UNITED STATES DISTRICT COURT
DISTRICT COURT OF COLORADO

Tomas Nicolas Diego

Petitioner,

v.

Robert Hagan, Field Office Director of Enforcement and Removal Operations, Denver Field Office, Immigration and Customs Enforcement; Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Juan Baltazar, Warden of the Aurora Detention Facility

Respondents.

Case No.

PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Petitioner Tomas Nicolas Diego brings this petition for a writ of habeas corpus to challenge his unlawful detention. Under the law, he should be detained under 8 U.S.C. 1226(a) and therefore eligible for bond. Petitioner is in physical custody of Respondents at the ICE Detention Facility in Aurora, Colorado. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) erroneously claim that Petitioner is detained under 8 C.F.R. §1225(b)(2) and therefore ineligible for bond. Petitioner requests that Respondent immediately release him from custody, or in the alternative to provide him a bond hearing at which the government shall bear the burden to justify the continued detention.

II. PARTIES

1. Petitioner is a citizen of Guatemala who has been detained by ICE since December 2025. Petitioner has resided in the United States since 2024.
2. Robert Hagan is the ICE Field Office Director of the Denver ICE Field Office and is sued in his official capacity. Mr. Guadian is the immediate custodian of Petitioner and is responsible for Petitioner's detention and removal.
3. Respondent Kristi Noem (or her successor) is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem (or her successor) has ultimate custodial authority over Petitioner and is sued in her official capacity.

4. Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE) and is sued in his official capacity. Mr. Lyons is responsible for Petitioner's illegal detention and has custodial authority over him.
5. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.
6. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.
7. Respondent Juan Baltazar is the Warden of the Aurora Facility where ICE jails Petitioner, and is an employee of the GEO Group, the for-profit prison company that operates the facility. Mr. Baltazar is a legal custodian of Petitioner. He is sued in his official capacity.

III. JURISDICTION AND VENUE

1. Petitioner is in physical custody of Respondents. Petitioner is detained at the ICE Detention Center in Aurora, Colorado.
2. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
3. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

4. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Colorado, the judicial district in which Petitioner currently is detained.
5. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Colorado.

IV. FACTUAL BACKGROUND

1. Petitioner is an 18-year-old Guatemalan citizen who entered the United States on or about October 12, 2024. *Exhibit A*, at 2-3: *Putative*[1] *Notice to Appear.*
2. On October 12, 2024, Petitioner received a Notice of Custody Determination "pursuant to the authority contained in section 236 of the Immigration and Nationality Act." *Exhibit C*, Notice of Custody Determination. On the same date, Petitioner was served a putative Notice to Appear charging him as a noncitizen present without admission under INA 212(a)(6)(A)(i). *Exhibit A,* at 2-3: *Putative Notice to Appear.*
3. Petitioner was designated as a UAC (Unaccompanied [Noncitizen] Child) and released from custody to an adult sponsor, [redacted] *Exhibit B, U.S. Department of Health and Human Services Office of Refugee Resettlement Verification of Release*.
4. Since his release on December 7, 2024, Petitioner remained out of custody until he was detained in December of 2025.

[1] The putative notice lacks the required date and time information. The lack of that information is not relevant in these proceedings, but Petitioner refers to this notice as a putative notice to distinguish it from the subsequent notice to appear issued to Petitioner.

5. Petitioner was detained in December of 2025 at what he believed was a routine ICE check-in. Petitioner was asked to come in and answer questions about his placement with his aunt. Petitioner complied. Petitioner was summarily detained at the "interview." Petitioner was not advised of a reason for his change in custody. Petitioner was not provided a reasonable opportunity to contest the allegations giving rise to his sudden and unexplained detention. On December 16, 2025, Petitioner was served a new Notice to Appear. *Exhibit A*, *Notice to Appear,* at 4. The new Notice to Appear also designates Petitioner as a noncitizen present without admission. *Id.*
6. Petitioner does not have a criminal history and is an upstanding member of his community.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Petitioner need not exhaust his administrative remedies. Exhaustion is not required where the Petitioner challenges the constitutionality of the agency procedure itself, "such that the question of the adequacy of the administrative remedy is for all practical purposes identical with the merits of the plaintiff's lawsuit." *McCarthy v. Madigan,* 503 U.S. 140, 148 (1992). In this case, Petitioner challenges the constitutionality of the procedures by which Respondent reviews his custody status – erroneously finding that he is detained under 8 U.S.C. § 1225. A party need not exhaust administrative remedies, however, when the available remedies would "provide no genuine opportunity for adequate relief" or when "administrative appeal would be futile. *Barco Mercado v. Francis*, No. 25-cv-6582, --- F. Supp. 3d ----, 2025 WL 3295903, at *30 (S.D.N.Y. Nov. 26, 2025); *Garza v. Davis*, 596 F.3d 1198, 1204 (10th Cir. 2010).

Petitioner here lacks a genuine administrative remedy. His only avenue for review, the Executive Office for Immigration Review, is bound by the Board of Immigration Judge's

precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 224 (BIA 2025)(holding that all noncitizens present without admission are subject to mandatory detention under 8 U.S.C. § 1225). *Barco Mercado v. Fancis,* at 30 ("To force Mr. Barco to request a bond hearing from an immigration judge — which would be denied under the BIA's recent decision and, even if it were held, would result in release being denied under that decision — and then appeal that denial to the same BIA that has prevented immigration judges from hearing bond requests in the first place, all before allowing Mr. Barco to seek judicial review of his arrest and redetention, would be "Kafkaesque." Exhaustion of administrative remedies would be futile.")

VI. DISCUSSION

A. Legal Authority for Immigration Detention

a. Petitioner's re-detention in without notice or an opportunity to be heard violates ICE regulations and Petitioner's due process rights.

Petitioner's current detention began with an ambush devoid of due process. Petitioner was living with his aunt after being released into her care by the Department of Health and Human Services Office of Refugee Resettlement (ORR). Petitioner was detained as the result of an immigration official asking for him at his aunt's house. Petitioner was not present when the ICE officer appeared unannounced at his house. The officer claimed he needed to meet with Petitioner to discuss Petitioner's placement with his aunt. Petitioner complied, mistakenly believing the authorities were being genuine about their request for information regarding Petitioner's placement. Instead, when Petitioner appeared at the appointment, he was summarily detained. Petitioner was not served with a warrant justifying his arrest. Petitioner was not provided notice or an opportunity to contest the change in his custody status.

A minor previously placed with a sponsor by ORR cannot be rearrested solely on the ground that he is subject to removal proceedings." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. Nov. 20, 2017). Respondents released Petitioner in December of 2024. *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 792 F. Supp. 3d 1025, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025) ("[E]ven when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody.") By releasing Petitioner, Respondents recognized that he was neither a danger to the community nor a flight risk. *R.D.T.M. v. Wofford*, 2025 U.S. Dist. LEXIS 183995, *3 ("the Trafficking Victims Protection and Reauthorization Act ("TVPRA"), provides that, in making custody determinations, ORR should consider "danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(A). In releasing petitioner, ORR determined that petitioner was not a flight risk or danger to the community.") If Respondents wished to revoke his release, they would have had to comply with 8 C.F.R. § 241.4. 8 C.F.R. § 241.4 ("the [noncitizen] will be notified of the reasons for revocation of his or her release or parole. The [noncitizen] will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification"). Where a child was previously apprehended and released, due process requires a "pre-deprivation bond hearing where the government bears the burden of proving by clear and convincing evidence that petitioner is a flight risk or danger to the community." *Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025).

Petitioner was deceived by immigration authorities who weaponized his compliance and took him into custody without notice, explanation, or an opportunity to contest the allegations which

purportedly would have justified his detention. Petitioner has no criminal history or violations which would have justified change in his custody status. Respondents' failure to follow their own regulations violates 8 C.F.R. § 241.4 and the Fifth Amendment's requirement that Petitioner be provided notice and an opportunity to be heard. *See, e.g.,*: *Mbunga v. Bondi*, 2026 U.S. Dist. LEXIS 25269, *5 (finding re-detention without compliance with 8 C.F.R. § 241.4 violated immigration regulations, and that re-detention violated due process under *Matthews v. Eldridge*); *R.D.T.M. v. Wofford*, 2025 U.S. Dist. LEXIS 183995, *17 (same[2]); see *infra Virachak v. Baltazar,* at 12 (citing nine other cases all granting immediate release for failure to comply with 8 C.F.R. § 241.4 procedures); *see also Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025)(specifically requiring pre-deprivation hearing with government bearing burden before re-detaining unaccompanied child).

Respondents presumably assert that Petitioner is entitled to no process because they believe he is an applicant for admission subject to mandatory detention under 8 U.S.C. § 1225. He is not. *R.D.T.M. v. Wofford*, 2025 U.S. Dist. LEXIS 183995, *9 ("The detention of unaccompanied minor children is governed by the TVPRA, which does not mandate detention. 8 U.S.C. § 1232(b)(2)(A)-(B).") As a UAC, Petitioner is entitled to a bond hearing "unless the [child] indicates on the Notice of Custody Determination form that he or she refuses such a hearing." *Flores v. Lynch,* 2:85-cv-04544-DMG-AGR (Document 318)(C.D. Cal. Jan. 20,

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[2] *Id.* "'[T]he root requirement' of the Due Process Clause" is "'that an individual be given an opportunity for a hearing *before* he is deprived of any significant protected interest.'" *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971)); *see Zinermon*, 494 U.S. at 127 ("Applying [the *Mathews*] test, the Court usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty . . . ."). The Supreme Court has held that Due Process requires a pre-deprivation hearing before those released on parole from a criminal conviction can have their bond finally revoked. *See Morrissey*, 408 U.S. at 480-86. The same is true for those subject to revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. at 782."

2017), at 2. Even if he was not a UAC, Respondents interpretation is simply incorrect as detailed below. *See infra, Subsection a:* Section 8 U.S.C. § 1226 and 8 U.S.C. § 1225. Whatever process this Court believes Petitioner should have been entitled to before being re-detained, this Court can be assured that Petitioner did not receive it. Petitioner received neither notice nor an opportunity to contest his re-detention. Once he presented himself under the false pretenses laid out by ICE, his detention was a fait accompli.

To repair the violation, this Court should order Petitioner's immediate release. As the Colorado District Court summarized in *Virachak v. Baltazar:*

> where an immigration 'regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute,' like the opportunity to be heard, 'and [ICE] fails to adhere to it, the challenged [action] is invalid.'" *Rombot v.Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (quoting *Waldron v. I.N.S.*, 232 F.3d 258, 262 (1st Cir. 2000)). Based on this principle, the vast majority of courts have found that where respondents fail to provide notice of revocation and conduct an interview with a petitioner as is required by 8 C.F.R. § 241.4(l) and § 241.13(i), the "[p]etitioner's immediate release is required to return him to the status quo ante-the last uncontested status which preceded the pending controversy.

Virachak v. Baltazar, 2026 U.S. Dist. LEXIS 55634, *11 (citing *Archambeault*, 2025 WL 3250922, at *1 (quotation omitted); *see also Izquierdo Navarro v. Bondi*, No. 25-cv-04210 NYW, 2026 WL 468582, at *3-4 (D. Colo. Feb. 18, 2026); *Nguyen v. Albarran*, No. 1:25-cv 1926 CSK, 2026 WL 184513, at *7 (E.D. Cal. Jan. 23, 2026); *Rodriguez Romero v. Ladwig*, No. 25-1106-JWD-EWD, 2026 WL 321437, at *11, 17 (M.D. La. Feb. 6, 2026); *Nguyen v. Lyons*, No. 25-cv-631-MSM-PAS, 2026 WL 125093, at *4 (D.R.I. Jan. 16, 2026); *N.A.L.R. v. Bondi*, No. 4:25-cv-00192-SEB-KMB, 2025 WL 2987239, at *2-3 (S.D. Ind. Oct. 23, 2025); *Phongsavanh v. Williams*, No. 4:25-cv-00426-SMR-SBJ, 2025 WL 3124032, at *6 (S.D. Iowa Nov. 7, 2025); *Villanueva v. Tate*, 801 F.Supp.3d 689, 705 (S.D. Tex. 2025). Like the petitioners in these cases, Mr. Nicolas-Diego was re-detained without noticed or an opportunity

to be heard and his detention is therefore invalid. The Court should order him released to "return him to the status quo ante-the last uncontested status which preceded the pending controversy." *Virachak v. Baltazar*, 2026 U.S. Dist. LEXIS 55634, *11.

b. Petitioner's warrantless arrest violates 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(2).

ICE is prohibited from effecting warrantless arrests in Colorado unless they comply strictly with 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(2). *Ovando v. Noem*, 2025 U.S. Dist. LEXIS 234204, *65-66. In any state, a civil immigration arrest typically requires both a Notice to Appear and a warrant. *Id.,* at 5. To conduct a warrantless arrest, ICE must comply with the requirements of 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii) which in turn demand that (1) the officer has probable cause that the person is violating U.S. immigration laws and (2) "is likely to escape before a warrant can be obtained for his arrest." *Id.,* at 5-6; *Roa-Rodriquez v. United States*, 410 F.2d 1206, 1209 (10th Cir. 1969)(adopting probable cause standard for "reason to believe" the individual is violation U.S. immigration law); *Arizona v. United States*, 567 U.S. 387, 394, 132 S. Ct. 2492, 183 L. Ed. 2d 351, at 408 (2012)(describing limitations on warrantless arrest authority). "ICE has a practice of conducting warrantless arrests in Colorado without considering flight risk on an individual basis." *Id.,* at 21. The statute and regulations require a "particularized inquiry" that the person is "likely to abscond." *Ovando v. Noem,* at 6 (citing *Moreno v. Napolitano*, 213 F.Supp.3d 999, 1007-08 (N.D. Ill. 2016); *see also United States v. Kahn*, 324 F.Supp.2d 1177, 1186-87 (D. Colo. 2004) (considering defendant's traditional flight risk factors, including ties to the community, in finding that his warrantless arrest violated § 1357(a)(2)); *Pacheco-Alvarez*, 227 F.Supp.3d at 889-90

(same); *United States v. Bautista-Ramos*, No. 18-cr-4066-LTS, 2018 WL 5726236, at *7 (N.D. Iowa Oct. 15, 2018) (same)).

> Mere presence within the United States in violation of United States immigration law is not, by itself, sufficient to conclude that a person is likely to escape before a warrant for arrest can be obtained.

Id., at 67. Warrantless arrests like Petitioner's are part of a larger policy, pattern, or practice by ICE. *Id.*, at 49.

Petitioner's December 16, 2025, arrest was warrantless. Petitioner was arrested without a particularized determination about his risk of flight. Petitioner's arrest plainly violates the requirements of 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(2). As in *Ovando*, no reasonable officer could have determined that Petitioner was a flight risk. Respondents had his address and knew his community ties. Most tellingly, Petitioner was arrested while complying with a request that he appear to answer questions about his placement with his aunt. Respondents lured Petitioner to present himself under false pretenses and summarily detained him in violation of their own procedures. Respondents know how to properly arrest an individual. Respondents followed the rules for Petitioner's initial arrest in October of 2024, providing both a warrant and a putative notice to appear. At the time of his December 2025 arrest, Petitioner was out of custody through an exercise of Respondents' discretion. Petitioner did not violate the law or his conditions of release. There is no reason Respondents could not follow the law when they sought to re-detain him in December of 2025. The arrest was illegal. Petitioner should be released to return him to the status quo before the illegal arrest.

c. Unaccompanied Alien Children

An unaccompanied alien child (UAC) is a child who has no lawful immigration status in the United States and who has not attained 18 years of age; and with respect to whom: There

is no parent or legal guardian present in the United States; or no parent or legal guardian in the United States is available to provide care and physical custody. UACs are treated differently than the way adults are treated by the Department of Homeland Security ("DHS") both in detention and in immigration proceedings. 8 U.S.C. § 1232 et seq.

In immigration proceedings, federal law requires that all UACs be placed in regular INA § 240 proceedings. 8 U.S.C. § 1232(a)(5)(D). Among other protections for UACs, the Trafficking Victims Protection Reauthorization Act ("TVPRA") grants USCIS initial jurisdiction over their asylum applications. Thus, while the default rule for individuals in removal proceedings is that the immigration court has exclusive jurisdiction over their asylum applications, the TVPRA creates a statutory exception to that rule for UACs. EOIR likewise treats UACs differently. EOIR issued regulations giving Immigration judges the authority to terminate removal proceedings of individuals who have filed for asylum with USCIS, under USCIS's procedures governing initial asylum jurisdiction over UACs. 8 C.F.R. § 1003.18(d)(1)(ii)(B).

The care and custody of UACs is governed by a legal framework consisting primarily of two statutes, a settlement agreement that is binding on the pertinent federal agencies, and federal regulations: the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization Act, and the 1997 *Flores* Settlement Agreement.

The *Flores* Settlement Agreement (the "FSA") from 1997 set forth the national policy governing the detention, release, and treatment of minors in the custody of the U.S. government. The FSA mandates, amongst other things, that any noncitizen child who remains in Government custody for removal proceedings is entitled to a bond hearing before an immigration judge, "unless the [child] indicates on the Notice of Custody Determination form

that he or she refuses such a hearing." *Flores v. Lynch,* 2:85-cv-04544-DMG-AGR (Document 318)(C.D. Cal. Jan. 20, 2017), at 2.

The Trafficking Victims Protection Reauthorization Act ("TVPRA") codified some substantive terms of the FSA as well as adding additional requirements concerning the care and custody of UACs. For instance, the TVPRA requires federal officials who discover an unaccompanied child to transfer the child to the care and custody of HHS within 72 hours (absent exceptional circumstances). 8 C.F.R. § 1232(b)(3). The TVPRA also tasks ORR with ensuring that unaccompanied children are "promptly placed in the least restrictive setting that is in the best interest of the child." 8 C.F.R. § 1232(c)(2)(A). This is usually with a sponsor. See, e.g., *Saravia v. Sessions*, 905 F.3d 1137, 1142–43 (9th Cir. 2018).

a. Unaccompanied Alien Children are not subject to mandatory detention.

The detention of unaccompanied minors is governed solely by the TVPRA, which does not mandate detention. *R.D.T.M. v. Wofford*, No. 1:25-CV-01141-KES-SKO, 2025 WL 2686866, at *4 (E.D. Cal. Sept. 18, 2025). The TVPRA calls for the least restrictive setting possible. 8 C.F.R. § 1232(c)(2)(A). The detention of UACs is governed by 8 C.F.R. §1232(b)(1). *Salvador v. Bondi*, No. 25-CV-07946-MRA-MAA, 2025 WL 2995055 (C.D. Cal. Sept. 2, 2025). Under section 1232(a)(5)(B), UACs are not subject to expedited removal and should be placed in full removal proceedings.

Mr. Nicolas Diego entered the United States at age seventeen. He entered by himself and was designated an unaccompanied minor. He was initially detained pursuant to a putative notice to appear and a warrant. The authorities determined that he was neither a danger to the community nor a flight risk under 8 U.S.C. § 1232(c)(2)(A) and released him to his aunt [redacted] [redacted] Neither of his notices to appear list him as an arriving alien. Other than his

initial detention and subsequent release to his aunt, he has not had any other interaction with immigration officials until his arrest on December 16, 2025.

District Courts around the United States agree that previously designated UACs who attain age of majority are not detained pursuant to section 1225(b). *Singh v. Stevens*, No. 3:26-CV-133, 2026 WL 456489 (N.D. Ohio Feb. 18, 2026) (Petitioner was initially detained and released by ORR consistent with the TVPRA. Accordingly, he remains protected under § 1232(c)(2)(B) of the TVPRA and is not an "applicant for admission" subject to mandatory detention under § 1225(b)(2).); *P.A.H.E. v. Noem*, No. 1:26-CV-01164-DJC-JDP, 2026 WL 451662 (E.D. Cal. Feb. 17, 2026); *R.A.R.R. v. Almodovar*, No. 25-CV-6597 (PKC), 2026 WL 323040, at *5 (E.D.N.Y. Feb. 6, 2026); *Garcia Gabriel v. Hermosillo*, No. 2:25-CV-02594-DGE-GJL, 2026 WL 194233 (W.D. Wash. Jan. 26, 2026); *Cornejo Rivera v. Noem*, No. 3:25-CV-1090-CCB-SJF, 2026 WL 81753 (N.D. Ind. Jan. 12, 2026) ("Numerous courts have held that individuals who entered the United States as an unaccompanied minor and were turned over to HHS subject to the provisions of the TVPRA are not "applicants for admission" within the meaning of Section 1225(b)(2)"); *F.S.S.M. v. Wofford*, No. 25-01518, 2025 WL 3526671 (E.D. Cal. Dec. 9, 2025); *Contreras Maldonado v. Cabezas*, No. 25–13004, 2025 WL 2985256 (D.N.J. Oct. 23, 2025) ("Because Petitioner resided in the United States when detained on July 8, 2025, § 1226, not § 1225, is applicable to Petitioner."); *Andres Salvador v. Bondi*, No. 25-CV-07946-MRA-MAA, 2025 WL 2995055 (C.D. Cal. Sept. 2, 2025); *Torres v. Wamsley*, No. C25-5772 TSZ, 2025 WL 2855379, at *3–5 (W.D. Wash. Oct. 8, 2025). Petitioner, was designated a UAC and is thus not an applicant for admission subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

Given the nature of the liberty deprivation involved, a minor previously placed with a sponsor by ORR cannot be rearrested solely on the ground that he is subject to removal proceedings." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. Nov. 20, 2017). Where a child was previously apprehended and released, due process requires a "pre-deprivation bond hearing where the government bears the burden of proving by clear and convincing evidence that petitioner is a flight risk or danger to the community." *Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025). It follows that where there is no allegation of flight risk or danger to the community, there is no justification for depriving the child of their constitutional right to liberty. Here Petitioner was released in December of 2024 following a determination that he was not a danger or a flight risk. Nothing has changed, and Respondents did not allege – let alone prove – that some change in circumstances justified re-detaining Petitioner.

b. Section 8 U.S.C. § 1226 and 8 U.S.C. § 1225

The two detention statutes at play in this petition are 8 U.S.C. § 1226 and 8 U.S.C. § 1225. 8 U.S.C. § 1226 permits release on bond. 8 U.S.C. § 1225 mandates detention during the removal proceedings. Respondent maintains that Mr. Nicolas Diego is subject to mandatory detention under § 1225. Petitioner maintains he should be eligible for discretionary release under § 1226.

Section 1226(a) sets out a default rule: a noncitizen may be detained pending a decision whether they are to be removed from the United States. *Jennings v. Rodriguez*, 583 U.S. 281, 288, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018). 8 U.S.C. § 1226(c) creates an exception to that default rule, explaining that inadmissible aliens with certain criminal histories are subject to mandatory custody and may therefore not seek discretionary release on bond. *Id.; Ramon*

Rodriguez Vazquez, v. Drew Bostock, et al., 3:25-cv-05240 (W.D. Wash. Apr.24, 2025). The exception in § 1226(c) proves the rule that the detention of inadmissible noncitizens such as those present without admission is generally governed under 8 U.S.C. § 1226(a). *Ramon Rodriguez Vazquez, v. Drew Bostock, et al.*, 3:25-cv-05240 (W.D. Wash. Apr.24, 2025), at 52.

> A plain reading of this exception implies that the default discretionary bond procedures in Section 1226(a) apply to a noncitizen who, like Rodriguez, is present without being admitted or paroled but has not been implicated in any crimes as set forth in Section 1226(c). See § 1226(a) (Attorney General may release noncitizen on bond "except as provided in subsection (c)"). As the Supreme Court has recognized, when Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). This lends strong textual support to Rodriguez's position that "inadmissible" noncitizens like himself are included within Section 1226.

A noncitizen subject to 8 U.S.C. § 1225 is detained mandatorily and may only be released on a grant of parole. *Jennings v. Rodriguez*, 583 U.S. 281, 285. As the Supreme Court recognized, § 1225 is concerned "primarily [with those] seeking entry, *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Id.* at 287. Section 1225 is split into two paragraphs (b)(1) and (b)(2) which apply to different subsets of noncitizens. 8 U.S.C. § 1225. Paragraphs (b)(1) and (b)(2) reflect the understanding that § 1225 is concerned with noncitizens seeking entry. Paragraph (b)(1)—which concerns "expedited removal of inadmissible arriving [noncitizens]"—encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible under section 212(a)(6)(c) or 212(a)(7)." 8 U.S.C. § 1225 (b)(1)(A)(i). These grounds of inadmissibility are for those who misrepresent information to an examining immigration officer or do not have adequate documents to enter the United States. Thus, subsection (b)(1)'s text demonstrates that it is

focused only on people *arriving* at a port of entry or who have *recently* entered the United States and not those already residing here. Paragraph (b)(2) is similarly limited to people "seeking admission" when they *arrive* in the United States or very shortly thereafter. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission" but who (b)(1) does not address. Put succinctly, 8 U.S.C § 1225(b)(2) mandates the detention of certain noncitizens who are (1) applicants for admission, (2) seeking admission, and (3) not clearly and beyond a doubt entitled to be admitted. 8 U.S.C § 1225(b)(2); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, at *12 (D. Colo. Oct. 22, 2025); *Barco Mercado v. Francis*, No. 25-cv-6582, --- F. Supp. 3d ----, 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025). "Seeking admission" is a present-tense action[3]. *Id.,* at 12; see also *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc)(An individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States).

B. Respondent's recent interpretation of § 1225b defies the plain meaning of the statute, the structure of the statute, Supreme Court precedent, and decades of practice

a. The plain language of § 1225b makes it inapplicable to noncitizens present in the United States without "seeking admission."

8 U.S.C. §1225(b)(2) reads in relevant part:

(2)Inspection of other aliens

[3] "[S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there." *Loa Caballero v. Baltazar,* at 13 (citations omitted).

> (A)In general
> Subject to subparagraphs (B) and (C), in the case of an alien who is an 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, the alien shall be detained for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2). By its own terms, this section is limited to persons who are "applicants for admission," "seeking admission," and "not clearly…entitled to be admitted." *Id.; Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, at *12 (D. Colo. Oct. 22, 2025); *Barco Mercado v. Francis*, No. 25-cv-6582, --- F. Supp. 3d ----, 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025). 8 U.S.C. § 1225(a)(1) describes what noncitizens will be "treated as" an applicant for admission for purposes of § 1225.

> A[] [noncitizen] 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 and including a[] [noncitizen] who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission

8 U.S.C. § 1225(a)(1). Respondent's position that all applicants for admission are mandatorily detained under this subsection would render the requirement that they be "seeking admission" superfluous. *Diaz Lopez v. Noem et al*, No. 1:2025cv04089 (D. Colo. 2026), at 6; *Corley v. United States*, 556 U.S. 303, 314, 129 S. Ct. 1558, 173 L. Ed. 2d 443 (2009) ("[O]ne of the most basic interpretive canons" is that "a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.") (quoting *Hibbs v. Winn*, 542 U.S. 88, 101, 124 S. Ct. 2276, 159 L. Ed. 2d 172 (2004)); see also *Fuller v. Norton*, 86 F.3d 1016, 1024 (10th Cir. 1996). The phrase "seeking" admission requires the noncitizen to be "presently and actively seeking lawful entry into the United States." *Diaz Lopez v. Noem et al.,* at 6 (citing *Loa Caballero v. Baltazar et al*, No. 1:2025cv03120 - (D. Colo. 2025), at 6)(further citations omitted). Therefore, a noncitizen

simply residing in the United States for years without applying for legal status is not "seeking admission"[4] within the meaning of § 1225(b)(2)(A). *Id.*

b. The statutory structure demonstrates that § 1226 not § 1225 generally applies to noncitizens present in the United States without admission.

The structure of the statutes further exposes the limits of Respondent's interpretation. Section 1226(a) is the "default rule" applying to all persons "pending a decision on whether the [noncitizen] is to be removed." *Rodriguez Vazquez*, 779 F.Supp.3d at 1246; *Jennings*, 582 U.S. at 281. Notably, 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)). Respondent's interpretation, if true, would render significant portions of § 1226(c) meaningless.

Section 1225 (b)(1) concerns "expedited removal of inadmissible arriving [noncitizens]"—encompasses only the "inspection" of certain "arriving" noncitizens and other

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[4] The phrase "seeking admission" cannot be subsumed by Petitioner's treatment as an "applicant for admission." Such a finding would "violate[] the meaningful-variation canon of statutory interpretation by assigning the same meaning to an 'applicant for admission' and a person 'seeking admission'." *Diaz Lopez v. Noem et al.*, at 7 (citing *Loa Caballero,* at 6, *Pulsifer v. United States*, 601 U.S. 124, 149 (2024), and *Lopez Benitez*, 795 F. Supp. 3d at 488. This interpretation is further supported the differentiation between the class of persons who are actually applying for admission and those who are merely "treated" or "deemed" as applicants for admission. 8 U.S.C. 1225(a)(1). There would be no need for 8 U.S.C. 1225(a)(1) to specify that this class of noncitizens should be "treated as" an applicant for admission if their mere non-admission operated as an actual application for admission such that they are "seeking admission" by their mere presence.

recent entrants the Attorney General designates, and only those who are "inadmissible under section 212(a)(6)(c) or 212(a)(7)." 8 U.S.C. § 1225(b)(1). Subsection (b)(1)'s text demonstrates that it is focused only on people *arriving* at a port of entry or who have *recently* entered the United States and not those already residing here. Paragraph (b)(2) is similarly limited to people "seeking admission" when they *arrive* in the United States or very shortly thereafter. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission" but who (b)(1) does not address. Moreover, subparagraph (b)(2)(C) addresses "[t]reatment of [noncitizens] *arriving* from contiguous territory," i.e., those who are "*arriving* on land." 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further underscores Congress' focus in § 1225 on those who are *arriving* in the United States—not those already *residing* here for years. Similarly, the title of § 1225 refers to the "inspection" of "inadmissible *arriving*" noncitizens. *See Dublin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe the statute). Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225 (b)(2)(A), (b)(4), or officers conducting "inspection[s]" of people "*arriving* in the United States," *Id.* § 235(a)(3), (b)(1), (b)(2), (d) (emphasis added); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning").

Respondent's interpretation would further nullify recent congressional acts adding to the mandatory custody exceptions in § 1226(c). *Loa Caballero v. Baltazar,* at 15. Congress' passage of the Laken Riley Act, amending § 1226 reflects a shared understanding that § 1226(a) applies to inadmissible noncitizens and not just removable ones. In January 2025,

Congress amended § 1226, adding § 1226(c)(1)(E). *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Section 1226(c)(1)(E) provides that the "Attorney General shall take into custody any alien who-"

> (E)(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and
>
> (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person, when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

8 U.S.C. § 1226(c)(1)(E). This provision would be meaningless if noncitizens already residing in the United States were already subject to mandatory detention under § 1225(b)(2). *Redondo v. Bondi*, 2026 U.S. Dist. LEXIS 23450, *9 citing *Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at *10 (N.D. Cal. Sept. 12, 2025) ("If Congress amended Section 1226 to create mandatory detention for certain inadmissible noncitizens, it follows that those noncitizens were not already subject to mandatory detention.")

c. *Jennings* forecloses Respondent's interpretation of the relationship between § 1226 and §1225

Supreme Court precedent supports Petitioner's reading of 8 U.S.C. § 1225 and 8 U.S.C. § 1226. In *Jennings*, the Supreme Court summarized 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). This District Court has already stated that to interpret § 1225(b)(2)(A) to mandate detention for all "applicants for admission" would render the "seeking admission" language superfluous. *Lopez v. Noem*, 2026 U.S. Dist. LEXIS 14990, *6 citing 2025 U.S. Dist. LEXIS 208290, [WL2025 U.S. Dist. LEXIS 2082902025 U.S. Dist. LEXIS 208290] at *7. The Supreme Court's framework only makes sense if some noncitizens fall outside the "applicants for admission" category, because treating every noncitizen as such would eliminate any distinction between the two sections.

d. Respondent's abrupt change in interpretation runs contrary to decades of its own practice.

More than a quarter-century of practice supports the interpretation that noncitizens like Petitioner are subject to detention under § 1226 rather than §1225. 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. Following the enactment of the IIRIRA in 1996, EOIR wrote regulations applicable to proceedings before Immigration Judges 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(a). *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"). Thus, in the following decades, people who

entered without inspection and did not have certain criminal legal contacts received § 1226(a) bond hearings. That practice was itself 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)).

Until July of 2025, the parties agreed that 8 U.S.C. § 1226(a) applied to noncitizens like petitioner. *Memorandum from Todd Lyons, Acting ICE Dir., to ICE Employees, Interim Guidance Regarding Detention Authority for Applicants for Admission* (July 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission. Respondent adopted the novel interpretation that all noncitizens present without admission are subject to mandatory custody under § 1225 in the context of a "determined campaign to arrest and remove as many noncitizens as possible." *Barco Mercado v. Francis*, at 24 – 25. The Board of Immigration Appeals adopted that position as a precedential decision in September of 2025. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). This Court owes no deference to such an interpretation that is "so inconsistent with the text, structure, and history of the relevant statute as well as precedent and the record in this case." *Barco Mercado v. Francis*, at 24 – 25 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).)

Respondents' treatment of Petitioner contradicts its own legal position as to his detention. *Loa Caballero v. Baltazar,* at 17. ("Respondents' treatment of Petitioner appears to conflict with their assertion that he is detained pursuant to § 1225"). *Lopez Benitez v. Francis*, ---F. Supp. 3d ----, 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025)

("Respondents' own exhibits unequivocally establish that Mr. Lopez Benitez was detained pursuant to Respondents' discretionary authority under § 1226(a). The warrants for Mr. Lopez Benitez's respective arrests in 2023 and 2025 explicitly authorized those arrests pursuant to 'section 236 of the Immigration and Nationality Act'—i.e., § 1226.") In this case, Mr. Nicolas Diego's first detention in October of 2024 was pursuant to a warrant. That warrant indicates that he is being detained under INA § 236. His Notice to Appear also classifies him as present without admission rather than as an arriving alien. The Department's own documents thus bely the Government's position that Petitioner is detained under § 1225.

C. This District Court and approximately fifty others around the Country have agreed that Respondent's interpretation results in the unlawful mandatory detention of petitioner's similarly situated to Mr. Nicolas Diego

As this Court found in *Lopez v. Noem,* "[t]his Court following the clear weight of persuasive authority, has already rejected Respondents' position." *Lopez v. Noem,* at 5 (citing *Loa Caballero v. Baltazar,* at 5 ("[F]ederal courts have overwhelmingly rejected Respondents' 'broad interpretation of section 1225(b)(2).'"). Petitioners like Mr. Nicolas-Diego, have prevailed in more than 350 cases decided by more than 160 judges in courts all across the country. *Barco Mercado v. Francis,* at 9 – 10 (appendix A, citations omitted); see also *Morales Lopez v. Baltazar*, 2026 WL 25161 (D. Colo. Jan. 5, 2026); *Nava Hernandez v. Baltazar, et al.*, 2025 WL 2996643, at *4 (D. Colo. Oct. 24, 2025); *Garcia Abanil v. Baltazar*, — F.Supp.3d —, 2026 WL 100587, at *4 (D. Colo. Jan. 14, 2026). As it pertains to the § 1225 § 1226 issue "[t]his issue is not materially different from an issue this Court has resolved in a prior ruling in another case." *Martinez-Orellana v. Hagan et al.* 1:26-cv-00355, at 3.

D. Petitioner's continued mandatory detention under Respondent's erroneous interpretation of § 1225 violates his substantive, due process, and statutory rights.

Petitioner has been in the United States since 2024. He was released to his Aunt in December of 2024. Petitioner remained uneventfully out of custody until he was entrapped by ICE officials feigning interest in his placement with his sponsor in December of 2025. Petitioner's mere presence does not amount to "seeking admission" within the meaning of 8 U.S.C. § 1225. Petitioner is therefore properly detained under § 1226(a) and his mandatory detention is unlawful. His continued deprivation of liberty violates his substantive constitutional rights against unlawful restraint. His continued detention without a bond hearing violates his due process rights. His continued detention under § 1225 where that statute does not apply to him, violates § 1226 and § 1225.

E. Petitioner is a member of the *Maldonado-Bautista* national class action, but the class-wide relief is temporarily stayed outside the U.S. District of Central California.

The U.S. District Court for the Central District of California certified a nationwide class action for noncitizens who were refused a bond hearing whose detention should be governed by § 1226. The certified bond eligible class includes all noncitizens in the United States without lawful status who:

1) Have entered or will enter the United States without inspection;
2) Were not or will not be apprehended upon arrival; and,
3) Are not or will not be subject to detention under 8 U.S. C. § 1226(c), §1255(b)(1), or §1231 at the time the Department of homeland Security makes an initial custody determination.

Id. The District Court in *Maldonado Bautista* found that *Yajure Hurtado* is no longer controlling as the legal conclusion underlying the decision is no longer tenable[5]. It further ordered that all noncitizens that are class members be issued a bond hearing. Petitioner is straightforwardly a covered class member. Respondent's nonetheless assert the right to ignore the order in *Maldonado-Bautista.* As it stands, the class-wide relief ordered in that case, is temporarily stayed as it relates to Petitioner.

F. CONCLUSION AND REMEDY

The appropriate remedy in this case is immediate release. Petitioner was unlawfully re-detained without notice and an opportunity to contest his detention. Having determined previously that Petitioner was neither a danger nor a flight risk, it was incumbent on Respondents to demonstrate a material change that alter that determination before rearresting him. Petitioner was detained without a warrant and without a particularized determination of flight risk. Both violations merit reparation by returning Petitioner to his pre-violation status: release. The Court should further specify that Petitioner be released with his personal belongings and without conditions[6] unilaterally imposed by Respondents. *Granillo-Chavarria v. Baltasar* 1:26-cv-00712-WJM, at 11 (D. Colo. Mar. 12, 2026)("No onerous conditions of release shall be unilaterally imposed by Respondents on Granillo Chavarria, including without limitation mandating that he wear GPS monitoring, submit to mandatory reporting, or have his

[5] Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

[6] "No onerous conditions of release shall be unilaterally imposed by Respondents on Granillo Chavarria, including without limitation mandating that he wear GPS monitoring, submit to mandatory reporting, or have his movements otherwise restricted." *Granillo-Chavarria v. Baltasar,* at 11.

movements otherwise restricted"). Respondents should honor the conditions of Petitioner's initial release as Petitioner did the entire time he was out of custody.

Respondents are further unlawfully applying 8 U.S.C. § 1225 to petitioner. The evidence indicates that the typical remedy for the erroneous application of 8 U.S.C. § 1225, a bond hearing before a neutral decisionmaker, is insufficient here because the Executive Office for Immigration Review is not a neutral decisionmaker. *Loa Caballero v. Baltazar,* at 19 – 20. Despite losing hundreds of cases on the same issue – raising the same arguments – and being subject to a national class action that forecloses its interpretation, Respondent insists on unlawfully detaining hundreds of noncitizens under 8 U.S.C. § 1225(b)(2). *Cortes v. Guadian*, 2026 U.S. Dist. LEXIS 21264, *5 ("Respondents' undaunted efforts to improperly detain other habeas petitioners under 8 U.S.C. § 1225[]"). Too often the bond hearings taking place after a successful habeas petition are a "sham" "designed to result in findings…without a fair consideration of the evidence." *Exhibit F,* at 23. The hearings are "fundamentally flawed or even pre-cooked" resulting in a "[p]redetermined outcome" that prolongs detention. *Id.,* at 24. The judges cited in the attached exhibits note that the ordered bond hearings were "stacked against detainees from the start." *Id.,* at 38. Those judges who were fairly considering bond requests have been removed and replaced. *Id.,* at 42.

> The executive branch-run system has removed "immigration judges who provide neutral adjudications" and "bond is systematically denied after a pro forma hearing with a predetermined outcome," Berger wrote in a Feb. 24 ruling.

Id. Former ICE Chief Counsel Jorge Artieda publicly admitted what any experienced immigration practitioner can see with their own eyes:

> detainees "are now being systematically denied bond based on rationales that would not have been deemed sufficient weeks earlier" in what "appears to be a systematic effort to nullify the constitutional protections that federal courts have recognized and enforced."

Id. For all of these reasons, courts are increasingly finding that a bond hearing would be "futile[,]" and would "not comport with due process." *Id.* Court's are thus resorting to ordering detainees released outright. *Id.* Like those noncitizens, Petitioner is "unlikely to get a fair shake in immigration court[]" and should also be ordered released outright. *Id.*, at 44. This Court should order Petitioner released.

CLAIM FOR RELIEF
COUNT I

Respondents Jail Petitioner in Violation of U.S.C. §1226(a)

1. Petitioner incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.
2. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Petitioner 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 Petitioner 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 irrelevant here. Detention under § 1226(a) requires access to bond.
3. Applying § 1225 to Petitioner unlawfully mandates his continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).

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

4. Petitioner incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.
5. 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).
6. Respondents' re-detention of Petitioner without notice or an opportunity to be heard is arbitrary and capricious, in violation of 8 C.F.R. § 241.4, and in violation of the Fifth Amendment to the U.S. Constitution.
7. Respondents warrantless arrest of petitioner without a particularized determination of flight risk is arbitrary and capricious, in violation of 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(2), and in violation of the Fifth Amendment to the U.S. Constitution.
8. Respondents' detention of Petitioner pursuant to § 1225 is arbitrary and capricious, and in violation of the Fifth Amendment to the U.S. Constitution. Respondents do not have statutory authority under § 1225 to detain Petitioner.
9. Respondents' detention of Petitioner without access to bond is arbitrary, capricious, an abuse of discretion, violative of the U.S. Constitution, and without statutory authority, all in violation of 5 U.S.C. § 706(2).

COUNT III

Respondents Detain Petitioner in Violation of his Fifth Amendment Due Process Rights

1. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
2. 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.
3. Petitioner has a fundamental interest in liberty and being free from official restraint, such as imprisonment in the Aurora Facility.
4. Petitioner's re-detention without notice or opportunity to be heard violates his Due Process rights.
5. Petitioner's warrantless arrest without a particularized finding of flight risk violates his Due process rights.
6. Respondents' detention of Petitioner without providing him a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to Due Process.

COUNT IV

Respondents Detain Petitioner Despite the Fact that he is a Member of the *Maldonado Bautista* Class Action

1. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).
2. The order in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

3. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."
4. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).
5. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.
6. The class-wide relief in *Maldonado Bautista* is temporarily stayed as it relates to Petitioner and other class members outside the Central District of California.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;
b. Ensure that Petitioner remain in the state of Colorado
c. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;
d. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;

e. Place the burden of proof at any bond hearing ordered by this Court on the Government to justify Petitioner's continued detention by clear and convincing evidence.

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

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

DATED this 23th of March, 2026.

/s/Tiago Guevara
Tiago Guevara, Esq.
Colorado Reg. No. 50052
McKinley Law Group LLC
829 Main St. Ste. 1
Longmont CO, 80501
Phone: (720) 386 4500
Fax: 720 554 77878
Tiago@McKinleylegal.com
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Tiago Guevara, hereby certify that on March 23, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and I hereby further certify that I mailed the document or paper to the following persons via first class mail on March 23, 2026:

/s/Tiago Guevara
Tiago Guevara, Esq.
Colorado Reg. No. 50052
McKinley Law Group LLC
829 Main St. Ste. 1
Longmont CO, 80501
Phone: (720) 386 4500
Fax: 720 554 77878
Tiago@McKinleylegal.com
Attorney for Petitioner

Attn: Civil Chief
Asst. U.S. Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202

Juan Baltazar
GEO Group ICE Denver Contract Detention Facility
3130 Oakland Street
Aurora, CO 80010

Robert Hagan
ICE Field Director, Denver District
12445 E. Caley Avenue
Centennial, CO 80111

Pamela Bondi
Attorney General of the United States
U.S. Department of Justice

950 Pennsylvania Ave., NW

Washington, D.C. 20530-0001

Kristi Noem, c/o:
Office of the General Counsel
United States Department of Homeland Security

2801 Nebraska Ave NW
Washington D.C. 20528

Office of the Principal Legal Advisor
Immigration and Customs Enforcement U.S. Department of Homeland Security 500 12th Street SW Washington D.C. 20528