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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION

JOSE DAVID RIANO BUSTOS,



Petitioner,

v.

WARDEN, IRWIN DETENTION  
CENTER; MARKWAYNE MULLIN,  
DHS SECRETARY

Respondent.

Case No.

PETITION FOR WRIT OF  
HABEAS CORPUS

1  
2 **INTRODUCTION**

3 1. Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241  
4 challenging the constitutionality and statutory legality of his current immigration  
5 detention and requesting his immediate release from custody. Petitioner is currently  
6 detained by the Department of Homeland Security (“DHS”) in connection with  
7 ongoing removal proceedings.  
8

9 2. Petitioner was previously released from immigration custody pursuant  
10 to the Government’s discretionary authority, allowing him to reside in the  
11 community subject to certain conditions. Following that release, Petitioner complied  
12 with all requirements imposed by DHS and remained fully available to immigration  
13 authorities. Despite this compliance, and without notice, explanation, or any  
14 individualized determination, DHS re-detained Petitioner during a routine check-in.  
15

16 3. Petitioner’s detention is unlawful and violates the Due Process Clause  
17 of the Fifth Amendment. By granting Petitioner release from custody, the  
18 Government created a protected liberty interest in his continued freedom from  
19 physical restraint. The Government extinguished that liberty interest without written  
20 notice, without a hearing, and without any individualized determination justifying  
21 re-detention. This summary deprivation of liberty—imposed in the absence of any  
22 lawful revocation process—constitutes an arbitrary and unauthorized action.  
23 Because Petitioner’s continued custody lacks statutory support and was imposed in  
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1  
2 disregard of constitutionally required procedures, immediate release is the  
3 appropriate remedy.

4       4. No statutory basis justifies Petitioner's continued detention. Petitioner  
5 is not subject to mandatory detention under any provision of the Immigration and  
6 Nationality Act. Because Petitioner was previously released into the interior of the  
7 United States and is now detained outside the context of initial inspection or border  
8 processing, detention under 8 U.S.C. § 1225 does not apply. At most, detention  
9 authority would arise under 8 U.S.C. § 1226(a), which permits only discretionary  
10 detention based on individualized determinations. Where detention is unlawful at its  
11 inception, however, a bond hearing is insufficient to cure the constitutional violation,  
12 and release is required.  
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14       5. Only in the alternative, and only if the Court declines to order release,  
15 Petitioner requests a prompt bond hearing pursuant to 8 U.S.C. § 1226(a). Should  
16 the Court order such a hearing, Petitioner respectfully requests that the Government  
17 be directed to file a written status report with this Court detailing the outcome of the  
18 bond determination and the legal basis for any continued custody, so that this Court  
19 may ensure compliance with statutory and constitutional due process requirements.  
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**JURISDICTION**

6. Petitioner is in the physical custody of Respondent. Petitioner is detained at the Irwin County Detention Center located in Ocilla, Georgia.

7. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) (habeas corpus), and 28 U.S.C. § 1331 (federal question).

8. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

**VENUE**

9. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Middle District of Georgia, the judicial district in which Petitioner currently is detained.

10. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Georgia.

**REQUIREMENTS OF 28 U.S.C. § 2243**

11. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return

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2 “within three days unless for good cause additional time, not exceeding twenty days,  
3 is allowed.” *Id.*

4 12. Habeas corpus is “perhaps the most important writ known to the  
5 constitutional law . . . affording as it does a swift and imperative remedy in all cases  
6 of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis  
7 added). “The application for the writ usurps the attention and displaces the calendar  
8 of the judge or justice who entertains it and receives prompt action from him within  
9 the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir.  
10 2000) (citation omitted).  
11

12 **PARTIES**

13 13. Petitioner, Mr. Jose David Riano, is a native and citizen of Colombia  
14 who is currently detained by U.S. Immigration and Customs Enforcement (“ICE”)  
15 at the Stewart Detention Center in Lumpkin, Georgia, where he has been held since  
16 January 29, 2026.  
17

18 14. The main Respondent is the Warden of the Irwin County Detention  
19 Center, which is operated by LaSalle Corrections. As Warden, he exercises  
20 immediate physical custody over Petitioner. He is sued in his official capacity.  
21

22 15. Respondent Markwayne Mullin is the Secretary of the United States  
23 Department of Homeland Security (“DHS”). In that capacity, he has legal custody  
24

1  
2 and ultimate authority over Petitioner’s detention through DHS and its component  
3 agency, ICE. He is sued in her official capacity.

## 4 **DUE PROCESS FRAMEWORK**

### 5 **A. The Fifth Amendment and Protected Liberty Interests**

6 16. The Due Process Clause of the Fifth Amendment provides that no  
7 person shall be deprived of liberty without due process of law. This protection  
8 applies to all “persons” within the United States, including noncitizens, and  
9 safeguards freedom from physical restraint as a core constitutional interest.  
10

11 17. A protected liberty interest may arise not only from freedom from initial  
12 confinement, but also from conditional release from physical custody. The Supreme  
13 Court has recognized that when the government grants an individual conditional  
14 liberty—allowing the individual to live in the community subject to specified  
15 terms—that liberty interest is protected by the Due Process Clause. *See Young v.*  
16 *Harper*, 520 U.S. 143, 147–49 (1997).  
17

18 18. Importantly, the existence of statutory authority to arrest or detain an  
19 individual does not eliminate constitutional constraints. Even where a statute permits  
20 detention, the Due Process Clause may independently require procedural protections  
21 beyond those expressly provided by statute. *Id.*; *Gagnon v. Scarpelli*, 411 U.S. 778,  
22 782 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).  
23  
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2 **B. Conditional Liberty and the Parole Analogy**

3 19. In determining whether a particular form of conditional release gives  
4 rise to a protected liberty interest, courts look to the nature of the release and  
5 compare it to parole as described in *Morrissey v. Brewer*. In *Morrissey*, the Supreme  
6 Court explained that parole permits an individual “to do a wide range of things open  
7 to persons who have never been in custody or convicted of any crime,” including  
8 living at home, working, associating with family and friends, and forming the  
9 “enduring attachments of normal life.” 408 U.S. at 482.

10  
11 20. Although parolees remain subject to conditions and supervision, the  
12 Court emphasized that their status “is very different from that of confinement in a  
13 prison.” *Id.* Because parole allows the individual to structure his life around  
14 continued freedom, the Court held that revocation of parole inflicts a “grievous loss”  
15 and therefore implicates a protected liberty interest. *Id.* at 482–84.

16  
17 21. The Court further recognized that conditional release carries an implicit  
18 promise that liberty will be revoked only upon failure to comply with release  
19 conditions. *Id.* This reliance interest is a key feature distinguishing conditional  
20 liberty from temporary or transitory release.

21 **C. Procedural Protections Required Before Revocation of Conditional Liberty**

22 22. Where a protected liberty interest exists, due process requires notice  
23 and an opportunity to be heard before that liberty may be terminated. The Supreme  
24 Court has consistently applied this principle across multiple contexts involving

1  
2 conditional release, including parole, probation, and parole programs. *See Morrissey*,  
3 408 U.S. at 482; *Gagnon*, 411 U.S. at 782; *Young*, 520 U.S. at 147–49.

4 23. These decisions reflect a common constitutional principle: summary  
5 revocation of conditional liberty, without procedural safeguards, creates a  
6 substantial risk of erroneous deprivation. As a result, the Constitution requires at  
7 least minimal procedures—such as notice of the grounds for revocation and an  
8 opportunity to contest those grounds before a neutral decisionmaker—before liberty  
9 may be withdrawn.  
10

11 24. Courts addressing immigration detention have similarly recognized that  
12 once a noncitizen is released from custody and permitted to live in the community,  
13 a protected liberty interest in remaining free may arise, triggering due process  
14 protections before re-detention.  
15

#### 16 **D. The Mathews v. Eldridge Framework**

17 25. When evaluating whether the procedures used to deprive an individual  
18 of liberty satisfy due process, courts apply the three-factor balancing test articulated  
19 in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). That test requires consideration  
20 of:

- 21 1) the private interest affected by the official action;
- 22 2) the risk of erroneous deprivation under the procedures used, and the  
23 probable value of additional or substitute safeguards; and
- 24 3) the government’s interest, including the fiscal and administrative  
burdens that additional procedures would entail.

1  
2 26. This framework governs the constitutional analysis where, as here, the  
3 government seeks to terminate conditional liberty through detention.

4 **STATUTORY FRAMEWORK GOVERNING DETENTION**  
5 **UNDER 8 U.S.C. § 1225 AND 8 U.S.C. § 1226**

6 **A. Inspection, Parole, and Applicants for Admission**

7 27. The Immigration and Nationality Act (“INA”) establishes distinct  
8 statutory frameworks governing inspection, parole, and detention of noncitizens.  
9 Under 8 U.S.C. § 1225(a), a noncitizen who presents himself for inspection is treated  
10 as an “applicant for admission.” Applicants for admission may be inspected by  
11 immigration officers to determine admissibility to the United States.

12  
13 28. Separately, Congress authorized the Secretary of Homeland Security to  
14 parole certain noncitizens into the United States on a discretionary basis. Under 8  
15 U.S.C. § 1182(d)(5)(A), DHS may parole a noncitizen “into the United States  
16 temporarily under such conditions as [it] may prescribe only on a case-by-case basis  
17 for urgent humanitarian reasons or significant public benefit.” Parole does not  
18 constitute an admission, but it permits the noncitizen to physically enter and reside  
19 in the United States subject to conditions imposed by DHS.

20  
21 29. When parole is granted, the statute provides that upon termination of  
22 parole, the noncitizen “shall return or be returned to the custody from which he was  
23 paroled and thereafter his case shall continue to be dealt with in the same manner as  
24 that of any other applicant for admission.” 8 U.S.C. § 1182(d)(5)(A).

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4 **B. Mandatory Detention and Expedited Removal Under 8 U.S.C. § 1225**

5 30. Section 1225(b) governs the inspection and initial processing of certain  
6 applicants for admission. Under § 1225(b)(1), DHS may subject certain noncitizens  
7 to expedited removal and mandatory detention. That provision applies only to  
8 specific categories of individuals, including noncitizens who have not been admitted  
9 or paroled into the United States and who cannot establish a requisite period of  
10 continuous physical presence. See 8 U.S.C. § 1225(b)(1)(A)(iii).

11  
12 31. Section 1225(b)(2) governs detention of other applicants for admission  
13 pending a determination of admissibility. Both provisions operate in the context of  
14 inspection and processing at or near the point of entry and are tied to an applicant's  
15 initial encounter with immigration authorities.  
16

17 **C. Discretionary Detention Pending Removal Proceedings Under 8 U.S.C. §**  
18 **1226**


19 32. Once a noncitizen is placed into removal proceedings, detention  
20 authority is governed by 8 U.S.C. § 1226. Section 1226(a) provides the general rule  
21 for detention pending a decision on removability. Under that provision, DHS may  
22 arrest and detain a noncitizen, or release the noncitizen on bond or conditional parole,  
23 pending the outcome of removal proceedings.  
24

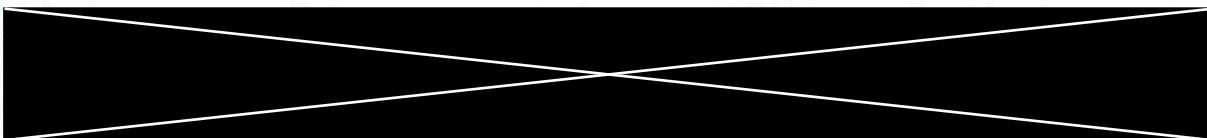
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2 33. Detention under § 1226(a) is discretionary and contemplates  
3 individualized custody determinations. Noncitizens detained under § 1226(a) are  
4 entitled to a bond hearing before an immigration judge to determine whether  
5 continued detention is warranted.

6  
7 34. By contrast, § 1226(c) mandates detention of a narrow category of  
8 noncitizens with specified criminal convictions. Mandatory detention under §  
9 1226(c) applies only when the statutory criteria are satisfied.

10 **FACTUAL BACKGROUND**

11 35. Petitioner is a native and citizen of Colombia who entered the United  
12 States on or about August 27, 2024, without inspection. Immediately upon entry, he  
13 was apprehended by immigration authorities and placed into immigration detention.

14  
15 36. While in custody, Petitioner expressed a fear of returning to Colombia  
16 and was referred for a credible fear interview. Petitioner credibly testified that he  
17 fears persecution in Colombia on account of his sexual orientation. 

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20 37. An asylum officer found that Petitioner established a credible fear of  
21 persecution, and he was subsequently placed into removal proceedings pursuant to  
22 INA § 240.

1  
2 38. After approximately nine (9) days in immigration detention, DHS  
3 released Petitioner on an order of recognizance, reflecting the Government's  
4 determination that Petitioner did not pose a danger to the community or a flight risk  
5 and that detention was not warranted.

6  
7 39. Following his release, Petitioner lived openly in the community and  
8 complied with all conditions imposed by the Department of Homeland Security. He  
9 enrolled in the Intensive Supervision Appearance Program ("ISAP") and reported as  
10 required, attending all scheduled check-ins approximately every three months.

11 40. Petitioner also applied for and was granted employment authorization,  
12 valid for a period of five years, further reflecting the Government's acknowledgment  
13 that he was eligible to remain in the United States while his removal proceedings  
14 were pending.

15  
16 41. At all times following his release, Petitioner fully complied with his  
17 obligations. He appeared for all required appointments, remained in contact with  
18 immigration authorities, and did nothing to suggest that he posed a flight risk or  
19 danger to the community.

20  
21 42. On a recent date, Petitioner appeared at a routine ISAP check-in  
22 appointment, as required. During that appointment, ICE officers abruptly detained  
23 him without prior notice, explanation, or any individualized determination.  
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2 43. Upon information and belief, ICE detained Petitioner for the purpose  
3 of accelerating his immigration court proceedings. No written notice of termination  
4 of his prior release was provided, no hearing was conducted, and no individualized  
5 findings were made regarding flight risk or danger.

6  
7 44. Petitioner's re-detention occurred despite his complete compliance  
8 with all conditions of release, his lack of any criminal history, and the Government's  
9 prior determination that he was suitable for release.

10 45. Petitioner remains detained at Irwin Detention Center as a result of this  
11 summary and unexplained re-detention.

12 **MEMORANDUM OF LAW**

13  
14 **I. Petitioner's Re-Detention was Unlawful and not Authorized by the INA.**

15 46. Petitioner was placed into removal proceedings and affirmatively  
16 released from immigration detention pursuant to the Government's discretionary  
17 authority. That release—on an order of recognizance—reflected DHS's  
18 individualized determination that Petitioner did not pose a danger to the community  
19 and was not a flight risk.

20  
21 47. Following his release, Petitioner complied fully with every condition  
22 imposed by DHS. He reported as required, remained under supervision, and made  
23 himself continuously available to the Government. At no point did DHS allege any  
24 violation, risk, or change in circumstances that would justify re-detention.

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2 48. Despite this complete compliance, ICE abruptly re-detained Petitioner  
3 during a routine check-in. That decision was made without notice, without  
4 explanation, and without any individualized determination that detention had  
5 become necessary.

6 49. The Immigration and Nationality Act does not authorize detention  
7 under these circumstances. Once an individual has been released into the interior of  
8 the United States and placed into removal proceedings, detention authority—if  
9 any—arises under 8 U.S.C. § 1226(a), which permits only discretionary detention  
10 based on individualized findings. The statute does not permit summary re-detention  
11 untethered to any finding of danger or flight risk.

12 50. Because Respondents failed to make any individualized custody  
13 determination prior to re-detaining Petitioner, his detention is unlawful and exceeds  
14 the authority granted by Congress.

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16  
17 **II. Petitioner Possessed a Protected Liberty Interest in His Continued Release**

18 51. Petitioner incorporates by reference the preceding paragraphs.

19 52. Petitioner's release on an order of recognizance was not temporary or  
20 incidental. He was permitted to live freely in the community under supervision,  
21 report to immigration authorities, and structure his life around that release.

22 53. Under *Morrissey v. Brewer*, when the government grants conditional  
23 liberty, it creates a protected liberty interest that cannot be revoked without due  
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2 process. 408 U.S. 471, 482–84 (1972). The Supreme Court made clear that  
3 individuals living in the community—even under supervision—enjoy a level of  
4 freedom fundamentally distinct from incarceration, and that revocation of that  
5 liberty constitutes a “grievous loss.”

6  
7 54. That principle applies with full force here. Petitioner’s release allowed  
8 him to live in the community, maintain stability, and comply with all requirements  
9 imposed by DHS. His liberty was real, substantial, and relied upon.

10  
11 55. Similarly, *Young v. Harper* confirms that conditional release—even  
12 outside the criminal context—creates a constitutionally protected interest in  
13 continued freedom. 520 U.S. 143, 147–49 (1997).

14  
15 56. Petitioner’s compliance underscores the strength of that liberty interest.  
16 He followed every condition, maintained a clean record, and demonstrated that  
17 detention was unnecessary. DHS’s own decision to release him confirms that he  
18 posed neither a danger nor a flight risk.

19  
20 57. By re-detaining Petitioner without notice, without a hearing, and  
21 without any individualized findings, Respondents extinguished that liberty interest  
22 in violation of the Constitution.

23  
24 58. Courts confronting similar circumstances have recognized that when  
the government releases a noncitizen and permits him to live freely in the community,  
due process protections attach before re-detention may occur. *See, e.g., Pinchi v.*

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2 *Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025); *Guillermo M. R. v. Kaiser*, 791  
3 F. Supp. 3d 1021, 1029 (N.D. Cal. 2025); *Ortega v. Kaiser*, 2025 WL 1771438, at  
4 \*3 (N.D. Cal. June 26, 2025). Because Respondents failed to provide notice, a  
5 hearing, or any individualized determination prior to re-detaining Petitioner, his  
6 continued detention violates the Due Process Clause and cannot stand.  
7

### 8 **III. Under *Mathews v. Eldridge*, Re-Detention Without Notice, Hearing, or** 9 **Individualized Findings Violated Due Process**

#### 10 **A. The Private Interest Affected Is Profound**

11 59. The private interest affected—freedom from physical restraint—is at  
12 the apex of due process protection. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).  
13 Petitioner’s liberty interest is particularly weighty because it followed a prolonged  
14 period of stable, compliant community release, during which he lawfully worked,  
15 supported his family, and pursued relief in removal proceedings.

16 60. Re-detention did not merely adjust the conditions of supervision; it  
17 extinguished Petitioner’s liberty entirely. Under *Morrissey*, that loss is “grievous”  
18 and constitutionally significant. 408 U.S. at 482–84.  
19

#### 20 **B. The Risk of Erroneous Deprivation Was Exceptionally High, and Minimal** 21 **Safeguards Would Have Significant Value**

22 61. The procedures used here created an unacceptably high risk of  
23 erroneous deprivation. Petitioner was arrested without prior notice, without  
24 explanation, and without any opportunity to contest the basis for detention.

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2 62. The record reflects no individualized assessment finding Petitioner  
3 posed a flight risk or danger, and no change in circumstances undermining DHS's  
4 original release determination. The absence of notice and a neutral, individualized  
5 process is precisely what drives the risk of error in conditional-liberty revocation.  
6 *Young*, 520 U.S. at 147–49; *Morrissey*, 408 U.S. at 482–84.

7  
8 63. Minimal safeguards—notice of the asserted basis for re-detention and  
9 a prompt hearing before a neutral decisionmaker—would materially reduce the risk  
10 of erroneous deprivation by requiring the Government to articulate and support its  
11 reasons and permitting Petitioner to respond.

12 **C. The Government's Interest Does Not Justify Summary Re-Detention**

13 64. The Government has an interest in administering the immigration  
14 system and ensuring appearance and community safety. But Petitioner's extended  
15 compliance, stable residence, and lawful employment demonstrate that less  
16 restrictive measures were effective.

17  
18 65. Requiring basic procedural safeguards before extinguishing conditional  
19 liberty imposes a minimal burden compared to the severe deprivation imposed.  
20 *Morrissey*, 408 U.S. at 482; *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973).

1  
2 **D. Balancing the Mathews Factors Confirms a Due Process Violation and**  
3 **Warrants Immediate Release**

4 66. Balancing the profound private interest, the substantial risk of  
5 erroneous deprivation created by summary re-detention, and the minimal burden of  
6 basic safeguards, the *Mathews* factors overwhelmingly favor Petitioner.

7 67. Because Petitioner's conditional liberty was terminated without notice,  
8 without a hearing, and without individualized findings, his detention violates the  
9 Due Process Clause of the Fifth Amendment.

10 68. Where detention is the product of a constitutional violation in the  
11 process of revoking conditional liberty, habeas relief is warranted. Immediate release  
12 is the appropriate remedy to halt the ongoing unlawful deprivation of liberty.

13  
14 **IV. Petitioner Is Not Subject to Mandatory Detention Under 8 U.S.C. § 1225,**  
15 **and His Detention Is Governed by 8 U.S.C. § 1226(a)**

16 69. Respondents cannot lawfully justify Petitioner's detention under the  
17 mandatory detention provisions of 8 U.S.C. § 1225. Petitioner was not held at the  
18 border pending inspection. Instead, DHS affirmatively released him into the United  
19 States on an Order of Recognizance after determining that he was neither a flight  
20 risk nor a danger to the community. Following that release, Petitioner lived openly  
21 in the interior of the United States for an extended period of time, complied with all  
22 conditions of supervision, and reported as required. That history forecloses any  
23 attempt to now treat him as an "arriving" noncitizen subject to § 1225.  
24

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2 70. The statutory text confirms that § 1225 does not apply. Section  
3 1225(b)(1) governs only those noncitizens “who ha[ve] not been admitted or paroled  
4 into the United States.” Here, DHS exercised its authority to release Petitioner into  
5 the country, allowing him to reside in the community under supervision. Having  
6 been permitted to enter and remain in the United States pursuant to DHS’s own  
7 custody determination, Petitioner falls outside the narrow category of individuals  
8 subject to mandatory detention under § 1225.  
9

10 71. Respondents cannot cure this defect by recharacterizing Petitioner’s  
11 status after the fact. The revocation of an Order of Recognizance does not  
12 retroactively transform a noncitizen who has been living in the interior of the United  
13 States into an arriving applicant for admission. The statute provides no mechanism  
14 for such a legal fiction. To the contrary, once an individual has been released into  
15 the United States and placed in removal proceedings, the governing detention  
16 authority is 8 U.S.C. § 1226—not § 1225.  
17

18 72. The manner of Petitioner’s arrest further underscores the point. ICE did  
19 not detain Petitioner at the border or during any inspection process. Instead, it re-  
20 arrested him in the interior of the United States after a prolonged period of  
21 community residence under government supervision. Courts have repeatedly  
22 rejected the government’s attempts to stretch § 1225 beyond its limited, border-  
23 focused purpose to justify detention in precisely these circumstances.  
24

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2 73. Because § 1225 is inapplicable as a matter of law, the only permissible  
3 statutory basis for Petitioner’s detention is 8 U.S.C. § 1226(a). That provision  
4 requires individualized custody determination and entitles Petitioner to a bond  
5 hearing before a neutral decisionmaker. Respondents’ continued detention of  
6 Petitioner without affording him that process is unlawful and must be enjoined.  
7

8 **V. The Government May Not Salvage an Unlawful Detention Through Post Hoc**  
9 **Recharacterization**

10 74. Respondents may not cure an unlawful detention by retroactively re-  
11 labeling its statutory basis during litigation. Habeas review examines the legality of  
12 detention as imposed, not as later reconstructed.

13 75. Allowing post hoc invocation of § 1225 would reward statutory and  
14 constitutional violations and permit detention first, authority later.

15 76. Because Petitioner’s detention was unlawful from its inception,  
16 immediate release—not remand for a belated bond hearing—is the appropriate  
17 remedy.  
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2 **CLAIMS FOR RELIEF**

3 **COUNT I**

4 **Violation of the Fifth Amendment Due Process Clause**  
5 **(Unlawful Revocation of Conditional Liberty Without Notice, Hearing, or**  
6 **Individualized Findings)**

7 77. Petitioner incorporates by reference all preceding paragraphs as if fully  
8 set forth herein.

9 78. The Due Process Clause of the Fifth Amendment to the U.S.  
10 Constitution prohibits the Government from depriving any person of liberty without  
11 due process of law. Freedom from physical restraint lies at the core of the liberty  
12 protected by the Constitution and may not be withdrawn absent constitutionally  
13 adequate procedures.

14 79. Petitioner possessed a protected liberty interest arising from DHS's  
15 decision to release him on an Order of Recognizance pursuant to 8 U.S.C. § 1226(a)  
16 and his prolonged, compliant residence in the community. Following his release,  
17 Petitioner lived openly in the United States, complied with all conditions of  
18 supervision, reported as required, and continued to pursue relief in his removal  
19 proceedings without incident.

20  
21 80. By granting Petitioner release on an Order of Recognizance, the  
22 Government affirmatively determined that he was neither a danger to the community  
23 nor a flight risk. That determination created a protected interest in his continued  
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1  
2 liberty and an implicit assurance that his freedom would not be revoked absent a  
3 material change in circumstances or a constitutionally adequate, individualized  
4 determination justifying re-detention.

5       81. Respondents abruptly revoked Petitioner's conditional liberty by re-  
6 arresting and detaining him without prior notice, without identifying any violation  
7 of the conditions of his release, and without affording him any opportunity to be  
8 heard before a neutral decisionmaker.

9  
10       82. Respondents further failed to conduct any individualized assessment  
11 that Petitioner poses a danger to the community or a risk of flight prior to re-  
12 detaining him, notwithstanding DHS's prior custody determination concluding the  
13 opposite.

14  
15       83. Under the balancing framework set forth in *Mathews v. Eldridge*, the  
16 procedures employed here are constitutionally deficient. Petitioner's interest in his  
17 physical liberty is paramount; the risk of erroneous deprivation under a system that  
18 permits summary re-detention without notice, explanation, or hearing is  
19 extraordinarily high; and the Government's interest in avoiding minimal procedural  
20 safeguards is negligible.

21  
22       84. Respondents' actions—revoking Petitioner's liberty without notice,  
23 without process, and without individualized justification—violate the Due Process  
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2 Clause of the Fifth Amendment. Accordingly, Petitioner's continued detention is  
3 unconstitutional and unlawful.

4 **COUNT II**

5 **Detention Without Statutory Authority Under the Immigration and**  
6 **Nationality Act**  
7 **(Misapplication of 8 U.S.C. § 1225 Instead of 8 U.S.C. § 1226(a))**

8 85. Petitioner incorporates by reference all preceding paragraphs.

9 86. The Immigration and Nationality Act establishes distinct statutory  
10 frameworks governing immigration detention. Mandatory detention under 8 U.S.C.  
11 § 1225 applies only to a narrow class of noncitizens who have not been admitted or  
12 paroled into the United States and who are encountered at or near the border during  
13 the inspection process.

14 87. Petitioner does not fall within that category. DHS affirmatively released  
15 him into the United States on an Order of Recognizance pursuant to 8 U.S.C. §  
16 1226(a) after determining that he was neither a danger to the community nor a flight  
17 risk. Following that release, Petitioner resided openly in the interior of the United  
18 States for an extended period of time, complied with all conditions of supervision,  
19 and continued to pursue relief in removal proceedings.

20  
21 88. The plain language of § 1225 forecloses its application here. That  
22 provision applies only to noncitizens who "ha[ve] not been admitted or paroled into  
23 the United States." By releasing Petitioner into the country and permitting him to  
24

1  
2 live in the community under supervision, DHS removed him from the limited class  
3 of individuals subject to mandatory detention under § 1225.

4 89. Respondents cannot retroactively transform Petitioner into an “arriving  
5 alien” by revoking his release. The statute provides no mechanism for such a legal  
6 fiction. Once Petitioner was released into the United States and placed in removal  
7 proceedings, his detention—if any—must be governed by 8 U.S.C. § 1226, not §  
8 1225.  
9

10 90. The circumstances of Petitioner’s re-arrest confirm this conclusion.  
11 ICE did not detain him at the border or during any inspection process, but instead  
12 arrested him in the interior of the United States after a prolonged period of compliant  
13 community residence under government supervision.  
14

15 91. Because § 1225 does not apply, Respondents lack statutory authority to  
16 subject Petitioner to mandatory detention. The only permissible basis for custody is  
17 § 1226(a), which requires an individualized custody determination and entitles  
18 Petitioner to a bond hearing before a neutral decisionmaker. His continued detention  
19 without such process is unlawful and exceeds the authority conferred by Congress.  
20

### 21 **COUNT III**

#### 22 **Ultra Vires Action and Unlawful Post Hoc Recharacterization of Detention** 23 **Authority** **(Detention First, Legal Justification Later)**

24 92. Petitioner incorporates by reference all preceding paragraphs.

1  
2 93. Petitioner was arrested and detained without any contemporaneous  
3 determination that his custody was authorized under 8 U.S.C. § 1225, § 1226(c), or  
4 any other mandatory detention provision of the INA.

5 94. Respondents may not cure an unlawful detention by retroactively  
6 invoking a different statutory basis during litigation. Habeas review examines  
7 whether detention was lawful at the time it was imposed, not whether the  
8 Government can later identify a post hoc justification.  
9

10 95. Allowing Respondents to recharacterize the statutory basis for  
11 detention after the fact would impermissibly sanction detention first and legal  
12 authority later, undermining both the structure of the INA and fundamental  
13 principles of due process.  
14

15 96. Because Petitioner's detention was unlawful from its inception and  
16 cannot be salvaged through retrospective statutory reclassification, Respondents'  
17 continued detention of Petitioner is ultra vires and unlawful.

18 **COUNT IV**

19 **Violation of the Administrative Procedure Act**

20 *(Arbitrary and Capricious Agency Action; Action Not in Accordance with Law;*  
21 *Failure to Observe Required Procedures)*

22 *5 U.S.C. § 706(2)(A), (C), (D)*

23 97. Petitioner incorporates by reference all preceding paragraphs.  
24

1  
2 98. The Administrative Procedure Act (“APA”) requires federal agencies  
3 to act in accordance with law, adhere to their own regulations, and engage in  
4 reasoned decision-making. See 5 U.S.C. § 706.

5 99. Respondents’ decision to arrest and detain Petitioner after previously  
6 releasing him on an Order of Recognizance constitutes final agency action subject  
7 to judicial review because it marks the consummation of the agency’s decision-  
8 making process and directly deprives Petitioner of his liberty.

9  
10 100. Respondents acted not in accordance with law and in excess of statutory  
11 authority by re-detaining Petitioner without lawful justification under the governing  
12 detention statutes. Having previously determined that Petitioner was neither a danger  
13 to the community nor a flight risk and releasing him pursuant to 8 U.S.C. § 1226(a),  
14 Respondents lacked authority to summarily revoke that determination and re-detain  
15 him absent a lawful, individualized custody determination. See 5 U.S.C. § 706(2)(A),  
16 (C).

17  
18 101. Respondents further failed to observe procedures required by law by re-  
19 arresting and detaining Petitioner without notice, without explanation, and without  
20 providing any process or individualized determination prior to depriving him of his  
21 liberty. See 5 U.S.C. § 706(2)(D).

22  
23 102. Respondents’ actions were arbitrary and capricious because they  
24 represent an unexplained departure from DHS’s prior custody determination that



- 1
- 2 e. Order Petitioner's immediate release from custody;
- 3 f. In the alternative, order that any continued detention proceed solely
- 4 under 8 U.S.C. § 1226(a) and require a prompt bond hearing before an
- 5 impartial immigration judge, at which the Government bears the burden
- 6 of justifying continued detention;
- 7 g. If a bond hearing is ordered, direct Respondents to file a written status
- 8 report with this Court within a time set by the Court, stating whether
- 9 bond was granted or denied, the bond amount and conditions if granted,
- 10 and a summary of the reasons stated on the record for the custody
- 11 determination, so as to ensure compliance with statutory and
- 12 constitutional due process requirements;
- 13 h. Award Petitioner attorney's fees and costs under the Equal Access to
- 14 Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other
- 15 basis justified under law; and
- 16 i. Grant any other and further relief that this Court deems just and proper.

17 DATED this 30th day of March, 2026.

18 ZAMBRANO LAW,

19 /s/ Shirley C. Zambrano

20 Shirley C. Zambrano

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1  
2 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

3 I represent Petitioner, Mr. Jose David Riano Bustos, and submit this  
4 verification on his behalf. I hereby verify that the factual statements made in the  
5 foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my  
6 knowledge.

7 DATED this 30th day of March, 2026.

8 ZAMBRANO LAW,  
9

10 /s/ Shirley C. Zambrano

11 Shirley C. Zambrano

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