IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

MIGUEL ANGEL MONTOYA RAMIREZ,

Petitioner,

vs.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security (DHS); **TODD M. LYONS**, Acting Director, U.S. Immigration and Customs Enforcement (ICE); **DEREK GORDON**, Acting Executive Associate Director, Homeland Security Investigations (HSI), U.S. Immigration and Customs Enforcement (ICE); **MARCOS CHARLES**, Acting Executive Associate Director, Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE); **DAREN K. MARGOLIN**, Director, Executive Office For Immigration Review;

Respondents.

CASE NO.

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW Petitioner, Miguel Angel Montoya Ramirez, by and through undersigned counsel, petitions this Honorable Court on an Emergency basis for a Writ of Habeas Corpus under 28 U.S.C. § 2241. Petitioner is a native and citizen of Mexico who has been unlawfully detained by the Department of Homeland Security (DHS) for a prolonged period in violation of statutory and constitutional law. This Court's intervention is necessary to end this unlawful detention and protect the rights guaranteed to Petitioner under the Due Process Clause of the Fifth Amendment and federal immigration law.

INTRODUCTION

1. This is a habeas corpus petition brought by Miguel Angel Montoya Ramirez, a native and citizen of Mexico, who has been unlawfully detained by U.S. Immigration and Customs Enforcement (ICE) in Colorado since at least November 16, 2025.

2. Mr. Montoya Ramirez has resided continuously and peacefully in the United States since his entry and he has no prior immigration or criminal encounters.

3. The government is detaining him under 8 U.S.C. § 1225(b), claiming he is subject to mandatory detention without the possibility of a bond hearing. This is incorrect. Since he was arrested well over three years after entering the United States, and inside the country, he is not subject to expedited removal or mandatory detention under § 1225.

4. Rather, he is properly classified under 8 U.S.C. § 1226(a), which entitles him to an individualized custody determination and the opportunity to request release on bond. This misclassification is contrary to almost 30 years of settled law and practice, and it is unlawfully premised solely upon the manner in which the person initially entered the country, in some cases, decades ago.

5. By denying Mr. Montoya Ramirez a bond hearing, the government is violating his statutory rights under § 1226(a), his procedural and substantive due process rights under the Fifth Amendment, and is acting contrary to law under the Administrative Procedure Act.

6. This Petition seeks an immediate bond hearing or release from detention, as required by law.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 2241, which authorizes federal courts to grant writs of habeas corpus to individuals in custody in violation of the Constitution, laws, or treaties of the United States.

8. This Court also has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), as this action arises under the Constitution and laws of the United States, including the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

9. Petitioner's claim is not barred from review by 8 U.S.C. § 1252(g) as Petitioner does not challenge the Respondent's decision to commence removal proceedings against him, the decision to arrest and detain him, or the methods by which he is detained. Petitioner challenges the Attorney General's treatment of him as an "alien seeking admission," whose detention is governed by 8 U.S.C. § 1225(a)(2) rather than 8 U.S.C. § 1226(a). *Cf. Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ("While [Section 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions.").

10. Similarly, this Court is not stripped of jurisdiction by the "zipper clause" of the INA, *see* 8 U.S.C. § 1252(b)(9), because Petitioner is "not asking for review of an order of

removal;" he is not "challenging the decision to detain [him] in the first place or to seek removal;" and he is "not even challenging any part of the process by which [his] removability will be determined." *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018); *see also Madu*, 470 F.3d at 1365 (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation).

11. To the extent applicable, this Court further has jurisdiction pursuant to the Administrative Procedure Act, 5 U.S.C. § 701 et seq., which authorizes judicial review of final agency actions where no adequate alternative remedy exists. *See* 5 U.S.C. §§ 702, 704, and 706(2)(A); *see also Califano v. Sanders*, 430 U.S. 99, 105–07 (1977).

12. This Court may issue declaratory relief under 28 U.S.C. § 2201 and may compel agency action unlawfully withheld or unreasonably delayed under 28 U.S.C. § 1361 where appropriate.

13. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(e)(1)(B), because Petitioner is currently detained in this District and a substantial part of the events or omissions giving rise to this action occurred here.

PARTIES

14. Petitioner, Miguel Angel Montoya Ramirez, is a native and citizen of Mexico, born on August 2, 1995. His alien number is [redacted]

15. Respondent Kristi Noem, Secretary of the U.S. Department of Homeland Security (DHS), is the head of DHS, the federal department charged with administering and enforcing the nation's immigration laws. Secretary Noem has the ultimate authority over ICE and all subordinate agencies involved in Petitioner's detention. She is sued in her official capacity.

16. Respondent Todd M. Lyons, Acting Director of U.S. Immigration and Customs Enforcement (ICE), is responsible for the nationwide administration and oversight of ICE, the agency charged with the enforcement of immigration detention and removal. He is sued in his official capacity.

17. Respondent Derek Gordon, Acting Executive Associate Director of Homeland Security Investigations (HSI), ICE, oversees investigative operations of ICE, including matters involving the apprehension of noncitizens. While HSI is primarily investigative, its leadership participates in the broader enforcement mechanisms of DHS. He is sued in his official capacity.

18. Respondent Marcos Charles, Acting Executive Associate Director of Enforcement and Removal Operations (ERO), ICE, is directly responsible for the supervision and operation of ICE's detention and removal activities. His division has direct oversight of the detention facility where Petitioner is currently held. He is sued in his official capacity.

19. Defendant, Daren K. Margolin, is the Director of the Executive Office for Immigration Review (EOIR), a component of the U.S. Department of Justice

responsible for adjudicating immigration cases, including asylum claims, in removal proceedings. He is sued in her official capacity.

LEGAL BACKGROUND

20. The Constitution of the United States enshrines liberty as a foundational principle, and any governmental deprivation of liberty must be justified by law and accompanied by procedural safeguards. This principle applies equally to noncitizens, regardless of how they entered the country or whether they have legal status. As the Supreme Court has long recognized, "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

21. The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving "any person of life, liberty, or property without due process of law." U.S. Const. Amend. V. That constitutional protection applies to all persons physically present within the United States, including noncitizens, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953).

22. These due process protections are especially critical where the government seeks to detain individuals in civil immigration custody, often for prolonged periods and without the protections that would accompany criminal detention. The Supreme Court has consistently emphasized that civil detention constitutes a significant deprivation of liberty that triggers constitutional scrutiny. *See Addington v. Texas*, 441

U.S. 418, 425 (1979); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 356–57 (1997).

23. In the immigration context, detention must be non-punitive and must bear a reasonable relation to its legitimate purposes, namely, ensuring attendance at removal proceedings and protecting public safety. *See Zadvydas*, 533 U.S. at 690. Where detention is prolonged or indefinite, and where there is no individualized determination as to necessity, due process is violated.

24. Congress has implemented these constitutional principles in the immigration system through a statutory framework that governs when and how noncitizens may be detained. This framework, established under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), codifies three distinct statutory detention authorities depending on the context and stage of removal proceedings.

25. 8 U.S.C. § 1225 generally governs individuals apprehended at or near the border or at a port of entry, and certain individuals who are placed into expedited removal. It generally authorizes mandatory detention without bond for those seeking admission.

26. 8 U.S.C. § 1226 governs the detention of individuals arrested within the interior of the United States, including those who entered unlawfully but were not immediately apprehended. This statute authorizes detention but also provides for release on bond or conditional parole in most cases. *See* 8 U.S.C. § 1226(a)-(c).

27. 8 U.S.C. § 1231 applies after a final order of removal has been issued, during the removal period, and any extended time required to carry out the deportation order.

28. These statutes are intended to be mutually exclusive, and the government's authority to detain a person must be grounded in the correct statute based on the individual's procedural posture and where and when they were apprehended. A person cannot be shuffled between statutes based solely on convenience or the government's policy preferences.

29. In particular, individuals who entered the United States unlawfully but were not apprehended near the border and have lived in the country for an extended period are not subject to § 1225, even if they initially lacked lawful status. Instead, such individuals, like Petitioner, are governed by § 1226(a) and are entitled to a bond hearing with full procedural safeguards.

30. Under federal immigration law, 8 U.S.C. § 1225 governs the inspection and processing of individuals who are seeking admission into the United States, such as those who present themselves at a port of entry or who are apprehended immediately after unlawfully crossing the border.

31. Section 1225 applies in two distinct scenarios:

    a. Subsection (b)(1) governs expedited removal for certain noncitizens who are inadmissible based on fraud, misrepresentation, or lack of valid entry documents and are apprehended soon after entering the country, typically

within two years, under DHS's extended implementation of expedited removal authority.

b. Subsection (b)(2) governs non-expedited removal for those who are seeking admission but are not clearly admissible and must be placed into formal removal proceedings under 8 U.S.C. § 1229a. However, the individuals detained at the border under this subsection are still classified as "applicants for admission" and subject to mandatory detention without bond while their case is pending, unless DHS grants parole under 8 U.S.C. § 1182(d)(5)(A).

32. The Supreme Court has confirmed that detention under § 1225 is tightly linked to border enforcement. In *Jennings*, the Court described § 1225 as applying to aliens who are stopped at the border seeking entry and emphasized that this provision was crafted to give the government discretion and authority over individuals who had not yet been admitted into the country. 583 U.S. at 287.

33. The statutory language in § 1225 reinforces that it governs only those who are applicants for admission. The term "applicant for admission" is defined to include any noncitizen "who seeks admission into the United States."8 U.S.C. § 1101(a)(13)(A). This does not include individuals who have already entered and resided in the U.S., even unlawfully, if they are apprehended years later in the interior.

34. Mandatory detention under § 1225(b)(2)(A) applies to a noncitizen who meets three criteria: (1) one who is an "applicant for admission" (a "term of art" in the INA that

includes noncitizens who "arrive[] in the United States," as well as those already "present in the United States who ha[ve] not been admitted," 8 U.S.C. § 1225(a)(1)); (2) who is actively "seeking admission" to the country, and (3) whom an examining immigration officer determines "is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). If § 1225(b)(2)(A) were intended to apply to all applicants for admission, there would be no need to include the phrase "seeking admission' in the statute. That is, rather than stating that mandatory detention is required for any "applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted," § 1225(b)(2)(A) (emphasis added), the statute would instead provide for mandatory detention for any "applicant for admission, if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." By reading a phrase out of the statute, DHS's interpretation would clearly "[V]iolate the rule against surplusage." *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) ("[E]very clause and word of a statute should have meaning."); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant.") (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)).

35. It is no accident that noncitizens in the country are treated differently from those seeking entry. As the Supreme Court observed, "our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective

of its legality. In the latter instance, the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953)); *see also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

36. When considering the amendment of the INA in 1996, Congress again acknowledged that noncitizens present in the United States have more substantial due process rights than new arrivals. *See* H.R. Rep. 104-469, p.1, at 163–66 (recognizing "that an alien present in the U.S. has a constitutional liberty interest to remain in the U.S., and that this liberty interest is most significant in the case of a lawful permanent resident alien"). Following the amendment, federal regulations explained, "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

37. Despite this history, DHS announced a change to its policies in a memo to ICE employees dated July 8, 2025:

> An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA §

> 235(a)(1). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings, absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated.

ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission, AILA Doc. No. 25071607 (July 8, 2025) (emphasis in original); *see also Merino v. Ripa*, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025) (discussing the memo).

38. DHS's interpretation of section § 1225(b)(2) mandating detention would nullify the recent amendment to the immigration statutes through the Laken Riley Act. This amendment codified in 8 U.S.C. § 1226(c)(1)(E) the mandatory detention of noncitizens who meet certain criminal and inadmissibility criteria. But if, as DHS suggests, a noncitizen's inadmissibility were, alone, already sufficient to mandate detention under section 235, then the 2025 amendment would have no effect. *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation," such as this one, "would render superfluous another part of the same statutory scheme."); *Gundy v. United States*, 588 U.S. 128, 141 (2019) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.")). Ample Supreme Court statutory construction canons would be

blatantly ignored and misconstrued in reading sections 1225 and 12265 as not applying to different classes of noncitizens.

39. Federal regulations and policy further clarify this limitation. Expedited removal under § 1225(b)(1) was initially applied only to noncitizens apprehended within 14 days and within 100 miles of the border. In 2019, DHS expanded this authority via policy memorandum to apply to those present in the U.S. for less than two years, but only where DHS establishes that they meet the criteria. *See Make the Road New York v. McAleenan*, 405 F. Supp. 3d 1 (D.D.C. 2019), vacated as moot, 962 F.3d 612 (D.C. Cir. 2020). The implementing regulation, 8 C.F.R. § 235.3(b)(1)(ii), codifies these restrictions.

40. Importantly, Section 1225 does not grant ICE carte blanche to detain anyone who entered without inspection, regardless of how much time has passed. Courts have repeatedly recognized that the scope of § 1225 is limited and cannot be retroactively applied to individuals who have been living quietly and peacefully in the United States well beyond the statutory period and geographic limits for expedited removal.

41. In *Matter of Yajure Hurtado*, the Board of Immigration Appeals issued a precedential decision that broadly redefined the term "applicant for admission" to include noncitizens arrested anywhere in the country, regardless of how long they have resided in the United States or where they were apprehended, if they were never lawfully admitted. Under this reading, even a person arrested after decades in the

United States would be deemed an applicant for admission subject to § 1225. 29 I. & N. Dec. 216 (BIA 2025).

42. This new interpretation has been widely rejected as contrary to the law. Courts have found that it upends decades of settled practice and disregards statutory limitations placed on the use of expedited and border-related detention. *See, e.g. Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *7–8 (D. Mass. Aug. 19, 2025) (rejecting *Matter of Hurtado* and affirming § 1226 governs interior arrests); *Hilario Rodriguez v. Moniz*, No. 25-12358 (D. Mass. Sept. 18, 2025) (granting habeas and ordering bond hearing); *Reyes v. Raycraft*, No. 25-cv-12546, 2025 LX 332553, at *19 (E.D. Mich. Sep. 9, 2025) ("BIA's decision is at odds with every district court that has been confronted with the same question").[1]

[1] *See also Vincens-Marquez v. Soto*, No. 25-16906 (KSH), 2025 WL 3097496 (D. N.J. Nov. 6, 2025); *Beltran v. Noem*, No. 25-cv-2650-LL-DEB, 2025 WL 3078837 (S.D. Cal. Nov. 4, 2025); *Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025); *Flores v. Olson*, 25 C 12916, 2025 WL 3063540 (N.D. Ill. Nov. 3, 2025); *J.A.M. v. Streeval*, No. 4:25- cv-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *Ramirez Valverde v. Olson*, No. 25-CV-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025); *Hernandez Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *Orellana v. Noem*, --- F.3d ---, 2025 WL 3006763 (W.D. Ky. Oct. 27, 2025); *Tomas Elias v. Hyde*, No. 25-cv-540-JJM-AEM,2025 WL 3004437 (D. R.I. Oct. 27, 2025); *Aguilar Guerra v. Joyce*, 2:25-cv-534-SDN, 2025 WL 2986316 (D. Maine Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, No. 25-cv-13004, 2025 WL 2985256 (D. N.J. Oct. 23, 2025); *Gomez Garcia v. Noem*, No. 5:25-cv-02771-ODW (PDx), 2025 WL 2986672 (C.D. Cal. Oct. 22, 2025); *Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650 (D.Colo. Oct. 22, 2025); *Ochoa Ochoa v. Noem*, No. 25-CV-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); N.A. v. Larose, No. 25-cv-2384-RSH-BLM, 2025 WL 2841989 (S.D. Cal. Oct. 7, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Maldonado v. Olson*, No. 25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. 25-CV-02157-PHX-DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. 25-CV-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Diaz Martinez v. Hyde*, No. 25-CV-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025).

43. These rulings emphasize that DHS's authority under § 1225 must be limited to what Congress authorized: detention of those seeking entry at or near the border, not of individuals living deep within the interior years after entry.

44. As such, § 1225 does not, and cannot, apply to Mr. Montoya Ramirez, who was detained by ICE over two years after entering the country, and who has never been placed into expedited removal. His continued detention under § 1225(b)(2) is not only statutorily unsupported, but it also deprives him of the opportunity to seek release on bond, in violation of his constitutional and statutory rights.

45. In contrast to § 1225, which governs individuals seeking admission at the border, 8 U.S.C. § 1226 applies to noncitizens who are arrested within the interior of the United States and placed into removal proceedings under § 1229a. Section 1226 provides the framework for immigration detention during the pendency of those proceedings, and it includes explicit provisions for release on bond.

46. The statute provides, in relevant part, that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The statute continues: "Except as provided in subsection (c) … the Attorney General may continue to detain the arrested alien; and may release the alien on (A) bond … or (B) conditional parole." *Id.*

47. Thus, individuals detained under § 1226(a) are generally eligible for release during the pendency of their removal proceedings unless they fall into a narrow category

subject to mandatory detention under § 1226(c), namely, those with certain criminal convictions or terrorism-related charges.

48. Federal courts, including the Supreme Court, have repeatedly reaffirmed that § 1226(a) applies to individuals already present inside the United States, even those who entered without inspection. In *Jennings*, the Court contrasted § 1225 with § 1226, explaining that the latter governs detention of noncitizens who are already in the country and subject to removal proceedings under § 1229a. 583 U.S. at 288–89; *See also Demore v. Kim*, 538 U.S. 510, 513 (2003) (interpreting § 1226 as authorizing arrest and detention of individuals in removal proceedings within the U.S.).

49. Individuals detained under § 1226(a) must be provided with an individualized bond hearing to assess whether detention is justified based on flight risk or danger to the community. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (holding that due process requires the government to prove by clear and convincing evidence that continued detention is justified); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021) (affirming district court's order granting habeas and ordering bond hearing under § 1226(a)); *Brito v. Garland*, 22 F.4th 240, 256–57 (1st Cir. 2021) (recognizing class-wide due process rights for § 1226(a) detainees).

50. The regulations implementing § 1226(a) confirm this procedural structure. Immigration Judges are authorized to conduct custody redetermination hearings, and individuals may seek release by demonstrating eligibility under 8 C.F.R. §§ 236.1(d)(1), 1236.1(d), and 1003.19(a).

51. The longstanding interpretation of § 1226 has always included individuals who entered without inspection but were later apprehended in the interior, often years after arrival. As early as 1997, the Immigration and Naturalization Service (INS) confirmed this understanding in its interim rule implementing IIRIRA, stating: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (emphasis added).

52. The consequences of this interpretation are profound. Under *Hurtado*, even a person who has lived and worked in the United States for decades, raised U.S. citizen children, and had no prior contact with immigration authorities may be suddenly detained without the possibility of release, based solely on the fact that their entry was unlawful.

53. Accordingly, this Court should find that Petitioner is not subject to detention under § 1225, that he is lawfully detainable, if at all, only under § 1226(a), and that he is entitled to an immediate bond hearing.

54. The statutory and constitutional framework described above makes clear that individuals who were arrested within the United States, as opposed to at or near the border or at a port of entry, must be detained, if at all, under 8 U.S.C. § 1226, not § 1225.

55. Petitioner entered the United States on or around January 15, 2014. He remained continuously present in the country for over two years, residing peacefully and

without any interaction with immigration enforcement or the criminal justice system.

56. On or about November 16, 2025, he was detained, and is now in the custody of U.S. Immigration and Customs Enforcement (ICE).

57. His detention occurred deep within the interior of the United States, and years after his entry.

58. He was not apprehended within the two-year period used by DHS for expedited removal under 8 C.F.R. § 235.3(b)(1)(ii), nor was he arrested near the border. No expedited removal proceedings were initiated against him. Instead, DHS placed him into § 1229a removal proceedings, the standard civil removal process under the Immigration and Nationality Act.

59. Accordingly, Mr. Montoya Ramirez is not an "arriving alien" and cannot lawfully be treated as an "applicant for admission" under § 1225(b).

60. He is not subject to expedited removal. There is no statutory or regulatory basis to justify his classification under § 1225(b)(2), and such classification is in direct violation of the INA.

61. Because he was arrested within the United States and not at the border, and because he has been placed into full § 1229a proceedings, Mr. Montoya Ramirez is plainly within the category of individuals covered by 8 U.S.C. § 1226(a).

62. This provision gives the Attorney General discretion to detain individuals pending removal proceedings, but also provides clear authority to release them on bond or conditional parole.

63. Mr. Montoya Ramirez poses no danger to the community and has shown stability through years of peaceful residence in the United States.

64. He is not subject to mandatory detention under § 1226(c), as he has not been convicted of any of the offenses enumerated in that section.

65. Because § 1226(a) governs his detention, Mr. Montoya Ramirez is entitled by law to a custody redetermination hearing before an Immigration Judge under 8 C.F.R. §§ 1003.19(a), 1236.1(d), in which he may request release on bond or other conditions. ICE's refusal to recognize his eligibility for such a hearing, based on an improper classification under § 1225(b), constitutes a violation of statutory rights, agency regulations, and the Due Process Clause of the Fifth Amendment.

66. The government's assertion that Mr. Montoya Ramirez is subject to § 1225(b) solely because of the manner of his entry, regardless of the place, timing, or circumstances of his arrest, is legally indefensible and contrary to binding statutory interpretation. Congress did not authorize the indefinite civil detention of individuals living in the U.S. for years without a bond hearing, particularly when they pose no threat to public safety or risk of flight.

67. Therefore, this Court should conclude that Petitioner's detention under § 1225(b) is unlawful, that § 1226(a) governs his custody, and that he is entitled to an immediate bond hearing or release from detention unless such a hearing is provided.

FACTUAL ALLEGATIONS

68. Petitioner Miguel Angel Montoya Ramirez is a native and citizen of Mexico, born on August 2, 1995.

69. He entered the United States without inspection on or around January 15, 2014, and has resided continuously in the country ever since.

70. Since his arrival, Petitioner has made [redacted]Colorado, his home. He has lived quietly, worked to support himself, and created a beautiful family alongside his U.S. Citizen children, supporting the children and his family through dedicated commitment, faith and hard work.

71. He has diligently paid his taxes, contributed to his community, and has an incredible showing of support from his friends in the community who have all known him for a long time.

72. The Petitioner was reported by a neighbor to ICE and was subsequently detained at his home though he had not committed any civil infraction or criminal offense. He was not issued a citation or ticket and was not charged or arrested.

73. Instead, he was detained without any apparent reason and has since been held at the Denver Contract Detention Facility in Denver, Colorado.

74. It has now been more than a month since Mr. Montoya Ramirez's detention by ICE. He has not violated any laws.

75. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a bond hearing with strong procedural protections. *See Hernandez-Lara*, 10 F.4th at 41; Doe, 11 F.4th at 2; *Brito*, 22 F.4th at 256-57 (affirming class-wide declaratory judgment); 8 C.F.R. §§ 236.1(d), 1003.19(a)-(f).

76. Under *Matter of Hurtado*, however, the responsible administrative agency has predetermined that Petitioner will be denied a bond hearing, and the government is holding Petitioner under the purported authority of 8 U.S.C. § 1225(b)(2), under which Petitioner will not receive a bond hearing.

77. Since his arrest, Petitioner has been detained at Denver Contract Detention Facility in the District of Colorado, a civil immigration detention center. He has been held continuously since at least January 2, 2025.

CAUSES OF ACTION

COUNT I

Violation of 8 U.S.C. § 1226(a) and Associated Regulations

78. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through seventy-seven (77) as though fully set forth herein.

79. Petitioner is a noncitizen who entered the United States on or about January 15, 2014, and who has resided continuously in the interior of the country, for more than two years prior to his detention on or around November 16, 2025.

80. Petitioner was detained inside the United States and placed into § 1229a removal proceedings via service of a Notice to Appear (NTA). He was not apprehended near the border, not placed in expedited removal under § 1225(b)(1), and was not charged as an arriving alien.

81. Under these circumstances, federal law provides that the exclusive statutory authority governing his detention is 8 U.S.C. § 1226(a). That provision applies to all noncitizens who are present in the United States and who are detained pending a decision on their removal.

82. Section 1226(a) authorizes discretionary detention and permits the Attorney General (or DHS) to detain or release a noncitizen "on bond … or conditional parole." *See also* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d), 1003.19(a) (governing procedures for bond redeterminations by Immigration Judges).

83. Petitioner is not subject to mandatory detention under § 1226(c), as he has no disqualifying criminal convictions, nor is he subject to final removal and post-order custody under § 1231.Nonetheless, Respondents have refused to provide Petitioner with a bond hearing under § 1226(a), asserting instead that his detention is governed by § 1225(b)(2)(A), a statute that applies only to arriving aliens and applicants for admission.

84. Petitioner is not an arriving alien. He was arrested well within the interior of the United States, far from any border or port of entry, and years after his unlawful entry. He is not in expedited removal, and the two-year window referenced in DHS's expanded expedited removal policy has long since elapsed.

85. By continuing to detain Petitioner under § 1225(b)(2), Respondents are unlawfully invoking a detention statute that does not apply to his case, thereby depriving him of the rights and procedures guaranteed under § 1226(a), including the right to seek release on bond and to appear before an Immigration Judge for a custody redetermination.

86. This misclassification violates not only the text and structure of the Immigration and Nationality Act (INA), but also the implementing regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, which expressly authorize bond hearings for § 1226 detainees.

87. For decades, DHS and its predecessor agencies adhered to the correct interpretation that individuals who entered without inspection and are later arrested in the interior are detainable under § 1226(a) and entitled to bond hearings. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (recognizing such individuals as "eligible for bond and bond redetermination").

88. Respondents' current interpretation, and their reliance on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), to support § 1225(b) detention of interior arrestees, represents an unlawful reversal of prior agency practice and a violation of Petitioner's statutory rights.

89. Because Petitioner is lawfully detainable, if at all, only under § 1226(a), and because Respondents have failed to provide him with a bond hearing as required by statute and regulation, his continued detention is in violation of federal law.

90. Petitioner respectfully requests that this Court declare his detention under § 1225(b) unlawful, find that he is detainable only under § 1226(a), and order that he be provided with an individualized bond hearing before an Immigration Judge without delay.

COUNT II

Violation of Fifth Amendment Right to Due Process

(Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a))

91. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through seventy-seven (77) as though fully set forth herein.

92. The Fifth Amendment to the United States Constitution provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

93. These due process protections extend to all persons within the United States, including noncitizens who entered the country without inspection and are subject to removal proceedings. *See Zadvydas*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Plyler v. Doe*, 457 U.S. 202, 210 (1982).

94. Petitioner has been detained since or around November 16, 2025, by U.S. Immigration and Customs Enforcement (ICE), at an interior location far from any border or port of entry, and more than twelve years after his entry into the United States.

95. Following his arrest, Petitioner was placed in removal proceedings under 8 U.S.C. § 1229a, but was denied any opportunity to appear before an Immigration Judge to request release on bond, based on ICE's assertion that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

96. Detention under § 1226(a) is discretionary, and due process requires that an individual detained under this provision be provided with an individualized bond hearing before an Immigration Judge, in which the government must demonstrate, at a minimum, that continued detention is necessary to prevent flight or danger to the community. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256–57 (1st Cir. 2021).

97. Prolonged civil detention without an individualized custody hearing constitutes a serious deprivation of liberty that must be accompanied by robust procedural protections under the Constitution. *Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418, 425 (1979).

98. Petitioner has now been detained without any opportunity to contest his custody or present evidence of his community ties, U.S. citizen family, and stable residence in the United States.

99. The government's refusal to provide Petitioner a bond hearing, despite the applicability of § 1226(a), violates his procedural and substantive due process rights under the Fifth Amendment. The continued detention of Petitioner without any

bond hearing, based solely on the misapplication of a statute that does not govern his case, is arbitrary, capricious, and unconstitutional.

100. Accordingly, Petitioner respectfully requests that this Court declare that Respondents' refusal to provide a bond hearing violates the Due Process Clause of the Fifth Amendment, and order that Petitioner be immediately provided with an individualized bond hearing before an Immigration Judge with appropriate procedural protections.

COUNT III

Violation of Fifth Amendment Right to Due Process

(Failure to Provide an Individualized Hearing for Domestic Civil Detention)

101. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through seventy-seven (77) as though fully set forth herein.

102. The Fifth Amendment to the United States Constitution guarantees that "[n]o person shall be … deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

103. It is well established that civil immigration detention constitutes a significant deprivation of liberty and therefore triggers constitutional due process protections, particularly when that detention is prolonged and occurs within the interior of the United States. *See Zadvydas*, 533 U.S. 678, 690 (2001); *Foucha*, 504 U.S. 71, 80 (1992); *Addington*, 441 U.S. 418, 425 (1979).

104. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. Zadvydas, 533 U.S. 678 at (2001).

105. The Supreme Court, thus, "has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. Addington, 441 U.S. at 425; see also Salerno, 481 U.S. at 755; Foucha, 504 U.S. at 81-83; Hendricks, 521 U.S. at 357.

106. Petitioner will be held without being provided any individualized detention hearing.

107. Petitioner's continuing detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

COUNT IV

Violation of Fifth Amendment Right to Due Process

(Substantive Due Process)

108. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through seventy-seven (77) as though fully set forth herein.

109. Because Petitioner is not being provided a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a "reasonable relation" to the purposes of immigration detention (i.e., the prevention of flight and danger to the community during the pendency of

removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

110. Petitioner's detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

COUNT V

Violation of Administrative Procedure Act (5 U.S.C. § 706)

111. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through seventy-seven (77) as though fully set forth herein.

112. The Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq., provides for judicial review of federal agency action.

113. Under the APA, a reviewing court must "hold unlawful and set aside agency action, findings, and conclusions found to be" (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; b) contrary to constitutional right, power, privilege, or immunity; (c) in excess of statutory jurisdiction or authority; or (d) without observance of procedure required by law. 5 U.S.C. § 706(2)(A)-(D).

114. Petitioner is being detained without a bond hearing pursuant to the BIA's decision in Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (B.I.A. 2025).

115. This classification directly contradicts the statutory structure of the Immigration and Nationality Act (INA), longstanding agency practice, and the regulatory

framework governing civil immigration detention. *See* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d), 1003.19(a).

116. DHS has not issued a formal rulemaking regarding this change in classification or detention policy, nor has it provided notice-and-comment procedures required under the APA for legislative rule changes.

117. This failure to follow procedural safeguards renders the application of this policy unlawful under 5 U.S.C. § 553 and reviewable under § 706(2)(D).

118. By detaining Petitioner under § 1225(b), refusing to afford him a bond hearing, and failing to apply the proper statutory and regulatory framework, Respondents have acted in a manner that is: (a) contrary to law (INA and implementing regulations); (b) in excess of their statutory authority;(c) arbitrary and capricious; and (d) in violation of constitutional and procedural due process rights.

119. Respondents' actions are therefore unlawful under the APA, and must be set aside by this Court under 5 U.S.C. § 706(2).

120. Petitioner respectfully requests that this Court declare Respondents' classification and detention of Petitioner under § 1225(b) to be unlawful, and that it direct Respondents to reclassify him under § 1226(a), provide him an individualized bond hearing, and release him from custody.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Honorable Court will:

121. Assume jurisdiction over this matter pursuant to 28 U.S.C. § 2241 and Article I, Section 9, Clause 2 of the U.S. Constitution (the Suspension Clause);

122. Order Respondents to Show Cause within three days unless, for good cause, additional time, not exceeding twenty (20) days, is allowed pursuant to 28 U.S.C. § 2243.

123. Order that Petitioner shall not be transferred outside the District of Colorado.

124. Declare that Petitioner is not subject to detention under 8 U.S.C. § 1225(b), and that he is lawfully detainable, if at all, only under 8 U.S.C. § 1226(a);

125. Declare that Petitioner's continued detention without an individualized bond hearing violates: (a) the Immigration and Nationality Act; (b) the Due Process Clause of the Fifth Amendment (procedural and substantive); (c) the Administrative Procedure Act, 5 U.S.C. § 706;

126. Issue a preliminary injunction and Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, order Respondents to release Petitioner if he is not provided a bond hearing within seven (7) days after the Court's order;

127. Under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) & 5 U.S.C. § 504 et seq., individuals can recover attorneys' fees and costs for successful federal court litigation against the U.S. government. The EAJA statute applies to "any civil action (other than cases sounding in tort), including proceedings for judicial review

of agency action, brought by or against the United States in any court having jurisdiction of that action." 28 U.S.C. § 2412(d)(1)(A); and

128. Grant such other and further relief as the Court deems just, proper, and equitable.

Respectfully submitted,

/s/Eduardo R. Soto, Esq.
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VERIFICATION PURSUANT TO 8 U.S.C. § 2242

I represent Petitioner, Miguel Angel Montoya Ramirez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: March 10, 2026

/s/ Eduardo R. Soto
Eduardo R. Soto

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 10, 2026, I electronically filed the foregoing document with the Clerk of Court using PACER. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties, either via transmission of Notices of Electronic Filing generated by PACER or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

/s/ Eduardo R. Soto, Esq.
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