr. Shaparov also asserts his rights as a member of a certified class: the local class certified in *Mendoza Gutierrez v. Baltazar*, No. 1:25-cv-02720-RMR (D. Colo. Nov. 21, 2025). This class certification confirms that this Court has already made the relevant legal determination. It is corroborating authority -- not the only basis for relief -- but provides compelling guidance for the merits of Petitioner's individual claim that independently mandates the same result.

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). The Court should grant the petition, given that Mr. Sharapov is similarly situated to the petitioners in the above referenced cases, given his manner of entry and his presence in the United States.

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241(c)(3), 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the Constitution (Suspension Clause). This Court may grant relief under 28 U.S.C. § 2241 (habeas), 28 U.S.C. § 2201 (Declaratory Judgment Act), and 28 U.S.C. § 1651 (All Writs Act). Non-citizens may challenge the lawfulness of their detention through habeas. *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

2. This petition only challenges custody, not removal—a classic habeas claim collateral to any removal order and not prohibited by 8 U.S.C. § 1252(b)(9), § 1252(g), or § 1252(a)(5). *See Grijalva Esquivel v. Baltazar*, No. 1:25-cv-04187-SKC, slip op. at 2 (D. Colo. Jan. 29, 2026).

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e) and *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), because Petitioner is detained at GEO Aurora Contract Detention Facility, 3130 N. Oakland Street, Aurora, CO 80010, in this District.

III. PARTIES

4. Petitioner Oleksandr Sharapov is a citizen of Ukraine who is in custody at the GEO Aurora Contract Detention Facility in Aurora, Colorado, within the meaning of the habeas statute. *See Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

5. Respondent **Markwayne Mullin** is Secretary of Homeland Security, Petitioner's ultimate legal custodian responsible for implementation of the immigration laws as codified under the Immigration and Nationality Act ("INA"). He is sued in his official capacity.

6. Respondent **Juan Baltazar** is Warden of the GEO Aurora Contract Detention Facility and Petitioner's immediate physical custodian. He is sued in his official capacity.

7. Respondent **Robert Hagan** is Director of the Denver Field Office of ICE's Enforcement and Removal Operations division and is also Petitioner's immediate custodian responsible for his detention and removal. He is sued in his official capacity.

8. Respondent **Todd M. Lyons** is Acting Director of ICE. He is sued in his official capacity.

9. Respondent **Todd Blanche** is the Acting Attorney General of the United States, with authority over the Department of Justice and the Executive Office for Immigration Review. He is sued in his official capacity.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES IS NOT REQUIRED

10. Exhaustion is not required under 28 U.S.C. § 2241, given the statutory "silence" regarding exhaustion. Any exhaustion requirement would be improvident, if not futile, and courts have broad discretion to waive it. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Exhaustion is excused where 'administrative remedies are inadequate or not efficacious,' 'pursuit of administrative remedies would be a futile gesture,' 'irreparable injury will result,' or 'the administrative proceedings would be void.' *Id.* All four conditions are independently satisfied here.

11. **Exhaustion Is Futile.** *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is deemed binding precedent stripping all Immigration Judges of jurisdiction to conduct bond hearings for noncitizens who entered without inspection ("EWI"). In short, there is no procedural mechanism by which Oleksandr Sharapov could obtain a bond hearing before any Immigration Judge (IJ) in any court in the country. See *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Lopez-Campos v. Raycraft*, 797 F.Supp.3d 771, 781 (E.D. Mich. 2025).

12. **Administrative Remedies Are Inadequate and Void.** The agency lacks jurisdiction to grant the relief Petitioner seeks. No administrative body can order ICE to reclassify Petitioner under § 1226(a). Where the administrative body has not been "empowered to grant effective relief," exhaustion is not required. "There are at least three broad sets of circumstances in which the interests of the individual outweigh against requiring administrative exhaustion: (1) "where a party could 'suffer irreparable harm if unable to secure immediate judicial consideration' (2) **where the administrative agency is not empowered to grant effective relief**; and (3) where the administrative body is shown to be biased or has otherwise predetermined the issue before it."

Brown v. Haaland, 604 F. Supp. 3d 1059, 1088 (D. Nev. 2022) (cleaned up) (emphasis added).

13. **Irreparable Injury.** Each day Petitioner languishes in detention without legal authority constitutes irreparable harm. "*Liberty once lost is lost forever.*"[1]

14. **No Administrative Jurisdiction Over Constitutional Claims.** Administrative bodies are precluded from adjudicating constitutional claims or overruling the Board of Immigration Appeals' ("BIA's") own binding precedent. "There is nothing efficient about sending constitutional claims to a body that cannot decide them, only to wait for an opportunity to appeal." *Am. Fedn. of Govt. Employees, AFL-CIO v. Trump*, 782 F. Supp. 3d 793, 817 (N.D. Cal. 2025), reconsideration granted in part, 782 F. Supp. 3d 872 (N.D. Cal. 2025), and appeal dismissed, No. 25-3030, 2025 WL 2268258 (9th Cir. May 30, 2025), and on reconsideration in part, 791 F. Supp. 3d 1065 (N.D. Cal. 2025).

V. STATEMENT OF THE FACTS AND PROCEDURAL BACKGROUND

15. Petitioner is a 24 year old native and citizen of Ukraine.

16. On or about January 11, 2024, Petitioner was paroled into the United States at John F. Kennedy International Airport in New York City, pursuant to Ukrainian Humanitarian Parole ("UHP") and was issued an I-94 and admitted until January 9, 2026. *See Exhibit No. 1.* Petitioner was not apprehended upon arrival, but in fact when he entered the JFK airport, he immediately applied for the UHP and has resided continuously in the United States since his entry.

17. Petitioner timely filed for an extension of his humanitarian parole status on October 13, 2025.

18. On January 15, 2026 the Petitioner filed an application for asylum with the Denver

[1] John Adams, Letter to his wife, Abigail Adam, July 7, 1775, Mass. Historical Society.

Immigration Court. *See Exhibit No. 6*

19. Petitioner has no criminal history and presents no danger or flight risk.

ICE Detention and Application of *Matter of Yajure Hurtado*

20. On or about January 15th, 2026, ICE took Petitioner into custody at Cheyenne, Wyoming -- while detained for a traffic stop -- in the interior of the United States, **not at a port of entry or the border**. He was not 'arriving' in the United States at that time. He had been living in the United States for just over two years.

21. ICE placed Petitioner in removal proceedings before the Denver Immigration Court in Aurora, Colorado and purportedly -- if not erroneously -- classified his detention under 8 U.S.C. § 1225(b)(2), relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

22. Furthermore, in this matter the Department of Homeland Security ("DHS") has issued a defective Notice To Appear ("NTA") -- the charging document issued by DHS --and subsequently filed three forms ("I-261") in order to amend the charges and allegations in the "NTA." *See Exhibits No. 2, 3*. The errors and misrepresentations of the NTA are critical in that they speak to his eligibility for custody determination. *See Exhibit No. 2.* The filing of three separate amendments to the NTA by DHS speaks to the erratic and unpredictable nature of the Petitioner's immigration proceedings that have clearly resulted in unreasonable delays.

23. Petitioner's other counsel has already sought two bond redetermination requests in this matter. *Yajure Hurtado* is binding on all Immigration Judges and strips them of jurisdiction to conduct bond hearings for EWI aliens. The immigration judge found that she was without jurisdiction to adjudicate Mr. Sharapov's request for a bond redetermination. *See Exhibit No. 4.*

24. Petitioner also filed a request for parole with ICE which was denied. *See Exhibit No. 5.*

25. The Petitioner is caught in a procedural morass: placed in § 1229a removal proceedings—which presuppose § 1226(a) detention—yet denied the bond hearing those proceedings contemplate.

26. Petitioner is trapped in a procedural void that is paradoxical: placed in § 1229a removal proceedings—which presuppose § 1226(a) detention—yet denied the bond hearing those proceedings contemplate.

27. The government has never made any showing, under any standard, that Petitioner should be confined.

VI. MEMBERSHIP — CORROBORATING AUTHORITY FOR RELIEF

28. Petitioner's individual merits independently entitle him to relief, as set forth in the Argument below. The following class certifications confirm that this Court and the Denver District Court have already resolved the dispositive legal question in Petitioner's favor. They provide corroborating authority and an additional independent basis for relief.

A. Mendoza Gutierrez — District of Colorado Local Class

29. This District has held that § 1225's mandatory detention provision "does not apply to someone like [petitioner], who has been residing in the United States for more than two years." *Mendoza Gutierrez v. Baltazar*, No. 1:25-cv-02720-RMR, 2025 WL 2962908, at *5 (D. Colo. Oct. 17, 2025). Petitioner has resided here for approximately one year and ten months. While the *Mendoza*

Gutierrez court described a petitioner present more than two years, that language is descriptive of the facts before that court — not a legal threshold. No court has held that § 1225(b)(2) applies to interior residents present less than two years, and the statutory text establishes no such line. The operative question under *Grijalva Esquivel v. Baltazar*, No. 1:25-cv-04187-SKC, slip op. at 10 (D. Colo. Jan. 29, 2026), is whether Petitioner is "seeking admission" — actively attempting to enter the country. He is not. He has been living here for nearly two years and cannot "go into a place where [he] already [is]." Id. (quoting *J.G.O. v. Francis*, 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025)).

30. On November 21, 2025, U.S. District Judge Regina M. Rodriguez certified a local class of approximately 500 individuals detained at the Aurora ICE Processing Center who are being denied bond hearings under § 1225(b)(2). *Mendoza Gutierrez v. Baltazar*, No. 1:25-cv-02720-RMR (D. Colo. Nov. 21, 2025). The class is defined to include: all people arrested or detained in Colorado pending removal where (a) the government has not alleged the person was admitted; (b) the person was not paroled at entry; (c) the most recent arrest did not occur at the border while arriving; and (d) detention is based on § 1225(b)(2)(A).

31. Petitioner is detained at the Aurora ICE Processing Center, is a member of the *Mendoza Gutierrez* class, and is entitled to enforcement of those holdings.

32. Note: In *Grijalva Esquivel v. Baltazar*, No. 1:25-cv-04187-SKC (D. Colo. Jan. 29, 2026), Judge Crews assumed without deciding that a petitioner 'would need to seek relief in either or both class action lawsuits to assert his rights as a class member,' but found it unnecessary to resolve the issue because the individual merits were dispositive. Petitioner's class membership is asserted as corroborating authority and an independent basis for relief, not as a substitute for his

individual claims.

VII. ARGUMENT

SECTION 1226(a) GOVERNS PETITIONER'S DETENTION—NOT § 1225(b) *The Plain Text: "Seeking Admission" Requires*

33. The District of Colorado has spoken definitively. In *Grijalva Esquivel v. Baltazar*, No. 1:25-cv-04187-SKC, slip op. at 8–16 (D. Colo. Jan. 29, 2026), Judge S. Kato Crews analyzed the plain text of §§ 1225 and 1226 and held—consistent with over 350 prior district court decisions—that § 1225(b)(2)(A) does not apply to a person who 'already resides in the United States.' The court held that §§ 1225 and 1226 'cover noncitizens presenting at arrival (under § 1225) and then everybody else (under § 1226).' *Id.* at 16 (quoting *J.G.O. v. Francis*, 2025 WL 3040142, at *4 (S.D.N.Y. Oct. 28, 2025)). Petitioner is 'everybody else.'

34. Section 1225(b)(2)(A) requires mandatory detention only where 'the examining immigration officer determines that [a noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted.' (Emphasis added.) Being an 'applicant for admission' does not automatically mean 'seeking admission.' As *Grijalva* explained, quoting *J.G.O. v. Francis*: 'Applicant for admission . . . doesn't require an application of any sort. All that's needed is presence without admission . . . By contrast, "seeking admission" might mean something more than that—some active desire or process toward admission.' *J.G.O.*, 2025 WL 3040142, at *3.

35. 'Seeking' is written in the present-progressive tense, 'which is used to refer to an action or a state that is continuing to happen.' *Id.* Putting this together, 'seeking admission' requires a noncitizen to be 'continu[ing] to want to go into the country.' *Id.* Petitioner cannot be 'seeking admission' to the United States because 'you can't go into a place where you already are.' *Id.*;

Grijalva, slip op. at 10. Here Oleksandr Shapoval has been within the interior of the United States since 2024. It defies logic and distorts semantics to find otherwise.

36. The implementing regulation confirms this. Section 235.3(c) of 8 C.F.R. limits § 1225(b)(2) to 'Arriving [noncitizens],' and 'arriving aliens' are defined as 'applicants for admission coming or attempting to come into the United States at a port of entry.' 8 C.F.R. § 1.2. Petitioner is plainly not 'coming or attempting to come into the United States.' *Grijalva*, slip op. at 18–19; *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, at *7 (D. Colo. Oct. 22, 2025).

THE ARBITRARY AND CAPRICIOUS ACTIONS OF THE IMMIGRATION COURT WARRANT THE REMEDY OF HABEAS GIVEN ITS "CHANGING OF THE GOAL POSTS."

A. Petitioner's Asylum Hearing Is Inextricable To His Custody

37. The Petitioner has a pending application for asylum before the Denver Immigration Court. His Individual Hearing on the merits of his asylum was canceled and has yet to be rescheduled. The only viable way that Mr. Shapoval can have a fair and full asylum hearing, and be granted release from detention.

B. Petitioner's Timely Application For The Extension Of His Parole Pursuant To UHP Is Inextricable To His DHS Custody.

38. On October 13th 2025, prior to its expiration, the Petitioner filed form I-131(USCIS form) for an extension of his parole status. USCIS denied the request stating that the USCIS lost jurisdiction upon DHS serving Oleksandr Shapoval with the Notice to Appear and taking him into custody.

See Exhibit No. 7. The Petitioner has filed a Motion to Reconsider the denial of his parole extension request. The Motion to Reconsider avers that the USCIS erroneously denied Mr. Sharapov's timely request for an extension("reparole") of his UHP Parole for erroneous reasons. *See Exhibit No. 8.,* wherein it is alleged by his other attorney, Alexander Tsiring, that the denial was erroneous and unlawful, and that in fact there is jurisdiction to adjudicate the Reparole. In short, given the erroneous denial of Mr. Sharapov's request for Reparole, the DHS has conflated yet another "basis" to keep in custody as he will have no Parole status.

C. *Surplusage Canon and Disjunctive "Or"*

39. Reading 'seeking admission' to mean the same thing as 'applicant for admission'—as the government contends—violates the rule against surplusage. If the terms were coterminous, Congress would have had no reason to add 'seeking admission' at all. *Grijalva*, slip op. at 11 (citing *J.G.O.*, 2025 WL 3040142, at *3; *Duncan v. Walker*, 533 U.S. 167, 174 (2001)).

40. The government's typical reliance on § 1225(a)(3)—which lists noncitizens 'who are applicants for admission or otherwise seeking admission'—is unavailing. This conflates two distinct terms using the word 'or,' which 'is customarily used in the disjunctive, that is, the words it connects are to be given separate meanings.' *Grijalva*, slip op. at 11 (quoting *Loughrin v. United States*, 573 U.S. 351, 357 (2014)). The government's reading 'commits several interpretive errors,' including reading 'or' to mean 'including.' *Id.*

D. *Jennings v. Rodriguez Confirms § 1226(a) Governs*

41. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court itself said that § 1225(b)(2) applies to noncitizens 'seeking admission into the country' while § 1226 applies to noncitizens 'already in the country pending the outcome of removal proceedings.' *Id.* at 289 (emphasis added).

Grijalva, slip op. at 12–13. Petitioner is 'already in the country' and has been for nearly two years. The Supreme Court's own language confirms § 1226(a) governs.

42. The government's attempt to use *Jennings* to support mandatory detention is 'largely undercut by the fact that the Supreme Court's discussion . . . considered an entirely different question of law'—whether individuals *indisputably subject* to mandatory detention were entitled to periodic bond hearings. *Grijalva*, slip op. at 12. *Jennings* 'said nothing about whether persons like [Petitioner] were subject to those provisions in the first place.' *Id.* (quoting *Hyppolite v. Noem*, 2025 WL 2829511, at *10 (E.D.N.Y. Oct. 6, 2025)).

D. The Laken Riley Act Confirms § 1225 Does Not Already Cover EWI Aliens

43. In January 2025, Congress passed the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), which amended § 1226(c)(1)(E) to add mandatory detention for noncitizens 'present in the United States without being admitted or paroled' who commit additional offenses. If the government's theory were correct—that § 1225(b)(2) already covered all such individuals through mandatory detention—the Laken Riley Act would have had no legal effect. *Grijalva*, slip op. at 17. 'When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.' *Stone v. INS*, 514 U.S. 386, 397 (1995). The Laken Riley Act is powerful evidence that Congress failed to understand § 1225(b)(2)'s application ("EWI" "entry without inspection") EWI interior residents.

E. Yajure Hurtado Has No Deference — Loper Bright

44. Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), courts must 'exercise their independent judgment in deciding whether an agency has acted within its statutory authority' and may not defer to the BIA's interpretation under *Chevron*. *Id.* at 412–13. The BIA's reading in

Yajure Hurtado 'is a deviation from the agency's long-standing interpretation of §§ 1225 and 1226; is not guidance issued contemporaneously with the relevant statutes; and contradicts the statutory interpretations of dozens of federal courts.' *Grijalva*, slip op. at 15. Under *Loper Bright*, the BIA's interpretation 'is no longer controlling; the legal conclusion underlying the decision is no longer tenable.' *Id.*

VIII. APA AND REGULATORY VIOLATIONS

45. The government's July 2025 'Interim Guidance' directing IJs to apply § 1225(b)(2) to EWI interior residents reversed thirty years of established agency practice—that such individuals 'will be eligible for bond,' 62 Fed. Reg. 10312, 10323 (1997)—without engaging in notice-and-comment rulemaking, in violation of 5 U.S.C. §§ 553, 706(2)(A), (D).

46. The agency is bound by its own regulations under the Accardi doctrine. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). The 1997 regulations promulgated at 8 C.F.R. § 235.3(c) demonstrate that § 1225(b)(2) was always understood to apply only to 'arriving' aliens, not interior residents.

47. Under *Loper Bright*, the BIA's deviation from its own three-decade-old interpretation receives no deference; the Court owes it no weight. *Grijalva*, slip op. at 14–15; *Loa Caballero*, 2025 WL 2977650, at *7.

IX. SEPARATION OF POWERS — MAJOR QUESTIONS DOCTRINE

48. The effective elimination of bond hearings for millions of long-term interior residents constitutes a decision of 'vast economic and political significance' requiring clear congressional authorization under *West Virginia v. EPA*, 597 U.S. 697, 735 (2022). Congress has repeatedly

demonstrated it knows how to mandate detention when it intends to do so—see § 1226(c), § 1225(b)(1), and the Laken Riley Act. The absence of such clear language in § 1225(b)(2) is dispositive.

X. SUSPENSION CLAUSE

49. Because *Yajure Hurtado* strips IJs of bond jurisdiction and provides no administrative mechanism to challenge the § 1225(b)(2) classification itself, Petitioner has no forum in which to challenge the legal basis of his detention. The Suspension Clause, U.S. Const. Art. I, § 9, cl. 2, guarantees access to this Court's jurisdiction. *Boumediene v. Bush*, 553 U.S. 723, 739–40 (2008).

XI. FIFTH AMENDMENT DUE PROCESS

50. Categorical detention without any individualized determination of flight risk or danger constitutes an arbitrary deprivation of liberty in violation of the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. at 690. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the three-factor test—private interest, risk of erroneous deprivation, governmental interest—weighs decisively in Petitioner's favor: his liberty interest is paramount; the risk of erroneous deprivation under a categorically incorrect classification is 100%; and the government's interest is fully protected by the individualized bond hearing § 1226(a) already provides. *Grijalva*, slip op. at 14 (citing *Rodriguez v. Bostock*, 2025 WL 2782499, at *17 (W.D. Wash. Sept. 30, 2025)).

XII. NATIONAL CONSENSUS

51. Since the government adopted its new detention policy in July 2025, well over 350 federal district court decisions have rejected the government's interpretation. Courts appointed by presidents of both parties have reached the same conclusion, with 'a regularity bordering on the

monotonous.' *Jimenez Facio v. Baltazar*, No. 25-CV-03592-CYC, 2025 WL 3559128, at *2 (D. Colo. Dec. 12, 2025).

52. This District has rejected the government's position in over a dozen cases. *See, e.g.*, *Grijalva Esquivel v. Baltazar*, No. 1:25-cv-04187-SKC (D. Colo. Jan. 29, 2026); *Jimenez Facio v. Baltazar*, No. 25-CV-03592-CYC (D. Colo. Dec. 12, 2025); *Espinoza Ruiz v. Baltazar*, No. 1:25-cv-03642-CNS (D. Colo. Nov. 26, 2025); *Arauz v. Baltazar*, No. 1:25-cv-03260-CNS (D. Colo. Oct. 31, 2025); *Hernandez v. Baltazar*, No. 1:25-cv-03094-CNS (D. Colo. Oct. 24, 2025); *Loa Caballero v. Baltazar*, No. 1:25-cv-3120-NYW (D. Colo. Oct. 22, 2025); *Mendoza Gutierrez v. Baltazar*, No. 1:25-cv-2720-RMR (D. Colo. Oct. 17, 2025).

53. A Fifth Circuit panel ruled 2-1 on February 6, 2026 (Case No. 25-20496) upholding the government's interpretation. That decision is not binding here. The Tenth Circuit has not ruled. This Court exercises independent judgment under *Loper Bright* and should join the overwhelming national consensus. The dissent by Judge Dana Douglas persuasively demonstrates why the majority's reading disregards the plain statutory text and contradicts *Zadvydas.*

54. On April 28, 2026, in *Barbosa Da Cunha, Petitioner -Appellee v. Joseph E. Freden*, the Second Circuit, 25-3141-pr (2nd Cir. April 28, 2026) unanimously affirmed the lower district court's grant of habeas, denying the government's appeal, finding that the Petitioner-Appellee was not subject to mandatory detention pursuant to 8 U.S.C. section 1225(b)(2)(A). It is notable that the two panel members chose to write separate concurrences -- one applauding the other -- but opining in a separate opinion affirming the lower court's grant of habeas, given their compelling yet different legal trajectories, supporting the same result.. The *Cunha* court decision rejected the government's appeal, and predicated its findings on established canons of statutory construction

and constitutional law.

XIII. NO ADEQUATE ALTERNATIVE REMEDY

55. This Court is the only forum that can grant relief. There is no administrative avenue to challenge the § 1225(b)(2) classification itself. § 1252 provides review only of final orders of removal. *Calcano-Martinez v. INS*, 533 U.S. 348, 350 (2001). Requiring Petitioner to wait years for a final order would render his right to a bond hearing permanently meaningless.

XIV. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A. Assume jurisdiction over this matter;

B. Find that Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) is unlawful and that § 1226(a) governs his custody;

C. Grant a writ of habeas corpus ordering Respondents to provide Petitioner with an individualized bond hearing under 8 U.S.C. § 1226(a) within **SEVEN (7) DAYS** of this Court's order, at which the government bears the burden of justifying continued detention by clear and convincing evidence, with consideration of the least restrictive alternative including ICE's Intensive Supervision Appearance Program (ISAP);

D. In the alternative, order Petitioner's immediate release on recognizance or reasonable conditions of supervision;

E. Declare that Petitioner is a member of the Bond Eligible Class certified in the local class certified in *Mendoza Gutierrez v. Baltazar* (D. Colo. Nov. 21, 2025);

F. Order Respondents to file a status report within **TEN (10) DAYS** certifying compliance, including the date of any bond hearing, whether bond was granted or denied, and the reasons for any denial;

G. Order, pursuant to the All Writs Act, 28 U.S.C. § 1651(a), that Respondents SHALL NOT REMOVE Petitioner from the District of Colorado or the United States unless or until this Court or the Tenth Circuit vacates this Order;

H. Retain jurisdiction to ensure compliance with this Court's orders;

I. Award Petitioner his reasonable costs and attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, with motion and affidavit filed within 30 days of final judgment, supported by affidavit per D.C.COLO.LCivR 54.3(a); and

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

Dated: May 4, 2026

Respectfully submitted,

//s// Sandra Saltrese Miller

Sandra Saltrese Miller
CO # 20462
The Saltrese Law Firm
2401 Broadway St., Boulder, CO 80304
Telephone: 303-442-8554
Email: saltreselaw@saltreselaw.com
Attorney for Petitioner, Oleksandr Shapoval

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

1. I am an attorney admitted to practice law in the State of Colorado.

2. Because many of the allegations in this petition require a legal knowledge not possessed by Petitioner, I am making this verification on his behalf.

3. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated: May 4, 2026

//s// Sandra Saltrese Miller

Sandra Saltrese Miller

CO # 20462

The Saltrese Law Firm

2401 Broadway St., Boulder, CO 80304

Telephone: 303-442-8554

Email: saltreselaw@saltreselaw.com

Attorney for Petitioner, Oleksandr Shapoval

TABLE OF EXHIBITS

No.	EXHIBITS
1	Petitioner's I-94 Parole Document with Passport Admission Stamp
2	DHS Charging Document, Notice to Appear ("NTA") and Warrant for Arrest of Alien
3	Three DHS Forms ("I-261") to amend "NTA" with "Additional Charges of Inadmissibility/Deportablity"
4	Immigration Judge's Written Order regarding Lack of Jurisdiction for Bond Proceedings
5	ICE Request for Parole Denial Notice, February 19, 2026
6	Application for Asylum Proof of Filing, March
7	Request for Extension of Parole ("I-131") USCIS Decision
8	Motion to Reconsider Denial of Parole Extension Request