UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Jose de Jesus Sahagun Aleriano, **Petitioner,** **v.** JUAN BALTASAR, Warden, GEO Group ICE Processing Center; GEORGE VALDEZ, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement; DAVID VENTURELLA, Acting Director of U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; and TODD BLANCHE, Acting U.S. Attorney General, in their official capacities, **Respondents.**	Case No.: **EXPEDITED CONSIDERATION UNDER 28 USC § 1657(a) REQUESTED**

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This petition arises from the U.S. government's unlawful detention of Petitioner pursuant to its recent policy that contradicts the plain language of the Immigration and Nationality Act ("INA"), federal court precedent, and decades of agency practice. Under this policy, the government erroneously interprets the INA to mandate detention without the possibility of bond for noncitizens who are alleged to have entered the United States without inspection, even when they have resided in the United States for years and are legally entitled to bond consideration under 8 U.S.C. § 1226(a).

2. This policy has led to the unlawful detention of countless noncitizens nationwide—including Petitioner—and has prompted an avalanche of habeas corpus petitions across the country. The overwhelming majority of decisions addressing this issue on the merits have found the plain statutory language dictates orders of relief for petitioners, either in the form of an order of immediate release or a requirement that the government provide a prompt bond hearing under § 1226(a).

3. Petitioner, Jose de Jesus Sahagun Aleriano, is a 36-year-old citizen of Mexico. His first and only entry to the U.S. was in 2019 when he entered without inspection. He has lived in the U.S. since that time.

4. On May 21, 2026, Mr. Sahagun Aleriano was arrested by U.S. Immigration and Customs Enforcement ("ICE") officers outside his home in Durango, Colorado, while he was taking his children to school. Following his arrest, he was transported

to the local ICE office for processing and was thereafter placed in immigration detention, where he remains pending further immigration proceedings.

5. Mr. Sahagun Aleriano was first detained at a facility in Durango, Colorado, and has now been transferred to the Aurora ICE Processing Center in Aurora, Colorado where he remains detained.

6. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that individuals who have entered the U.S. without inspection or parole are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to seek release from detention through a bond hearing.

7. Based on the *Yajure Hurtado* precedent, Respondents have detained Petitioner without the possibility of bond.

8. Respondents' position is unlawful. Under 8 U.S.C. § 1226(a), individuals who, like Petitioner, are residing in the United States but charged as inadmissible based on an alleged entry without inspection are entitled to a bond determination. For decades, DHS and the Executive Office for Immigration Review ("EOIR") consistently applied § 1226(a) to such individuals and provided bond hearings in immigration court.

9. Respondents' continued detention of Petitioner violates the INA and Petitioner's right to due process by depriving Petitioner of liberty without any individualized determination that detention is warranted.

10. Accordingly, Petitioner seeks a writ of habeas corpus requiring Respondents to immediately release Petitioner from custody. Alternatively, Petitioner seeks an order requiring Respondents to provide a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days, and, if such hearing is not provided within such timeframe, immediate release.

CUSTODY

11. Petitioner is in the physical custody of Respondents, imprisoned at the Aurora ICE Processing Center, an immigration detention center in Aurora, Colorado. Petitioner is under direct control and supervision of Respondents.

JURISDICTION

12. This Court has subject matter jurisdiction over this petition pursuant to 28 U.S.C. § 2241(c), which authorizes federal courts to grant writs of habeas corpus to persons held in custody in violation of the Constitution or laws of the United States.

13. This Court also has federal question jurisdiction under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.

14. Jurisdiction is further proper under Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).

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

VENUE

16. Venue is proper in this judicial district under 28 U.S.C. § 2241 because Petitioner is detained at the GEO Group's Aurora ICE Processing Center in Aurora, Colorado, which is within the jurisdiction of this district and is in the immediate physical custody of Respondent Juan Baltasar, who resides in this district for purposes of this action. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1005-06 (2025) (per curiam) ("For core habeas petitions, jurisdiction lies in only one district: the district of confinement" (internal quotation marks and citations omitted.)).

17. Venue is also proper under 28 U.S.C. § 1391(e)(1) because Respondents are officers, employees, or agencies of the United States acting in their official capacities; because a substantial part of the events or omissions giving rise to Petitioner's claims—including Petitioner's detention, the denial of bond eligibility, and Respondents' refusal to comply with binding declaratory judgment—occurred within this district; Petitioner resides in this District, and no real property is involved in this action.

REQUIREMENTS OF 28 U.S.C. § 2243

18. This Court must grant the petition for a writ of habeas corpus or issue an order directing Respondents to show cause "forthwith" why the writ should not be granted, unless it appears from the application that Petitioner is not entitled to relief. 28 U.S.C. § 2243.

19. If the Court issues an order to show cause, Respondents must file a return within three days unless, for good cause, additional time not exceeding twenty days is allowed. *Id.*

20. Prompt resolution is particularly warranted here because the legal issues governing Petitioner's detention have already been resolved overwhelmingly in Petitioner's favor by hundreds of federal courts across the country and Respondents' continued detention of Petitioner is unlawful.

21. Habeas corpus is intended to provide a "swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). Whereas here, a petitioner is detained in clear violation of federal law and binding judicial authority, expedited relief is required.

PARTIES

A. Petitioner

22. Petitioner Jose de Jesus Sahagun Aleriano is a citizen of Mexico. He has lived in the United States since 2019. Petitioner remains detained at the Aurora ICE Processing Center, in the custody and direct control of Respondents and their agents.

B. Respondents

23. Respondent Juan Baltasar is the Warden of the Aurora ICE Processing Center. Respondent Baltasar has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain non-citizens and is sued in his official capacity. Respondent Baltasar is a legal custodian of Petitioner.

24. Respondent George Valdez is the Director of the Denver Field Office for U.S. Immigration and Customs Enforcement. As such, Director Valdez is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official capacity.

25. Respondent David Venturella is the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Venturella is responsible for Petitioner's detention and is sued in his official capacity.

26. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA and oversees ICE, the component agency responsible for Petitioner's detention. Respondent Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

27. Respondent Todd Blanche is the Acting Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). He has the authority to adjudicate removal cases and oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals. Respondent Blanche is a legal custodian of Petitioner and is sued in his official capacity.

STATEMENT OF FACTS

28. Petitioner is thirty-six years old citizen of Mexico and has resided in the U.S. since 2019. Petitioner entered the U.S. without inspection, that is, without having been admitted or paroled. He has significant community ties, given that he has lived

seven years in the United States. He is married and has two U.S. citizen children, a 3-year-old and a 3 month old. Petitioner is eligible to pursue lawful permanent resident status through a family-based immigrant visa process. His U.S. citizen wife filed an I-130 immigrant visa petition on his behalf, which was approved on May 28, 2022. Following the approval of the immigrant visa petition, Petitioner filed an Application for Provisional Unlawful Presence Waiver (Form I-601A) on July 8, 2024, which remains pending with U.S. Citizenship and Immigration Services (USCIS). Accordingly, Petitioner has a viable avenue to obtain lawful status in the United States and is actively pursuing available immigration relief.

29. On May 21, 2026, ICE arrested Petitioner outside his home while he was taking his children to school. He was subsequently placed in immigration detention, where he remains in custody pending removal proceedings.

30. Petitioner is detained at the Aurora ICE Processing Center in Aurora, CO.

31. Because Petitioner enterer the U.S. without admission or parole, DHS will charge him as subject to removal under 8 U.S.C. § 1182(a)(6)(A)(i) as a noncitizen present in the U.S. without admission or parole.

32. In 2025, Petitioner plead guilty to a charge for driving while ability impaired and received a deferred sentence. He has followed all requirements of the criminal court regarding his sentence. Apart from DWAI violation, Petitioner has no criminal history. He has worked in the restaurant industry as a kitchen manager in the U.S. for more than 7 years to support his family, including his two U.S.-citizen children.

33. Petitioner has not requested a bond hearing from the immigration court as it would be presumptively denied under *Yajure Hurtado*, 29 I&N Dec. 216.

LEGAL FRAMEWORK

34. Since 1952, U.S. immigration law has provided that noncitizens detained during the pendency of removal proceedings may seek release on bond.[1] Today, the bond statute at 8 U.S.C. § 1226 provides that aliens present in the U.S. without authorization "may be arrested and detained" upon issuance of an arrest warrant. When the foreign national has not committed a circumscribed set of crimes or engaged in terrorist activity, the government "may release the alien" "on bond of at least $1,500" or "conditional parole." 8 U.S.C. § 1226(a)(2)(A-B), (c). Alternatively, the government "may continue to detain the alien." 8 U.S.C. § 1226(a)(1).

35. If the government chooses to continue detention, the detainee has a right to a custody redetermination (i.e. bond) before an immigration judge ("IJ"). 8 C.F.R. § 236.1(d)(1). After a detainee makes such a request and prior to any final order of removal, "the immigration judge is authorized to exercise the authority in section 236 of the Act [8 U.S.C. § 1226] . . . "to detain the alien in custody, release the alien, and

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[1] INA § 242(a) (1952) ("Pending a determination of deportability in the case of any alien as provided in subsection (b) of this section, such alien may, upon warrant of the Attorney General, be arrested and taken into custody. Any such alien taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability, (1) be continued in custody; or (2) be released under bond in the amount of not less than $500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe; or (3) be released on conditional parole."). INA § 242(b) (1952), in turn, establishes proceedings "to determine the deportability of any alien."). Conjunctively, the statutes demonstrate that any alien subject to a deportation proceeding was subject to an Attorney General determination that they be "continued in custody," "released under bond," or "released on conditional parole."

determine the amount of bond, if any, under which the respondent may be released." *Id.* In practice, IJ bond determinations are a fact-intensive inquiry wherein the noncitizen seeks to "establish to the satisfaction of the Immigration Judge that he or she does not present a danger to others, a threat to the national security, or a flight risk." *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

36. When Congress enacted the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA") in 1996, its provisions eliminated bond eligibility for three groups: (1) those "arriving in the United States" who have not been physically present in the U.S. for at least two years; (2) those subject to a final deportation order; and, (3) "applicants for admission" who are "seeking admission" and "not clearly and beyond a doubt entitled to be admitted." §§ 1225(b)(1)(A)(i), (iii)(II); § 1231; § 1225(b)(2)(A). Group (1) is ordered "removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(II). Group (2) is subject to mandatory detention. 8 U.S.C. § 1231(a)(2)(A). So is group (3). 8 U.S.C. § 1225(b)(2)(A). Additionally, Congress more recently passed the Laken Riley Act in January 2025, amending 8 § U.S.C. 1226(c) to create an additional category of noncitizens subject to mandatory detention who are (1) inadmissible under §§ 1182(6)(A) [present without admission or parole], (6)(C) [misrepresentation], or (7)(A) [lack of proper documentation] *and* (2) have been charged with "burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person." 8 U.S.C. 1226(c)(1)(E)(ii); Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). According, "[i]f 8 U.S.C. § 1225

already mandates detention for noncitizens 'already in the country' . . . it would have been superfluous for Congress to pass the Laken Riley Act, amending § 1226 to add another category of noncitizens who must be detained." *Mendoza Gutierrez v. Baltazar*, No. 1:25-cv-02720-RMR, Doc. 33, at 17-18 (D. Colo. Oct. 17, 2025) (internal citations omitted).

37. Consistent with the plain reading of the statute, noncitizens charged with entering without inspection were afforded bond hearings under § 1226(a) for nearly three decades following IIRIRA's enactment (subject to the aforementioned statutory exceptions).[2] This practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

38. The Supreme Court re-affirmed this distinction between §§ 1226 and 1225 as follows: "U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] already in the country

[2] In fact, after IIRIRA's enactment, the Immigration and Naturalization Service promulgated regulations clarifying that noncitizens who entered the United States without inspection are generally detained under § 1226(a), not § 1225. *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled ... *will be eligible for bond and bond redetermination*") (emphasis added).

pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Jennings v. Rodriguez*, 582 U.S. 281, 289 (2018) (Alito, J.).

39. Decades of applying this discretionary bond determination framework outlined in 8 U.S.C. § 1226(a) to people who have already entered and have been residing in the United States (particularly for decades, as in Petitioner's case) prior to apprehension and detention by immigration authorities came suddenly under assault on July 8, 2025, when ICE, "in coordination with" the Department of Justice, issued new policy guidance "revisit[ing] its legal position on detention and release authorities" and determining that "section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission . . . **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole**. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS." *See* Exh. 1-1, U.S. Immigration and Customs Enforcement, *Interim Guidance Regarding Detention Authority for Applicants for Admission* (July 8, 2025) (emphasis in original).

40. On September 8, 2025, the Department of Justice's Board of Immigration Appeals held that the "plain language" of 8 U.S.C. § 1225(b)(2)(A) removed Immigration Judges' "authority to hear bond requests or to grant bond to aliens who

are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

41. The *Yajure Hurtado* decision—like the government policy it seeks to uphold—defies the INA. As Judge Robert White wrote—after noting that federal district courts are not bound by agency interpretations of statutes—the BIA's reasoning is unpersuasive and "at odds with every District Court that has been confronted with the same question of statutory interpretation." *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025); *see also Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL 2607924, at *8 n.11 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Beltran Barrera v. Tindall*, No. 3:25-cv-541-RGJ, 2025 WL 2690565, at *5 (W.D. Ky. Sept. 19, 2025) (same); *Chogllo Chafla v. Scott*, Nos. 2:25-cv-00437-SDN, 2:25-cv-00438-SDN, 2:25-cv-00439-SDN, 2025 WL 2688541, at *7–8 (D. Me. Sept. 21, 2025) (same).

42. Thus, this reinterpretation of 8 U.S.C. § 1225(b)(2)(A) has triggered an avalanche of litigation throughout the United States. Federal court decisions on these cases nationwide have overwhelmingly rejected Respondents' abrupt reinterpretation of the statutory scheme, and—contrary to both the ICE policy and the BIA's decision in *Yajure Hurtado*—have held that § 1226(a), not § 1225(b), applies to noncitizens who are arrested while residing in the United States—as opposed to being arrested when arriving at the border. Indeed, federal courts across the country have overwhelmingly rejected ICE and the DOJ's reinterpretation of 8 U.S.C. § 1225(b), holding that noncitizens who were not apprehended upon entry and were residing in

the United States at the time of arrest must be afforded bond hearings. *See Jimenez Facio v. Baltazar*, Doc. No. 13, No. 25-cv-03592-CYC, Order at 3–4 (D. Colo. Dec. 12, 2025) ("Courts have therefore held, with a regularity bordering on monotonous, that because section "'1225(b)(2)(A) [INA section 235(b)] applies only to those noncitizens who are actively seeking admission to the United States, it cannot, according to its ordinary meaning, apply to persons who have already been residing in the United States for several years.'") (collecting cases that overwhelmingly reject the government's argument that 235(b) applies to noncitizen residents apprehended in the interior of the United States); *see also Chogllo Chafla v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541, Order on Petitions for Writs of Habeas Corpus, Doc. 26, at *12–13 (D. Me. Sept. 22, 2025) (same); *Ochoa Ochoa v. Noem*, No. 25-cv10865, 2025 WL 2938779, Memorandum Opinion and Order, Doc. 20, at *10 n.8 (N.D. Ill. Oct. 16, 2025) (same). *See, e.g., Barreno v. Baltasar*, No. 25-cv-03017-GPG-TPO, 2025 WL 3190936, at *1–4 (D. Colo. Nov. 14, 2025); *Hernandez v. Baltazar*, No. 25-cv-03094-CNS, 2025 WL 2996643, at *1–8 (D. Colo. Oct. 24, 2025); *Moya Pineda v. Baltasar*, No. 25-cv-02955-GPG, 2025 WL 3516291, at *1–2 (D. Colo. Oct. 20, 2025); *Mendoza Gutierrez v. Baltasar*, No. 25-cv-02720-RMR, 2025 WL 2962908, at *4–9 (D. Colo. Oct. 17, 2025); *Garcia Cortes v. Noem*, No. 25-cv-02677-CNS, 2025 WL 2652880, at *2–3 (D. Colo. Sept. 16, 2025).

43. Federal courts of appeals have reached differing conclusions regarding the scope of detention authority under 8 U.S.C. §§ 1225, 1226. *Compare Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), and *Avila v. Bondi*, 170 F.4th 1128

(8th Cir. 2026), with *Barbosa da Cunha v. Freden*, No. 25 3141-pr, 2026 WL 1146044 (2d Cir. Apr. 28, 2026), *Lopez-Campos v. Raycraft*, Nos. 25 1965/1969/1978/1982, 2026 WL 1283891 (6th Cir. May 11, 2026), and *Hernandez Alvarez v. Warden*, Fed. Det. Ctr. Miami, Nos. 25-14065/14075, 2026 WL 1243395 (11th Cir. May 6, 2026).

44. The Tenth Circuit has not yet offered guidance on these legal questions and courts in this District have continued to follow the analysis laid out previously that finds noncitizens who entered without inspection eligible for a bond hearing. *Vargas Cardenas v. Bondi*, No. 26-cv-01174-SKC, at *3-4 (D. Colo. Apr. 1, 2026).

APPLICATION TO PETITIONER'S CASE

A. The refusal of Respondents to Provide Petitioner with an Initial Custody Determination and Custody Redetermination Violates 8 U.S.C. § 1226(a).

45. This Court should exercise its independent judgment to join the chorus of federal courts around the nation who agree that § 1225(b)(2) is not the applicable statute of detention over noncitizen long term residents like Petitioner, where Petitioner is clearly neither a recent arrival nor seeking admission. *See Gimenez Rivero v. Mina*, No. 6:26-cv-00066-RBD-NWH, Order, Injunction, and Order to Show Cause at 1 (M.D. Fla. Jan. 26, 2026), Doc. No. 15 ("Judges across the country—the vast majority who have considered this question—have told the Government many times in the past few months that its interpretation of the law is wrong . . . This is no partisan stance: judges appointed by every President from Ronald Reagan through Donald Trump have said so.") (internal citations omitted).

46. Although the Fifth Circuit and Eighth Circuit recently reached the opposition conclusion to hold that unadmitted aliens apprehended in the United States are not eligible for release on bond, that decision is not binding over this Court, and neither the Tenth Circuit nor the Supreme Court of the United States has addressed this issue. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), and *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026). Further, this Court has already rejected *Buenrostro* as persuasive in light of the "the Seventh Circuit[3] and the overwhelming number of district court orders that have rejected the reasoning upon which the *Buenrostro-Mendez* majority relied." *See Gurlal Singh v. Baltazar*, et al., No. 1:26-cv-00336-CNS (D. Colo. Feb. 9, 2026) (granting habeas and ordering immediate release).

47. Further, federal courts within the Tenth Circuit and across the country continue to disagree with and reject the *Buenrostro-Mendez* majority as unpersuasive and unsupported by the statutory text. *See, e.g. Wilian Alexander Vasquez Lopez v. Warden, Glades County Detention Center, et al.*, No. 2:26-cv-147-JES-NPM (M.D. Fla. (Fort Myers) Feb. 10, 2026) (granting habeas notwithstanding *Buenrostro*, noting that the majority decision is "is contrary to the overwhelming majority of district court judges to have considered the issue. This Court respectfully disagrees with the

[3] *See Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1061 (7th Cir. 2025) (suggesting that Section 1225(b)(2) does not apply to noncitizens who are already residing in the United States, reasoning "the mandatory detention provision upon which Defendants rely, limits its scope to an 'applicant for admission' who is 'seeking admission,' § 1225(b)(2)(A). Put another way, 'U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).'" 161 F.4th at 1061 (emphasis in original, quoting *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)).

Fifth Circuit's analysis and notes that it is not binding precedent in this Court."); *Janeth Goyo Rodriguez v. Olson, et al.*, No. 4:26-cv-00026-TWP-KMB (S.D. Ind. Feb. 10, 2026) ("considering § 1225 as a whole, the most natural meaning is that it applies to 'arriving' noncitizens attempting to enter the United States rather than [those] who have lived in the interior of the United States for years. . . As the Court has previously explained, Respondents' interpretation of the statute (1) disregards the plain meaning of § 1225(b)(2)(A); (2) disregards the relationship between §§ 1225 and 1226; (3) would render a recent amendment to § 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice"); *Pride Ngu Fon v. Samuel Olson, et al.* at 16-17, FN 6 (E.D. Ky., N.D. at Covington; Feb. 10, 2026) ("In the absence of an authoritative decision from the Sixth Circuit, the Court respectfully declines to adopt the Fifth Circuit's holding in Buenrostro Mendez...Petitioner's detention is not governed by § 1225(b)(2) but § 1226"); *Pascual Jose-de-Jose v. Noem, et al.*, Case No. CIV-25-1454-SLP at 3 (W.D. Okla. Feb. 9, 2026) (acknowledging authority to the contrary, including *Buenrostro*, but nonetheless joining "the decision reached by the vast majority of district courts in this judicial district, in district courts within the Tenth Circuit and across the country" to "rejec[t] Respondents' statutory interpretation of §§ 1226(a) and 1225(b)(2)(A))."; *Jose Alfonzo Mendoza Jerez v. Ripa, et al.*, No. 2:26-cv-157-JES-DNF (M.D. Fla. (Fort Myers) Feb. 12, 2026; *Alfredo A. & Julio S.C. v. Easterwood, et al.*, Case No. 26-CV-1016 (PJS/DLM) (D. Minn. Feb. 7, 2026) ("[T]he Court continues to believe that the better reading is that § 1225(b)(2) does not apply to [those] who entered without inspection

and are already present and living in the United States."); *Sanchez Bermudez v. Noem*, No. 2:26-cv-00678 (NJC), Mem. & Order at 3–4 (E.D.N.Y. Feb. 9, 2026) (noting *Buenrostro* comes to an opposite conclusion but concluding "that Respondents' position that Section 1225(b)(2) requires the detention of a non-citizen apprehended in the interior of the United States notwithstanding the fact that the non-citizen has continuously resided in this country for months, if not years, is unsupported by the statutory text" and agreeing with "[t]he vast majority of courts throughout this District, Circuit, and even the country" that "have rejected Respondents' expansive interpretation of Section 1225(b)(2)."). In the absence of any Supreme Court or Tenth Circuit precedent to the contrary, this Court should also reject *Buenrostro* as unpersuasive.

B. The refusal of Respondents to Provide Petitioner with an Initial Custody Determination and Custody Redetermination Violates Petitioner's Constitutional Right to Due Process.

48. Respondents maintain that Petitioner is detained subject to 1225. They are wrong. The only detention statute which could authorize his detention is 1226—yet, he has not been afforded the process that comes with 1226 detention, including the initial custody determination that should happen immediately upon arrest, and subsequent custody redetermination if not released by ICE on bond. *See* 8 C.F.R. § 236.1(d)(1).

49. The Supreme Court has rejected the idea that removable noncitizens "forfeit" liberty; holding that "the petitioners have a fundamental liberty interest in freedom from detention pending deportation proceedings," and that this interest cannot be

arbitrarily infringed without an individualized hearing. *Demore v. Kim*, 538 U.S. 510 (2003). As petitioner was already denied the custody redetermination hearing to which he is entitled, and his continued detention continues to violate his recognized liberty interest, the most appropriate remedy for this continuing due process violation is immediate release.

CLAIM FOR RELIEF

COUNT I: Violation of the INA

Respondent's Detention of Petitioner Violates 8 U.S.C. § 1226(a)

50. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

51. Respondents' unlawful application of 8 U.S.C. § 1225(b)(2) mandating continued detention of Petitioner violates the INA.

52. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to individuals like Petitioner who previously entered the country and reside in the United States prior to being apprehended and placed in removal proceedings.

53. Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a). Petitioner's detention up to this point has thus been illegal, as Petitioner was not provided an individualized bond determination by either ICE or EOIR.

54. Plain statutory language and the overwhelming weight of authority indicates that an individual in Petitioner's circumstances is detained under section 1226 and thus eligible for a bond hearing under the discretionary bond framework governing 1226(a).

COUNT II: Violation of Due Process

55. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

56. "It is well established that the Fifth Amendment [Due Process Clause] entitles aliens to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint— lies at the heart of the liberty [the Due Process Clause] protects." *Zadvydas v. Davis*, 533 U.S., 690.

57. Petitioner has a fundamental interest in liberty and being free from official restraint, including imprisonment in the Aurora ICE Processing Center.

58. Respondents' detention of Petitioner without affording him the process that comes with § 1226(a) detention, including an initial custody determination and custody redetermination hearing, violates his right to Due Process.

59. The most appropriate remedy for this due process violation is immediate release. In the alternative, Petitioner should be released if the government does not provide Petitioner, within 7 days, a bond hearing where the government bears the burden by clear and convincing evidence of demonstrating that Petitioner should continue to be detained based on an individualized flight risk and danger to the community assessment. *Velasquez Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729 at*18–19 (D.N.M. Sept. 17, 2025) ("Respondents shall bear the burden of justifying, by clear and convincing evidence, Petitioner's continued detention. If Petitioner has not received a lawful bond hearing by September 23, 2025,

this Court ORDERS that he be immediately released."); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, Doc. 18, at 20 (D. Colo. Oct. 22, 2025) ("**If Respondents to not do not provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) as required herein, Petitioner must be immediately released from detention.**") (emphasis in original).

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Enjoin Petitioner's removal or transfer outside of this Court's jurisdiction during the pendency of this case;

c. Pursuant to 28 U.S.C. § 2243, forthwith award the writ or issue an order directing respondents to show cause why the writ should not be granted within three days;

d. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA, and implementing regulations;

e. Grant a writ of habeas corpus directing Respondents to immediately release Petitioner and enjoining Respondents from re-detaining Petitioner during the pendency of his removal proceedings;

f. Or, in the alternative, issue a writ of habeas corpus requiring Respondents release Petitioner unless they, within seven days, provide Petitioner a bond hearing where the government will bear the burden to

show, by clear and convincing evidence, why Petitioner's detention should continue and enjoining the Immigration Court from denying bond on the basis that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2);

g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

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

Dated: June 5, 2026

/s/ Luke Niermann
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Attorney for Petitioner

28 U.S.C. § 2242 VERIFICATION STATEMENT

I, Luke Niermann, submit this verification on behalf of the Petitioner because I am Petitioner's attorney. On the basis of documents reviewed and discussions with Petitioner and Petitioner's family, I hereby verify that statements made in this petition are true and correct to the best of my knowledge.

Dated: June 5, 2026

/s/ Luke Niermann
Attorney for Petitioner