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

UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLORADO

ADAN GREY DURAN MENDOZA,

Petitioner,

v.

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

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

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

JUAN BALTAZAR, in his official capacity as Warden of the Aurora Immigration Detention Facility,

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

The Executive Office for Immigration Review,

United States Immigration and Customs Enforcement,

The Board of Immigration Appeals,

Respondents

Case No. _____

VERIFIED PETITION FOR HABEAS CORPUS

IMMIGRATION HABEAS CASE

INTRODUCTION

ADAN GREY DURAN MENDOZA (Petitioner), by and through his undersigned counsel, hereby files this petition for a writ of habeas corpus. Upon information and belief, Petitioner entered the United States at or near Eagle Pass, Texas, on or about June 17, 2022, without parole or inspection. (Exhibit 1). Petitioner is a native of Venezuela. (Exhibit 1). Petitioner was apprehended by the Department of Homeland Security (DHS) on or about June 19, 2022, shortly after his entry into the United States. On June 19, 2022, DHS issued a Warrant for Arrest of Alien and served Petitioner with a Notice to Appear charging him as removable under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act for being present in the United States without admission or parole. Petitioner was subsequently released from ICE custody on June 20, 2022, on his own recognizance subject to conditions of supervision, including participation in the Alternatives to Detention (ATD) program, electronic monitoring, and reporting requirements.

Petitioner complied with all conditions of release and appeared for his immigration proceedings as required. On August 5, 2022, the Immigration Court granted a motion to change venue from the Immigration Court in Laredo, Texas to the Immigration Court in Denver, Colorado, where Petitioner's removal proceedings remain pending. Petitioner has not been convicted of any crimes while under DHS supervision.

On or about January 27, 2026, after more than three years of compliance with DHS supervision and immigration court proceedings, Immigration and Customs Enforcement (ICE) re-detained Petitioner. Petitioner is currently detained in ICE custody in the State of Colorado. (Exhibit 2).

Under 8 U.S.C. § 1226(a), aliens who have been apprehended within the United States and placed in removal proceedings - other than arriving aliens - are generally eligible for a

bond redetermination before an immigration judge. This statutory framework authorizes immigration officers to initially arrest and detain such individuals pending a determination in the relevant removal proceedings, but also provides authority for release on bond or conditional parole based on a discretionary custody determination. This framework exists to prevent prolonged detention by ensuring that individuals detained under § 1226(a) may seek custody redetermination before an immigration judge. The provisions of 8 U.S.C. § 1226(a) apply to noncitizens who have been living within the United States, including those who entered without inspection or overstayed a lawful admission, and were designed with the intention of providing a neutral review of custody decisions. During this process, the individual may request a bond hearing before an immigration judge who is tasked with evaluating relevant factors such as flight risk and danger to the community. Where the immigration judge ascertains that the relevant bond redetermination factors have been satisfactorily proven, the judge may subsequently set bond or impose conditions of supervision. However, the bond redetermination mechanism does not extend to arriving aliens, who remain subject to a separate parole framework under 8 U.S.C. § 1182(d)(5). This distinct and separate classification underscores detention and release provisions that are otherwise applicable to different categories of noncitizens.

The Department of Homeland Security has, at times, advanced an expansive interpretation of the "arriving alien" classification for certain individuals who entered the United States without inspection. However, such an interpretation conflicts with the statutory framework of the Immigration and Nationality Act and the regulatory definitions governing custody jurisdiction. The prior Board decision that attempted to advance such an interpretation, Matter of Yajure Hurtado, has since been vacated and therefore does not control the legal analysis governing Petitioner's custody classification.

The Board of Immigration Appeals' prior expansive interpretation of the "arriving alien" classification is erroneous in its expansive and unlawful application to individuals like Petitioner, who are otherwise eligible for bond redetermination under the plain text of the Immigration and Nationality Act (INA), as well as the existent structure of the custody regulations. The INA makes a point to expressly distinguish between "arriving aliens" - defined as those individuals who present themselves at a port of entry - and "applicants for admission" under 8 U.S.C. § 1225(a)(1) - who are individuals apprehended only after entering the United States. These applicants for admission - like Petitioner - are processed under the detention authority articulated in 8 U.S.C. § 1226(a). The INA made certain to draw the distinction, perhaps in anticipation that DHS might seek a more expansive and overbroad application of bond ineligibility to otherwise eligible applicants under the code. In further assertion of its plain text, the INA regulations reinforce the critical distinction by clearly defining an "arriving alien" as "one who is coming to the United States" at a port of entry, but not someone already present within the interior - regardless of lawfulness at the point therein. The statutory and regulatory purpose of 8 U.S.C. § 1226(a) provides a bond relief mechanism for individuals apprehended within the country; any interpretation collapsing these statutory and regulatory distinctions thereby deprives otherwise eligible individuals of their entitled relief. While the collapse and nullification of decades of regulatory practice is problematic, such interpretations create a mechanism to collapse non-arriving-alien custody jurisdictions, thereby rendering bond redetermination an effectively meaningless gesture only situated to produce prolonged detention and mitigated relief. While the Board's holding certainly cannot be rectified with existing statutory text, regulatory definitions, or the broader Congressional scheme, perhaps that is void of the point. Perhaps

the point is to void decades of an existing regulatory scheme to reinforce the prolonged detention of individuals like Petitioner.

The Maldonado Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM, 2025 WL 523334 (C.D. Cal. Dec. 18, 2025), although not binding authority on this Court, provides persuasive analysis recognizing that noncitizens who entered the United States without inspection and were later apprehended within the interior of the country fall within the detention framework of 8 U.S.C. § 1226(a), rather than the mandatory detention scheme governing arriving aliens. A denial of Petitioner's bond application would highlight a futile attempt at exercising the relief articulated in the INA by Petitioner. More importantly, however, it highlights the Department of Justice's unlawful exercise of conflicting BIA holdings, and a subsequent commitment by the Department of Justice to hollow decades of statutory and regulatory framework. Although Maldonado Bautista does not bind this Court, the reasoning therein underscores the statutory structure governing custody determinations, in connection with the statutory custody framework set forth in the INA, which constitutes unlawful detention in violation of 8 U.S.C. § 1226(a) and the Due Process Clause of the United States Constitution.

Pursuant to *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), federal courts must exercise independent judgment when interpreting federal statutes and may not defer to an agency's interpretation merely because a statute is ambiguous. The Supreme Court made clear that the Administrative Procedure Act requires courts—not agencies—to determine the meaning of statutory provisions and whether an agency has acted within the bounds of its lawful authority. *Id.* at 392–94. Accordingly, interpretations advanced by the Board of Immigration Appeals are not entitled to automatic or controlling deference. Although immigration judges remain bound by BIA precedent, including decisions such as

Matter of Q. Li, 29 I. & N. Dec. 66 (B.I.A. 2025), federal courts reviewing detention under the Immigration and Nationality Act must independently interpret the statute and determine whether the agency's interpretation is consistent with the statutory framework enacted by Congress. At most, such agency interpretations may be considered for their persuasive value under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Accordingly, this Court must independently determine whether Respondents' interpretation of the INA—resulting in Petitioner's continued detention without meaningful custody review—is consistent with the statute.

Moreover, the absence of meaningful custody review is particularly significant in this case because Petitioner was previously released by DHS on his own recognizance in June 2022 and complied with all conditions of supervision for more than three years before being re-detained on January 27, 2026 while his removal proceedings remain pending.

JURISDICTION AND VENUE

This court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701 et seq., the Due Process Clause of the United States Constitution and the Immigration Naturalization Act (INA). This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., and All Writs Act, 28 U.S.C. § 1651. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of conduct perpetuated by DHS and DOJ. Nothing in 8 U.S.C. § 1252 strips federal district courts of jurisdiction to consider habeas petitions challenging the legality of immigration detention. See Zadvydas v. Davis, 533 U.S. 678, 687 (2001).

Venue is proper pursuant to 28 U.S.C. § 1391(e) because Respondents are agencies of the United States or officers or employees thereof acting in their official capacity or

under color of legal authority. Petitioner is also in the custody of the Denver Contract Detention Facility, which is in the jurisdiction of the Colorado District Court and there is no real property involved in this action. The habeas statute does not require exhaustion of administrative remedies. Even where courts consider exhaustion as a prudential matter, the requirement does not apply where administrative review would be futile, particularly where the petitioner challenges unlawful or prolonged detention.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

The Court must grant the petition for a writ of habeas corpus or issue an order to show cause (OSC) directing Respondents to respond forthwith, unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id.

Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention, particularly detention that is prolonged or imposed without meaningful avenues for review. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay* v. Noia, 372 U.S. 391, 400 (1963).

Petitioner is "in custody" for purposes of 28 U.S.C. § 2241 because Petitioner is currently detained by Respondents in immigration custody.

PARTIES

PETITIONER

Petitioner, ADAN GREY DURAN MENDOZA, is a Venezuelan citizen who is currently in the custody of the Department of Homeland Security in Aurora, Colorado.

RESPONDENTS

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

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

Respondent Arthur Wilson is the Field Office Director of Immigration and Customs Enforcement. He is in charge of the custody of all Immigration and Customs Enforcement detainees currently pending removal proceedings and determinations in the Colorado District Court. Respondent Arthur Wilson is sued in his official capacity as an agent of the United States Government.

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

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

Respondent Juan Baltazar is the Warden of the Aurora Detention Center who has custody over the Petitioner. Juan Baltazar is sued in his official capacity as an agent of the United States.

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

PROCEDURAL AND FACTUAL BACKGROUND

Petitioner is a citizen of Venezuela. On or about June 17, 2022, Petitioner entered the United States at or near Eagle Pass, Texas. On June 19, 2022, the Department of Homeland Security ("DHS") apprehended Petitioner and issued a Warrant for Arrest of Alien. DHS served Petitioner with a Notice to Appear charging him as removable under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act for being present in the United States without admission or parole. On June 20, 2022, Petitioner was released from ICE custody on his own recognizance subject to conditions of supervision, including participation in the Alternatives to Detention ("ATD") program and reporting requirements. Petitioner complied with all conditions of release and has not been convicted of any crimes while under the Order of Release on Recognizance. Petitioner was ordered to appear before the Immigration Court in Laredo, Texas on August 5, 2022. On that date, the Immigration

Judge granted a motion to change venue to the Immigration Court in Denver, Colorado. Petitioner's removal proceedings remain pending before the Immigration Court in Denver, Colorado. Petitioner's Individual Hearing in those proceedings is currently scheduled for April 28, 2026.

Petitioner remained released under DHS supervision for more than three years before being re-detained on January 27, 2026. Despite Petitioner's compliance with all conditions of supervision for more than three years, Immigration and Customs Enforcement re-detained Petitioner on or about January 27, 2026. Petitioner remains detained by Immigration and Customs Enforcement in the State of Colorado.

LEGAL FRAMEWORK

I. Petitioner's Detention Pursuant to 8 U.S.C. § 1225 or § 1226

8 U.S.C. § 1225(a) provides that "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for the purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). Applicants for admission are divided into two categories: those covered by § 1225(b)(1) and those covered by § 1225(b)(2). See *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). Noncitizens detained under 1225(b)(2) must remain in custody for the duration of their removal proceedings, while those detained under 1226(a) are entitled to a bond hearing before an IJ at any time before the entry of a final removal order. See 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(d)(1). Because Petitioner was apprehended within the United States and placed in removal proceedings, his detention is governed by 8 U.S.C. §1226(a).

The Supreme Court explained that §1225 governs detention of individuals seeking admission at the border, whereas §1226 governs detention of noncitizens already present in

the United States who are placed in removal proceedings. For those who have already entered the interior of the United States, "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).

Petitioner was released from immigration custody on June 20, 2022 on his own recognizance and complied with all conditions of supervision for more than three years. Petitioner has not been convicted of any crimes while under the Order of Release on Recognizance. Despite this compliance, Immigration and Customs Enforcement re-detained Petitioner on January 27, 2026, while his removal proceedings remain pending before the Immigration Court in Denver, Colorado. Under these circumstances, Petitioner's detention is governed by 8 U.S.C. § 1226(a), which authorizes detention pending removal proceedings but expressly provides for the possibility of release on bond following a custody determination by an immigration judge.

II. Petitioner's Detention Violates the Due Process Clause

The Fifth Amendment to the United States Constitution provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. To determine whether civil detention violates a detainee's Fifth Amendment procedural due process rights, courts apply the familiar three-part test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Mathews requires courts to weigh three factors: (1) "The private interest that will be affected by the official action"; (2) "The risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; (3) "The government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural

requirement would entail." Id. at 335–36. Petitioner has been detained since January 27, 2026 without access to the custody review procedures contemplated by §1226(a).

A. Petitioner Has a Legitimate Private Interest in Remaining Free from Physical Detention

The Supreme Court has recognized that freedom from physical detention implicates "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner asserts that the government has violated his due process rights by detaining him without providing access to the custody review procedures contemplated by 8 U.S.C. § 1226(a). Releasing Petitioner would not preclude the government from continuing removal proceedings at the appropriate time. Moreover, Petitioner's liberty interest is not so diminished, because of his immigration status that he should be summarily denied the opportunity to seek a bond determination

B. There is a Significant Risk of Erroneous Deprivation of Petitioner's Due Process Rights

Petitioner has not received a meaningful opportunity to challenge the lawfulness of his current detention. As discussed above, § 1226 governs his detention, and the statute contemplates the availability of a bond redetermination before an immigration judge. The second *Mathews* factor weighs heavily in his favor as he is presently detained without access to the custody review procedures contemplated by the statutory framework governing his detention.

C. The Government Must Show a Compelling Interest in Detaining Petitioner Without Holding a Bond Hearing

Undoubtedly, immigration enforcement is an important public interest. However, it is also in the public interest that the due process rights of individuals subject to immigration enforcement are adequately protected through an individualized custody determination. Releasing the Petitioner on bond, pursuant to an Immigration Judge's determination, would not preclude the government from continuing removal proceedings. Moreover, if appropriate, an Immigration Judge may deny bond following such a hearing.

All three *Mathews* factors weigh in Petitioner's favor. Although the Supreme Court has upheld certain forms of mandatory immigration detention, it has emphasized that such detention must be closely tied to the statutory framework established by Congress. See Demore v. Kim, 538 U.S. 510 (2003); Jennings v. Rodriguez, 138 S. Ct. 830 (2018).

III. Administrative Exhaustion Would be Futile

The exhaustion of available administrative remedies is generally a prerequisite for § 2241 habeas relief, although the Tenth Circuit recognizes that the statute itself does not expressly contain such a requirement. *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010) (citing *Williams v. O'Brien*, 792 F.2d 986, 987 (10th Cir. 1986)). A narrow exception to the exhaustion requirement applies if a petitioner can demonstrate that exhaustion would be futile. Id.

Futility may exist where the administrative body has effectively predetermined the issue before it. *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). Petitioner has not sought administrative custody review because, under the circumstances of this case, such relief would not provide a meaningful opportunity to challenge his current detention. Habeas review is therefore the appropriate mechanism for judicial consideration of the lawfulness of Petitioner's custody.

CAUSES OF ACTION

FIRST CAUSE OF ACTION: Violation of Fifth Amendment Right to Due Process

Petitioner incorporates and references the above allegations herein.

The Due Process Clause of the Fifth Amendment to the United States Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due Process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

These constitutional protections extend to Petitioner, who is currently detained by the federal government while his removal proceedings remain pending.

Here, Petitioner is deprived of due process under the Fifth Amendment because DHS is detaining Petitioner without providing a meaningful opportunity to obtain custody review, despite his placement in removal proceedings and the absence of any statutory bar to such review.

Under the Immigration and Nationality Act, noncitizens detained pursuant to 8 U.S.C. § 1226(a) are entitled to an individualized custody determination before a neutral adjudicator. The United States Supreme Court has repeatedly emphasized that civil immigration detention must include adequate procedural safeguards to satisfy the Fifth Amendment. See *Zadvydas*, 533 U.S. at 690.

Despite Petitioner's release from immigration custody in June 2022 and his compliance with all conditions of supervision for more than three years, Immigration and Customs Enforcement re-detained Petitioner on January 27, 2026 without providing him access to the custody review procedures contemplated by § 1226(a).

As a result, Petitioner is being held unlawfully without the procedural protections required by the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION: Violation of the Immigration and Nationality Act

Petitioner incorporates and references the above allegations herein.

The Immigration and Nationality Act ("INA") establishes specific statutory frameworks governing the detention of noncitizens. Under 8 U.S.C. § 1225(b), certain applicants for admission may be detained pending a determination of admissibility. Under 8 U.S.C. § 1226(a), the Attorney General may arrest and detain noncitizens who are already in removal proceedings, but the statute expressly authorizes release on bond or conditional parole. Furthermore, 8 U.S.C. § 1226(c) mandates detention only for certain noncitizens with specified criminal convictions during removal proceedings. Petitioner does not fall within any of the categories subject to mandatory detention under § 1226(c).

Because Petitioner was apprehended within the United States and placed in removal proceedings under § 212(a)(6)(A)(i), his detention is governed by 8 U.S.C. § 1226(a).

Section 1226(a) authorizes detention pending removal proceedings but contemplates that noncitizens may seek release through an individualized custody determination before an immigration judge. By detaining Petitioner without providing access to the custody review procedures contemplated by § 1226(a), Respondents are acting in a manner inconsistent with the statutory framework established by the INA.

Accordingly, Petitioner must be treated under the detention provisions that govern his circumstances-§ 1226(a)-and afforded the opportunity to seek an individualized custody determination before a neutral adjudicator.

Because Petitioner does not fall within any statutory category that authorizes mandatory detention under the INA, his continued confinement is ultra vires.

Petitioner therefore seeks habeas relief and immediate release from unlawful custody, or alternatively, an order directing Respondents to provide Petitioner with a prompt custody determination before an immigration judge.

RESERVATION OF RIGHTS

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

PRAYER FOR RELIEF

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

A. Assume jurisdiction over this Petition pursuant to 28 U.S.C. § 2241.

B. Declare Petitioner's detention without meaningful access to custody review unlawful pursuant to the Due Process Clause of the Fifth Amendment of the United States Constitution and contrary to the detention framework established by the Immigration and Nationality Act, including 8 U.S.C. § 1226(a).

C. Order Respondents to immediately release Petitioner from custody, or in the alternative order Respondents to provide Petitioner with a prompt individualized custody determination before an Immigration Judge, where DHS has the burden to prove by clear and convincing evidence that Petitioner is a danger to the community or a flight risk.

D. Award Petitioner costs of suit and attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412 to the extent permitted by law.

E. Enter all necessary relief, injunctions, and orders as justice and equity as appropriate to remedy the harms to Petitioner.

F. Grant such further relief as this Court deems just and proper.

DATED this 12th day of March 2026.

Respectfully submitted,

/s/*Jonathon Bell*

Counsel for Petitioner

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

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

Dated this 12th day of March 2026.

Respectfully Submitted,

/s/ Jonathon Bell