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UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01162

JUAN CARLOS MEMBRENO PORTILLO,

Petitioner

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

GEORGE VALDEZ, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in he official capacity,

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

PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

Respondents

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Respondents illegally incarcerate without bond Petitioner Juan Carlos Membreno Portillo ("Mr. Membreno") at Immigration and Customs Enforcement's ("ICE") Denver Contract Detention Facility in Aurora, Colorado ("Aurora Facility"). [1] Mr. Membreno is entitled to a writ of *habeas corpus* to end his unlawful loss of liberty.

2. The issues here are not new. Judges in this District have unanimously found that Respondents' novel and unprecedented interpretation of the statute subjecting millions of people like Mr. Membreno to mandatory detention is illegal. *E.g.*, *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, ECF 16, at *4 (D. Colo. Jan. 15, 2026) (noting this District's unanimity). In fact, Respondents' interpretation "has been rejected in more than 1,500 district court decisions." *Chavez Amrenta v. Noem*, No. 26-cv-00236-PAB, 2026 WL 274634, at *2 (D. Colo. Feb. 3, 2026). Expeditious action from this Court is needed to address Respondents' continued lawlessness because, despite its best efforts, "ICE is not a law unto itself." *Juan T.R. v. Noem*, 26-cv-0107 (PJS/DLM), 2026 WL 232015, at *1 (D. Minn. Jan. 28, 2026).

II. PARTIES

Mr. Membreno

3. ICE charges Mr. Membreno with having entered the United States without inspection. Mr. Membreno has lived in the United States for approximately seven years. He is married and lives with his spouse. He has worked for years in the roofing industry, supporting himself and his spouse.

[1] This Petition does not refer to the Aurora Facility or Petitioner's loss of liberty as detention because it does not accurately reflect the conditions at the Aurora Facility. *E.g.*, *L.G. v. Choate*, 744 F.Supp.3d 1172, 1182 (D. of Colo. 2024) (citation omitted) (acknowledging that the District of Colorado found that the GEO Facility is "more akin to incarceration than civil confinement"). Indeed, the conditions in the Aurora Facility are "abhorrent." *Arostegui-Maldonado v. Baltazar*, 794 F.Supp.3d 926, 940 (D. Colo. 2025).

Mr. Membreno has no criminal history that subjects him to mandatory detention. ICE now incarcerates Mr. Membreno at the Aurora Facility without the opportunity to request bond due to ICE claiming that Mr. Membreno is subject to 8 U.S.C. § 1225(b)(2) mandatory detention.

Respondents

4. Juan Baltazar is the Warden of the Aurora Facility where ICE jails Mr. Membreno, and is an employee of the GEO Group, the for-profit prison company that operates the facility. Mr. Baltazar is a legal custodian of Mr. Membreno. He is sued in his official capacity.

5. George Valdez is the ICE Field Office Director of the Denver ICE Field Office and is sued in his official capacity. Mr. Valdez is the immediate custodian of Mr. Membreno and is responsible for Mr. Membreno' detention and removal.

6. Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). Ms. Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA"). DHS is the parent agency of ICE, and thus Ms. Noem also oversees ICE, which is responsible for Mr. Membreno's illegal detention. Ms. Noem has ultimate custodial authority over Mr. Membreno and is sued in her official capacity.

7. Todd M. Lyons is the Acting Director of U.S. ICE and is sued in his official capacity. Mr. Lyons is responsible for Mr. Membreno's illegal detention and has custodial authority over him.

8. Pamela Bondi is the Attorney General of the United States. She is responsible for the actions of the Department of Justice ("DOJ"). The EOIR and the immigration court system it operates are a component agency of DOJ. Ms. Bondi is sued in her official capacity.

III. JURISDICTION AND VENUE

9. Respondents incarcerate Mr. Membreno at the Aurora Facility in Aurora, Colorado. Mr. Membreno is currently imprisoned in this District and is under the control of Respondents and their agents.

10. Mr. Membreno brings this action under 28 U.S.C. § 2241, the INA and its implementing regulations, the Administrative Procedures Act (5 §§ U.S.C. 500-596, 701-706), the All-Writs Act (8 U.S.C. § 1651), the Declaratory Judgment Act, 28 U.S.C. § 2201, and the U.S. Constitution. District courts have jurisdiction under 28 U.S.C. § 2241 to hear *habeas corpus* actions by noncitizens challenging the lawfulness and constitutionality of their civil immigration detention.

11. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the U.S.

12. Venue is proper under 28 U.S.C. § 1391 because Respondents imprison Mr. Membreno in Aurora, Colorado, within the jurisdiction of this Court. Likewise, Mr. Membreno is a resident of this District, his counsel is in this District, and a substantial part of the events giving rise to the claims in this action took place within this District.

IV. FACTUAL BACKGROUND

A. Legal Authority for Immigration Detention.

13. ICE's authority to jail noncitizens is prescribed by statute. Section 1226(a) of 8 U.S.C. establishes discretionary detention for noncitizens ICE arrests "[o]n a warrant issued by the Attorney General" and then place in 8 U.S.C. § 1229a removal proceedings. 8 U.S.C. § 1226(a). Those noncitizens may then move an immigration judge for a custody hearing at any time prior to a final order of removal. *Id.*; 8 C.F.R. §§ 236.1(d)(1), 1003.19(a), (b). During the custody hearing, i.e., bond hearing, the IJ determines whether the noncitizen is a risk of flight or danger to the

community. *See generally Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006). The statute does not require ICE to conduct an initial custody determination before the noncitizen has the right to seek a custody hearing before the IJ. 8 U.S.C. § 1226(a).

14. Section 1226(c) of 8 U.S.C. establishes mandatory detention for noncitizens with certain criminal legal contacts in § 1229a removal proceedings. 8 U.S.C. § 1226(c). IJs do not have the authority to consider these noncitizens' request for release on bond unless ICE is substantially unlikely to establish that the noncitizen falls within one of § 1226(c)'s mandatory detention provisions. *See generally Matter of Joseph*, 22 I. & N. Dec. 799 (B.I.A. 1999).

15. The statute also provides for mandatory detention of a narrow subset of noncitizens subject to an expedited removal pursuant to § 1225(b) or for other noncitizen "applicants for admission" to the U.S. who are apprehended at the border or port of entry. *See* 8 U.S.C. § 1225(b)(2). Section 1225 focuses on noncitizens "arriv[ing]" "whether or not at a designated port of arrival," and applies to people like those who were "interdicted in international or United States waters" (§ 1225(a)(1)), are "stowaways" (§ 1225(a)(2)), and who are otherwise "applicants for admission" into the U.S. (§ 1225(a)(3)). In contrast to § 1226, § 1225 discusses matters such as "screening" "claims for asylum" (§ 1225(b)(1)(A)(i)-(ii)) at the border, "inspection" by an immigration officer to determine if a noncitizen "is … clearly and beyond a doubt entitled to be admitted" (§ 1225(b)(2) & (d)), and "removal" of "an arriving [noncitizen]" (§ 1225(c)(1)).

16. Finally, the statute provides for detention of noncitizens with final removal orders. 8 U.S.C. § 1231(a), (b).

17. Mr. Membreno does not have any criminal legal contact rendering him subject to 8 U.S.C. § 1226(c). He is also not subject to § 1231 detention because he does not have a final removal

order. Rather, this case concerns the discretionary detention provision at 8 U.S.C. § 1226(a) and Respondents' erroneous assertion that mandatory detention pursuant to § 1225(b) applies.

18. The Supreme Court summarizes the interplay between §§ 1226 and 1225 as follows: "In sum, 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* pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Jennings v. Rodriguez*, 582 U.S. 281, 289 (2018) (Alito, J., emphasis added). The Court has since reiterated this statutory scheme. *E.g.*, *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (Noncitizens "who are arrested and detained may generally apply for release on bond" pursuant to § 1226(a)); *Nielsen v. Preap*, 586 U.S. 392, 395 & 397 (2019) (§ 1226 is the "general rule regarding [noncitizens] arrest and detention" and permits " release . . . on bond").

19. Both the § 1226 and § 1225 detention provisions were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently amended in early 2025 by the Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025), with new provisions specifically enacted to jail individuals who entered the United States without inspection and who have certain criminal legal contacts. 8 U.S.C. § 1226(c)(1)(E).

20. Following the enactment of the IIRIRA in 1996, EOIR wrote regulations applicable to proceedings before IJs explaining that, in general, people who entered the country without inspection (also known as "present without admission") were *not* detainable under § 1225 and instead could only be detained under § 1226. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("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").

21. Thus, in the following decades, people who entered without inspection and did not have certain criminal legal contacts received § 1226(a) bond hearings when placed in § 1229a proceedings. That practice was consistent with additional decades of pre-IIRIRA practice, in which noncitizens who were not "arriving" or seeking entry into the United States 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 the new § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

22. This practice – both pre- and post-enactment of the IIRIRA – is consistent with the fact that noncitizens present in the U.S. have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

23. Despite this long-standing practice and the plain text of the statute, the Board of Immigration Appeals ("BIA") issued an unpublished decision on May 22, 2025, holding that noncitizens who entered the United States without inspection were subject to § 1225(b)(2) mandatory detention as "applicants for admission."

24. On July 8, 2025, ICE, "in coordination with" the DOJ announced a new policy consistent with the unpublished BIA decision from May 22, 2025. The new ICE/DOJ policy, titled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all noncitizens present within the U.S. who entered without inspection – no matter how long ago, no matter where, and no matter how – are deemed "applicants for admission" under 8 U.S.C. § 1225,

and thus subject to mandatory detention under § 1225(b)(2)(A). The new policy applies regardless of when and where a person was apprehended and affects people who reside in the U.S. for years.

25. The federal courts resoundingly rejected Respondents' position almost immediately. *E.g.*, *Rodriguez-Vazquez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, 804 F.Supp.3d 265 (D. Mass. 2025).

26. Nevertheless, on September 5, 2025, the BIA published a precedential decision finding that people who entered without inspection are subject to § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). IJs across the country are now required to apply Respondents' unlawful detention regime absent federal court intervention.

27. Since *Yajure Hurtado*, the federal courts have continued to overwhelmingly reject Respondents' position. *E.g.*, *Sampiao v. Hyde*, 799 F.Supp.3d 14 (D. Mass. 2025); *Pizzaro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden et al.*, 799 F.Supp.3d 59 (D.N.H. 2025); *Lopez Santos v. Noem*, 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Kaiser et al.*, No 25-cv-06924-EMC (EMC), 2025 WL 2637503 (N.D. Ca. Sept. 12, 2025); *Barrera v. Tindall*, No. 3:25-cv-00541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Chafla v. Scott*, 804 F.Supp.3d 247, 258 (D.Me, 2025); *Maldonado Vasquez v. Feeley*, 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2631828 (W.D. Tex. Sept. 22, 2025); *Lepe v. Andrews*, 801 F.Supp.3d 1104 (E.D. Cal. 2025); *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923, at *1 (N.D. Cal. Sept. 25, 2025); *Luna Quispe v. Crawford*, 1:25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *da Silva v.* ICE, 1:25-cv-00284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *B.D.V.S. v. Forestal*,

25-cv-01968, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); 2025); *Da Silva v. Bondi*, No. 25-cv-12672-DJC, 2025 WL 269163 (D. Mass. Oct. 21, 2025).

28. This includes the Western District of Washington and the District of Massachusetts' grants of summary judgement to a class of incarcerated noncitizens presenting the same arguments Mr. Membreno does here. *Rodriguez Vazquez v. Bostock*, 802 F.Supp.3d 1297 (W.D. Wash. Sept. 30, 2025); *Guerrero Orellana v. Moniz*, 802 F.Supp.3d. 297 (D. Mass. 2025).

29. The District of Colorado joined the chorus on September 16, 2025, when Judge Sweeney explained, *inter alia*, that the Government's argument for § 1225(b)(2) detention must fail when a noncitizen is not "seeking admission" into the United States. *Garcia Cortes v. Noem et al.*, No. 1:25-cv-02677-CNS, 2025 WL 2652880 at *3 (D. of Colo. Sept. 16, 2025). The chorus continues unanimously and unabated in this district. *E.g.*, *Mendoza Gutierrez v. Baltasar et al.,* 1:25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Pineda v. Baltasar et al.*, 1:25-cv-2966, 2025 WL 3516291 (D. Colo. Oct. 20, 2025); *Loa Caballero v. Baltazar et al.*, 25-cv-03120, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Hernandez Vazquez v. Baltasar et al.,* 1:25-cv-3049-GPG, 2025 WL 4083603 (D. Colo. Oct. 23, 2025); *Nava Hernandez v. Baltazar et al.*, 1:25-cv-03094, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Artola Aruaz v. Baltazar, et al.*, 1:25-cv-03260-CNS, 2025 WL 3041840 (D. Colo. Oct. 31, 2025), ECF 16; *Cervantes Arredondo v. Baltazar, et al.*, 1:25-cv-03040-RBJ (D. Colo. Oct. 31, 2025), ECF 21; *De Domingo Campos v. Baltazar*, 25-cv-3062, 2025 WL 4083609 (D. Colo. Nov. 13, 2025), ECF 33; *Ortiz Rosales v. Baltazar, et al.*, 25-cv-03275-GPG (D. Colo. Nov. 16, 2025), ECF 25; *Espinoza Ruiz v. Baltazar, et al.*, 1:25-cv-03642-CNS, 2025 WL 3294762 (D. Colo. Nov. 26, 2025), ECF 18; *Velasquez de Leon v. Baltazar et al.*, 1:25-cv-03805-RBJ, *5 n.4 (D. Colo. Dec. 22, 2025), ECF 19 (collecting cases); *Navas Medina v. Batazar et al.*, 1:25-cv-03919-RMR (D. Colo. Dec. 29, 2025), ECF 17; *Rodriguez Rodriguez v.*

Baltasar et al., 1:25-cv-03961-GPG (D. Colo. Dec. 30, 2025), ECF 20; *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, *4 (D. Colo. Jan. 15, 2026), ECF 16 (collecting cases and acknowledging the District's unanimity); *Portillo-Martinez v. Baltazar*, No. 26-cv-00106-PAB, 2026 WL 194163 (D. Colo. Jan. 26, 2026); *Chavez Amrenta v. Noem*, No. 26-cv-00236-PAB, 2026 WL 274634, (D. Colo. Feb. 3, 2026); *Hernandez v. Baltazar*, 26-cv-0276-WMJ-TPO, 2026 WL 304362 (D. Colo. Feb. 5, 2026).

30. Respondents' interpretation that § 1225(b) governs detention in this case is wrong. Indeed, their interpretation "has been rejected in more than 1,500 district court decisions." *Chavez Amrenta*, 2026 WL 274634, at *2. It defies the plain language of the INA, fundamental canons of statutory construction, and the agency's longstanding regulations.

31. The plain language of § 1226 applies to people charged as inadmissible for entering without inspection. *E.g.*, 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to inadmissible individuals makes clear that, by default, inadmissible individuals not subject to subparagraph (E)(ii) are entitled to a bond hearing under subjection (a). As the *Rodriguez-Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez-Vazquez*, 779 F.Supp.3d at 1256-57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

32. Thus, § 1226 applies to noncitizens like Mr. Membreno who are present without inspection, face inadmissibility charges in removal proceedings due to their entrance without inspection, and who do not have certain criminal legal contacts.

33. By contrast, § 1225(b) applies to people *arriving at* U.S. ports of entry or who *recently entered* the U.S. and are encountered *at or near the border*. Section 1225's entire framework is

premised around inspection at the border of people who are "seeking admission" to the U.S. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 582 U.S. at 287.

34. Accordingly, contrary to Respondents' erroneous interpretation of the statute, the mandatory detention provisions of § 1225(b)(2) do not apply to people like Mr. Membreno who "arrived" in the country long ago and have resided in the United States for years before ICE jailed them.

B. Mr. Membreno's Illegal Detention Without Bond

35. Mr. Membreno has lived in the United States for approximately seven years. He has worked for years in the roofing industry, supporting himself and his spouse. Mr. Membreno has no criminal history that subjects him to mandatory detention. Mr. Membreno is an excellent candidate for release on bond so that he may meaningfully defend his removal proceedings while at liberty. *E.g.*, *Matter of Guerra*, 24 I. & N. Dec at 40 (listing factors relevant for bond). Nevertheless, Respondents incarcerate him under the wrong statute without the possibility of requesting bond. Absent intervention by this Court, Mr. Membreno will illegally remain in Respondents' custody.

36. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). While Respondents' current confinement of Petitioner is incarceration, Petitioner seeks habeas relief from *all* forms of illegal ICE custody. *See Jones v. Cunningham*, 371 U.S. 236, 242 (1963) ("While petitioner's parole releases him from immediate physical imprisonment, it imposes conditions which significantly confine and restrain his freedom; this is enough to keep him 'in custody' . . . within the meaning of the habeas corpus

statute"); *Orellana v. Moniz*, 788 F.Supp.3d 61, 68 (D. Mass. June 11, 2025) (same for a noncitizen with an ankle monitor); *Hogarth v. Santacruz*, 5:25-cv-09472-SPG-MAR, 2025 WL 3211461, *13 (C.D. Cal. Oct. 23, 2025) (same). This includes the imposition of GPS monitoring, check-in requirements, in-person or telephonic requirements, retention of identity documents, delays in bond payment or actual release, and any other conditions ICE unilaterally imposes as part of judge-ordered release. As discussed *supra*, Respondent's novel interpretation of the statute is wrong. Its authority to jail Petitioner is pursuant to § 1226(a) and its refusal to offer him a custody hearing is unlawful.

V. CLAIMS FOR RELIEF

COUNT I
Respondents Jail Mr. Membreno in Violation of 8 U.S.C. § 1226(a)

37. Mr. Membreno incorporates by reference the allegations of fact set forth in the preceding paragraphs.

38. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Mr. Membreno because he was present and residing in the U.S., has been placed in § 1229a removal proceedings, and charged with inadmissibility pursuant to 8 U.S.C. § 1182. Simply, § 1225 does not apply to people like Mr. Membreno who previously entered the country and reside in the U.S. prior to being detained and placed in removal proceedings. Such noncitizens may only be detained pursuant to § 1226(a), unless they are subject to mandatory detention provisions of § 1226(c) irrelevant here.

39. An IJ's jurisdiction to hear a noncitizen's request for liberty in a custody hearing is not contingent upon ICE conducting an initial custody determination. 8 U.S.C. § 1226(a). Noncitizens subject to § 1226(a) incarceration require access to a bond hearing; the only exceptions are found in § 1226(c) which are not relevant here.

40. Applying § 1225 to Mr. Membreno unlawfully mandates his continued detention without a custody determination hearing and violates 8 U.S.C. § 1226(a).

COUNT II
Respondents are Detaining Mr. Membreno in Violation of the INA Bond Regulations (8 C.F.R. §§ 236.1, 1236.1 & 1003.19)

41. Mr. Membreno incorporates by reference the allegations of fact set forth in the preceding paragraphs.

42. Respondent EOIR and the then Immigration and Naturalization Service issued a rule to interpret and apply the IIRIRA under the heading "Apprehension, Custody, and Detention of [Noncitizens]," which explained: "Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond*." 62 Fed. Reg. at 10323 (emphasis added). Respondents thus long-ago made clear that people like Mr. Membreno who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and the implementing regulations.

43. Nonetheless, Respondents here deemed Mr. Membreno subject to mandatory detention under § 1225, which unlawfully mandates his continued detention.

44. Respondents' application of § 1225(b)(2) to Mr. Membreno unlawfully requires his continued detention in violation of 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Respondents are Detaining Mr. Membreno in Violation of the Administrative Procedures Act (5 U.S.C. § 706(2))

45. Mr. Membreno incorporates by reference the allegations of fact set forth in the preceding paragraphs.

46. Under the APA, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

47. Respondents' detention of Mr. Membreno pursuant to § 1225 is arbitrary and capricious, and in violation of the Fifth Amendment of the U.S. Constitution. Respondents do not have statutory authority under § 1225 to detain Mr. Membreno.

48. Respondents' detention of Mr. Membreno without access to bond is arbitrary, capricious, an abuse of discretion, violative of the U.S. Constitution, the statute, the implementing regulations and therefore in violation of 5 U.S.C. § 706(2).

COUNT IV

Respondents Detain Mr. Membreno in Violation of his Fifth Amendment Due Process Rights

49. Mr. Membreno incorporates by reference the allegations of fact set forth in the preceding paragraphs.

50. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the [Fifth Amendment's due process] Clause protects." *Zadvydas*, 533 U.S. at 690.

51. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty . . . ." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified). The "touchstone" of due process is protecting people against arbitrary government action, whether from "denial of a

fundamental procedural fairness, or the exercise of power without any reasonable justification in the service of a legitimate government objection." *Cty. of Sacremento v. Lewis*, 532 U.S. 833, 845–46 (1998).

52. Whether government action violates procedural due process is determined by the three-factor balancing test in *Mathews*. 424 U.S. at 335. The test requires the Court to balance (1) "the private interest that will be affected by the official action"; (2) "the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (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.*

53. Mr. Membreno has a fundamental interest in liberty and being free from official restraint, such as imprisonment in the Aurora Facility, *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary government action"), and ICE's unilaterally imposed restrictions including, *inter alia*, 24/7 GPS monitoring, reporting requirements, and restrictions on movement, *Orellana*, 788 F.Supp.3d at 68. The risk of erroneous deprivation is high considering the government is not providing Mr. Membreno any process at all—including ICE's initial decision to incarcerate Mr. Membreno — and the administrative burden on the government to provide him with a custody hearing is negligent.

54. Respondents' detention of Mr. Membreno without providing him with either an initial custody determination or a custody hearing before a neutral adjudicator to determine whether he is a flight risk or danger to others violates his right to Due Process.

COUNT VI

Violation of Substantive Due Process

55. Mr. Membreno incorporates by reference the allegations and facts set forth in the preceding paragraphs.

56. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. at 693.

57. The civil incarceration of noncitizens is only authorized for specific, non-punitive purposes. *Id.* at 690. Those purposes are limited to "certain special and narrow nonpunitive circumstances" including the mitigation of flight and danger to the community. *Id.*

58. Here, Respondents jail Mr. Membreno pursuant to the wrong statute and refuse to permit an independent adjudicator to consider whether the decision to incarcerate Mr. Membreno is limited to certain special, narrow, and non-punitive purposes. Continued incarceration therefore serves no purpose and violates Mr. Membreno's substantive due process rights.

PRAYER FOR RELIEF

Mr. Membreno respectfully asks that this Court take jurisdiction over this matter and grant the following relief:

1. Issue a writ of *habeas corpus* requiring Respondents to release Mr. Membreno immediately from all forms of custody and enjoin ICE from unilaterally imposing additional restraints on liberty like 24/7 GPS monitoring, reporting requirements, or restrictions on movement, or delays in bond payment or effectuating release through the CeBONDS system, or in the alternative, schedule him for a custody hearing pursuant to 8 U.S.C. § 1226(a) before this Court within seven days, regardless of whether ICE conducted an initial custody

determination, and at which Respondents must demonstrate by clear and convincing evidence that continued custody of any kind is necessary;

2. Or, also in the alternative, order Respondents to schedule him for a custody hearing pursuant to § 1226(a) before a neutral IJ within seven days, regardless of whether ICE conducted an initial custody determination, at which Respondents must demonstrate by clear and convincing evidence that continued custody of any kind is necessary;
3. Enjoin Respondents from unilaterally imposing additional forms of custody like 24/7 GPS monitoring, reporting requirements, or restrictions on movement, or delays in bond payment or delays in effectuating release through the CeBONDS system unless this Court or an IJ orders those conditions after Respondents convince this Court or an IJ by clear and convincing evidence in the custody hearing that they are necessary;
4. Enjoin Respondents from invoking the automatic stay provision in 8 C.F.R. § 1003.19(i)(2) if bond is granted;
5. Enjoin ICE from delaying the payment or processing of bond once one is issued due to its claim that 8 C.F.R. § 1003.19(i)(2) permits it to do so.
6. Enjoin Respondents from denying Petitioner a custody hearing due to DHS' refusal to conduct, claiming a failure to conduct, or failure to evidence, an initial custody determination;
7. Require the IJ to consider the Respondent's financial circumstances and ability to pay a bond when deciding what bond amount is appropriate;
8. Enjoin Respondents from transferring Petitioner outside the jurisdiction of the District of Colorado pending resolution of this case;

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

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

Dated: March 20, 2026

/s/ Daniel Herrera
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VERIFICATION

I, Ana Loera, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.:

/s/ Ana Loera
Ana Loera
Meyer Law Office, PC
1547 Gaylord St.
Denver, CO 80206
Phone: 303.831.0817
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CERTIFICATE OF SERVICE

I, Daniel Herrera hereby certify that on March 20, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Daniel Herrera, hereby certify that I will mail a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 by certified mail by March 24, 2026, or sooner pursuant to any forthcoming Court order regarding service. Kevin Traskos, attorney for Respondents, confirmed with undersigned counsel that he will accept service on behalf of all Respondents.

Kevin Traskos
Chief, Civil Division
U.S. Attorney's Office
District of Colorado
1801 California Street, Ste. 1600
Denver, CO 80202

Pam Bondi
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

And to: Kristi Noem and Todd Lyons, DHS/ICE, c/o:

Office of the General Counsel
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave., SE
Washington, D.C. 20528

And to:

Juan Baltazar
GEO Group, Inc.
3130 N. Oakland Street
Aurora, CO 80010

And to:

George Valdez
Denver ICE Field Office
12445 E. Caley Ave.
Centennial, CO 80111

/s/ Daniel Herrera

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