**UNITED STATES DISTRICT COURT**
**DISTRICT OF COLORADO**

**MELESIO ROMO RIOS,**
[redacted]

***Petitioner,***

**v.**

**GEORGE VALDEZ, Acting Field Office Director, Denver Field Office, Immigration and Customs Enforcement; JUAN BALTAZAR, Warden of Denver Contract Detention Facility; KRISTI NOEM, Secretary, Department of Homeland Security; PAMELA BONDI, Attorney General,**

***Respondents.***

**Case No. 1:26-cv-1203**

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

## INTRODUCTION

1. This case demonstrates an unrelenting refusal by Respondents to follow the applicable statute and regulation and to provide necessary due process. Respondents continue to insist individuals like Petitioner Melesio Romo Rios ("Mr. Romo") are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) despite an overwhelming number of habeas petitions ruling to the contrary. *See Briales-Zuniga v. Baltazar*, 2026 WL 35227, at *3 (D. Colo. Jan. 6, 2026) (noting that federal courts have overwhelmingly rejected the government's policy and statutory interpretation).

2. Over the past few months, some noncitizens otherwise caught by this policy have been able to obtain a bond and release in light of the class action *Maldonado Bautista* orders. *See Maldonado Bautista v. Santacruz*, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025) (vacating the ICE policy); *Maldonado Bautista v. Santacruz*, 2026 WL 468284, at * (C.D. Cal. Feb. 18, 2026) (vacating *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)). However, the Ninth Circuit has stayed the district court's December order outside the Central District of

California, and stayed the court's February 2026 order vacating *Yajure Huratdo,* keeping the government's detention policy in place. *Bautista, et al. v. U.S. Dep't of Homeland Security, et al.*, No. 26-1044 (9th Cir., order dated March 6, 2026).[1]

3. Respondents' attempts to avoid providing Mr. Romo the process actually due absent an order from a federal court—despite an overwhelming number of district court cases and a nationwide class action justifying such an action—is remarkable.

4. Respondents' actions are contrary to law and infringe upon Mr. Romo's due process rights, rendering his custody unlawful. Accordingly, this Court should order his immediate release.

## JURISDICTION AND VENUE

5. Mr. Romo is detained at the Denver Contract Detention Facility in Aurora, Colorado, and is in physical custody of Respondents. *See* Ex. 1 (ICE Detainee Locator).

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. §§ 2201-02 (declaratory relief), the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, and 28 U.S.C. § 1651 (All Writs Act).

7. This Court may grant relief pursuant to 28 U.S.C. § 2241, § 2243, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

8. Venue is proper because Mr. Romo's immediate custodian at Denver Contract Detention Facility is located in this District and a "substantial part of the events or omissions giving rise to the claim" occurred in this District. 28 U.S.C. § 1391(e)(1).

[1] The Ninth Circuit is hearing oral argument on the matter on Monday, March 30, 2026. *See Bautista*, 26-1044, ECF No. 10.

## PARTIES

9. Petitioner Melesio Romo Rios is a native of Mexico. ICE is detaining him at the Denver Contract Detention Facility in Aurora, Colorado.

10. Respondent George Valdez is the Acting Field Office Director of the ICE Denver Field Office and is responsible for ICE's operations in Colorado where Mr. Romo is held. He is sued in his official capacity.

11. Respondent Juan Baltazar is the Warden of the Denver Contract Detention Facility and is the immediate custodian of Mr. Romo. He is sued in his official capacity.

12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA and oversees ICE and ICE's policies, which are responsible for Mr. Romo's detention. Secretary Noem has ultimate custodial authority over Mr. Romo and is sued in her official capacity.

13. 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.

## REQUIREMENTS OF 28 U.S.C. § 2243

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

15. 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).

16. "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).
17. Mr. Romo requests the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, in light of the significant restraint on his liberty and clear Constitutional violations in this case.

**TRANSFER OUTSIDE THE DISTRICT; ALL WRITS ACT**

18. The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."
19. Courts both in and outside this district have recently invoked the All Writs Act to prevent the transfer of individuals detained within the judicial district. *See Arostegui-Maldonado v. Baltazar*, 794 F.Supp.3d 926, 948-49 (D. Colo. Aug. 8, 2025) (listing cases).
20. Mr. Romo requests that this Court invoke the All Writs Act to prevent any transfer out of the District of Colorado during the pendency of his habeas action, given the likelihood that he will be ordered to appear at a hearing shortly after this Court rules upon the habeas petition. Mr. Romo lives in Colorado, and his counsel's law firm operates primarily in Colorado. He will need to participate in the preparation for and attend his bond hearing should the Court order one, and he will incur additional, unnecessary expenses and difficulty in returning to his residence in Colorado should he be granted a bond hearing after being transferred elsewhere. *See Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025) (noting that presence in the judicial district where an action is pending "facilitate[s]" the petitioner's "ability to work with

[his or] her attorneys, coordinate the appearance of witnesses," and generally present claims related to detention); *Suri v. Trump*, 785 F. Supp. 3d 128, 148 (E.D. Va. May 6, 2025).

## EXHAUSTION

21. Mr. Romo was prepared to exhaust his administrative remedies by seeking a custody redetermination hearing in immigration court, but the Ninth Circuit's stay in *Maldonado Bautista* has rendered that action futile. It is clear that the Department of Homeland Security ("DHS") intends to detain Mr. Romo absent order from this Court, and the immigration judges will rule consistent with *Matter of Yajure Hurtado*. There is nothing left for Mr. Romo to do before the agency in order to secure his release from unlawful custody.

22. Moreover, any failure to exhaust administrative remedies does not bar Mr. Romo's claim unless "Congress specifically mandates" exhaustion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (quoting *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992)). No such mandate exists here.

## STATEMENT OF RELEVANT FACTS

23. Mr. Romo entered the United States in 2000 without inspection and prior to his detention lived with his family in Colorado. He has no criminal history.

24. In January 2026, Immigration and Customs Enforcement ("ICE") officers arrested and detained Mr. Romo.

25. In arresting Mr. Romo, ICE officers served Mr. Romo with a warrant of arrest, indicating that their authority to arrest him came from Immigration and Nationality Act § 236 and § 287, 8 U.S.C. § 1226 and § 1257. *See* Ex. 2 (I-200, Warrant of Arrest).

26. ICE placed Mr. Romo in removal proceedings before an immigration judge. Ex. 3 (Notice to Appear).

27. Mr. Romo intended to file a motion for a custody redetermination with the immigration court, arguing that he is a member of the *Maldonado Bautista* class and is thus entitled to a custody hearing. *See Maldonado Bautista v. Santacruz*, 5:25-cv-1873, -- F. Supp. 3d --, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (certifying a bond eligible class as "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), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination); *see also Maldonado Bautista*, 2025 WL 3678485, at *5 (declaring that the bond eligible class members "are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2).").

28. However, prior to having such custody hearing, the Ninth Circuit stayed the *Maldonado Bautista* decision that immigration judges in Denver had been following in order to conduct custody determinations.

## LEGAL BACKGROUND

### *Immigration Detention and Bond*

29. Under the INA, immigration officers are generally required to obtain a warrant prior to arresting and detaining noncitizens. *See* 8 U.S.C. § 1226(a) ("*On a warrant issued by the Attorney General*, a [noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed.").

30. DHS's administrative arrest warrant is produced on a Form I-200.

31. After arrest, DHS must make an initial custody determination in order to keep someone detained. This is typically recorded on a Form I-286, Notice of Custody Determination. 8

C.F.R. § 236.1(c)(8), (g)(1); *see Martinez-Orellana v. Hagan*, 26-cv-355, at p. 7-8 (D. Colo. Feb. 13, 2026).

32. The decision whether to release a noncitizen is an individualized determination first made by ICE. 8 C.F.R. § 236.1(c)(8); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 26 (1st Cir. 2021) (noting that ICE officers make the initial custody determination); *Velasco Lopez v. Decker*, 978 F.3d 842, 849 (2d Cir. 2020) (noting that 8 C.F.R. § 236.1(c)(8) "applies only to the initial custody determination made by the arresting officer and not to immigration judges in bond hearings" although immigration judges do apply the same rule regarding presumption of detention to custody hearings under § 1226(a)); *Lopez Benitez*, 795 F. Supp. 3d at 484.

33. Detention under 8 U.S.C. § 1226(a) "must be premised on an individualized custody determination based on Petitioner's dangerousness and flight risk." *Campbell v. Almodovar*, 2025 WL 3626099, at *1 (S.D.N.Y. Dec. 15, 2025) (marks and citation omitted). A noncitizen who is neither a danger nor a flight risk may be released on a "bond of at least $1,500 with security approved by, and containing conditions prescribed by [ICE]." 8 U.S.C. § 1226(a); *see N-N- v. McShane*, 2025 WL 3143594, at *2 (E.D. Pa. Nov. 10, 2025).

34. If DHS elects to detain a noncitizen, the noncitizen may seek a custody *re*determination before an immigration judge. 8 C.F.R. §§ 1003.19(a) 1236.1(c)(8), (d)(1); *Mendoza Gutierrez*, 2025 WL 2962908, at *7; *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 68-69 (D. Mass. 2025).

35. "If either party is dissatisfied with the immigration judge's custody determination, there are two methods of recourse: (a) appeal the immigration judge's order" to the Board of Immigration Appeals, or "(b) after an initial bond redetermination, a detainee may request a subsequent bond redetermination upon a showing that their 'circumstances have changed materially since the prior bond redetermination." *N-N-*, 2025 WL 3143594, at *3 (quoting 8

C.F.R. §§ 1236.1(d)(3), 1003.19(a), 1003.19(e)); *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 527-28 (2021); *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1179 (D. Colo. 2024).

***Immigration Detention Authority (8 U.S.C. §§ 1225 and 1226)***

36. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, which set forth separates procedures for the removal and detention of arriving or recently arrived noncitizens and those who have entered and established a presence in the United States, even those who have done so in violation of the immigration laws. *Compare* 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"), *with* 8 U.S.C. § 1226 ("Apprehension and detention of aliens"), § 1229a ("Removal proceedings").

37. For those individuals with an established presence in the United States, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) "shall be the sole and exclusive procedure from the United States" unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

38. During the pendency of standard removal proceedings under 8 U.S.C. § 1229a, § 1226 provides for the detention of noncitizens already in the United States, even those who entered illegally or without inspection. While § 1226(c) mandates the detention of certain classes of criminal noncitizens, § 1226(a) sets forth the rule for noncitizens subject to discretionary detention under § 1226. Under 8 U.S.C. § 1226(a), a noncitizen "may be arrested and detained pending a decision on whether the alien is to be removed from the United States[.]" 8 U.S.C. § 1226(a).

39. Separate from the removal proceedings under § 1229a, Congress created an expedited removal process to be implemented during initial inspection for certain "applicants for admission"

deemed to be "arriving aliens." 8 U.S.C. § 1225(b). The INA defines an applicant for admission as 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)." 8 U.S.C. § 1225(a)(1). The INA further clarifies that the term "application for admission" has "reference to the application for admission *into* the United States," making clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4) (emphasis added). Notably, individuals subject to the expedited removal statute are not eligible for bond pending completion of their removal hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see id.* at 303 (distinguishing individuals subject to § 1225(b) from those "already present in the United States").

40. Critically, expedited removal proceedings do not apply to all "applicants for admission." Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States for less than two years and have not been admitted or paroled—only become subject to expedited removal if so designated by DHS. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I).

41. Separately, 8 U.S.C. § 1225(b)(2) mandates the detention of certain "applicants for admission" not covered by § 1225(b)(1). Yet in keeping with the statute's focus on arriving aliens, the statute does not mandate detention for all applicants for admission. Instead, § 1225(b)(2)(A) only mandates the detention of "an applicant for admission" when "the examining immigration

officer determines" that the noncitizen who is "seeking admission is not clearly and beyond a doubt entitled to be admitted."

42. Courts and the U.S. Government have consistently taken the position that noncitizens who have entered without inspection and are encountered in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g.*, *Jennings*, 583 U.S. at 303 ("While the language of §§ 1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, § 1226 applies to aliens *already present in the United States*.") (emphasis added); IIRIRA Implementing Regulation, 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."). This is because these individuals are not "seeking admission." *See Mendoza Gutierrez v. Baltasar*, 2025 WL 2962908, at *5-6 (D. Colo. Oct. 17, 2025) (concluding that § 1225 does not apply to a noncitizen who has been residing in the United States for more than two years) (collecting cases); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025) (holding that a noncitizens who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025) (rejecting the Government's "novel interpretation" that 1225(b) applies to noncitizens detained while present in the United States); *accord Mendoza Gutierrez*, 2025 WL 2962908, at *5.

43. Despite amending the INA numerous times since passing IIRIRA, *see, e.g.*, REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, Congress has never seen fit to clarify or alter this universally accepted interpretation of the statute.

44. Yet in July 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it had embraced when IIRIRA was first enacted and over three decades since. In a complete reversal, "DHS, in coordination with the Department of Justice (DOJ) . . . revisited its legal position on detention and release authorities," and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 "is the applicable immigration detention authority for all applicants for admission."[2]

45. In September 2025, the Board of Immigration Appeals adopted DHS's novel statutory reading of 8 U.S.C. § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board found no distinction between the statutory terms "applicant for admission" and "seeking admission," and concluded that § 1225(b)(2) must be read to include all noncitizens who have not been inspected and admitted at any point. *Id.* at 221-22. Further, the Board asserted that legislative history supported its construction, although it did not cite any legislative history addressing the detention statutes. *Id.* at 223-25. This decision was recently vacated. *Maldonado Bautista, et al. v. Santacruz, et al.*, 2026 WL 468284, at *10 (C.D. Cal. Feb. 18, 2026); *but see Santacruz v. Maldonado Bautista*, No. 26-1044 (9th Cir. March 6, 2026) (staying the district court's February 18, 2026 decision).

46. Courts that have reviewed this issue—including every case within this district—have almost universally rejected Respondents' new reading of the statute. *See, e.g., Martinez-Orellana*, 1:26-cv-355 at p. 4-5; *Garcia Abanil v. Baltazar*, -- F. Supp. 3d --, 2026 WL 100587, at *4 (D. Colo. Jan. 14, 2026); *Flores Marin v. Baltazar*, 2025 WL 3677019 (D. Colo. Dec. 18, 2025); *Hernandez Vazquez v. Baltasar*, 1:25-cv-3049 (D. Colo. Oct. 23, 2025); *Loa Caballero v. Baltazar*, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Moya Pineda v. Baltasar*, No. 1:25-cv-

[2] https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

2966 (D. Colo. Oct. 20, 2025); *Mendoza Gutierrez*, 2025 WL 2962908; *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Lopez Benitez*, 795 F. Supp. 3d 475; *Martinez*, 792 F. Supp. 3d 211; *Galdamez Martinez v. Noem, et al.*, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025).

47. Notwithstanding the resounding rejection of DHS and DOJ's policy and the *Maldonado Bautista* court's vacatur of the policy, Respondents continue to defend the policy and follow *Matter of Yajure Hurtado*, insisting that all noncitizens who have not been admitted to the United States are considered subject to mandatory detention under 8 U.S.C. § 1225(b).

48. Upon information and belief, ICE is so unwavering in its position that it will invoke the automatic stay provision in 8 C.F.R. § 1003.19(i)(2) to preclude a noncitizen from being released on a bond set by an immigration judge if the judge finds the noncitizen to be a member of the *Maldonado Bautista* bond eligible class.

***Automatic Stay of Immigration Judges' Decisions***

49. In IIRIRA, Congress recognized that existing resources at the time of enactment may have been insufficient to support immediate compliance with the detention provisions. Thus, IIRIRA allowed for a one-year transition period with less stringent custody rules if the Attorney General notified Congress within ten days of IIRIRA's enactment "that there [wa]s insufficient detention space and . . . personnel available" to comply with the mandatory detention provisions of § 1226(c). *See* Pub. L. 104-208, Div. C, § 303(b)(2). The transition period could be extended by the Attorney General if there was still insufficient bed space and personnel after the first year.

50. The former Immigration and Naturalization Service ("INS") made the requisite notifications to Congress on October 9, 1996, and again on September 29, 1997, thereby triggering the Transition Period Custody Rules.

51. IIRIRA's Transition Period Custody Rules gave the Attorney General the discretion to release certain noncitizens covered by the mandatory detention provision at § 1226(c). Pursuant to that discretionary authority, the Department of Justice ("DOJ") issued regulations identifying classes of noncitizens who could be considered for release, using the bond procedures set forth at § 1226(a), despite being described in the mandatory detention provision at § 1226(c). *See* 63 Fed. Reg. 27441 (May 19, 1998).

52. Recognizing that the Transition Period Custody Rules allowed for the release of noncitizens Congress deemed subject to mandatory detention, the implementing regulation allowed the legacy INS to invoke an automatic stay and appeal an immigration judge's decision overturning an initial custody determination denying bond or setting it at $10,000 or more. 63 Fed. Reg. at 27448-49.

53. In implementing the automatic stay provision, the DOJ dismissed commenters' concerns that the automatic stay encroaches on the authority of immigration judges, noting that "custody appeals are themselves unusual, undertaken only in compelling cases, and subject to review by responsible senior officials within [INS]." 63 Fed. Reg. at 27447 (emphasis added). DOJ added that "[i]t is expected that such appeals will remain exceptional" and that INS "district directors will continue to set custody conditions according to their best assessment of the bail risk presented in each case." *Id.*

54. On October 31, 2001, DOJ issued an interim rule extending the automatic stay provisions beyond noncitizens subject to mandatory detention under § 1226(c) to allow INS to invoke the

automatic stay in other cases in which INS's decision to deny bond or set it at $10,000 or higher was reversed or amended by an immigration judge. 66 Fed. Reg. 54909 (Oct. 31, 2001).

55. DOJ later finalized the rule with several modifications. *See* 71 Fed. Reg. 57873 (Oct. 2, 2006). First, to allay concerns that "the automatic stay might be invoked by low-level employees of DHS without supervisory review, or might be invoked without an adequate factual or legal basis," the final rule requires DHS to appeal the immigration judge's custody determination to the Board within ten business days and requires a senior legal official to approve the filing of the appeal and to certify that there is factual and legal support justifying . . . continued detention." 71 Fed. Reg. at 57874; 8 C.F.R. § 1003.6(c)(1).

56. Second, the final rule provided that the automatic stay would lapse 90 days after the notice of appeal is filed. 8 C.F.R. § 1003.6(c)(4). Yet it does not preclude DHS from then seeking a discretionary stay under the neighboring provision, 8 C.F.R. § 1003.19(i)(1). *See* 71 Fed. Reg. at 57874.

57. Third, the regulation provides specific timelines to extend the automatic stay so that DHS can seek input from the Attorney General even if the Board has authorized release. 8 C.F.R. 1003.6(d). However, the regulation does not limit the Attorney General's discretion to extend the stay further. *Id.* Thus, under the current regulations, a noncitizen could be subjected to potentially indefinite detention even if an immigration judge and the Board determine that he should be released.

58. Responding to public comments expressing concerns with the regulation's constitutionality and the potential for abuse, DOJ again emphasized that DHS "invoke[s] the automatic stay in only a select number of custody cases"—just 273 times in Fiscal Year 2004 and only 43 times in Fiscal Year 2005. 71 Fed. Reg. 57873, 57878 (Oct. 2, 2006).

59. However, DHS has abandoned the selective nature of the automatic stay and has invoked it numerous times, without the requisite individualized determination, in the past several months. In response, courts across the country have concluded that the automatic stay provision violates the INA and/or Constitutional due process. *See, e.g., Arana-Hernandez v. Baltasar*, 2026 WL 696642 (D. Colo. March 12, 2026); *Balderas Rivas v. Baltazar*, 2026 WL 444732, at *2 (D. Colo. Feb. 17, 2026); *Merchan-Pacheo v. Noem*, 2026 WL 88526 (D. Colo. Jan. 12, 2026); *Leal Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Mohammed H. v. Trump*, 786 F. Supp. 3d 1149, 1157-59 (D. Minn. June 17, 2025); *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1189 (D. Minn. May 21, 2025); *Zabadi v. Chertoff*, 2005 WL 1514122, at *1-2 (N.D. Cal. June 17, 2005) (listing cases).

## CLAIMS FOR RELIEF

### COUNT ONE
***Violation of the Immigration and Nationality Act***
***Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226***

60. Mr. Romo realleges and incorporates by reference the paragraphs above.

61. Respondents continue to detain Mr. Romo on the theory that he is subject to detention under 8 U.S.C. § 1225(b)(2)(A). However, this is contradictory to their own actions, processing Mr. Romo's arrest under 8 U.S.C. § 1226. *See* Ex. 2. Respondents cannot have it both ways; arresting Mr. Romo under § 1226, but detaining him under § 1225(b)(2).

62. To the extent ICE will not admit that Mr. Romo is detained under 8 U.S.C. § 1226(a), this Court should grant the petition and order that Mr. Romo is subject to detention under § 1226(a) and not § 1225(b)(2). Respondents' reading of the statute has been overwhelmingly rejected in

more than fifteen hundred district court decisions that have ruled on the issue and on a class-wide basis. *See supra* ¶ 46.

63. As the Supreme Court recognized in *Jennings*, § 1225(b) focuses on individuals arriving at the border and ports of entry and thus are in the process of "seeking admission." *Jennings*, 583 U.S. at 297, 303; *see also* 8 C.F.R. § 1.2 (addressing noncitizens who are geographically "coming or attempting to come into the United States."). Conversely, § 1226(a) focuses on individuals who are in the United States and the government is seeking to remove through removal proceedings. *Id.* at 303. Further, with regard to § 1225(b)(2), Mr. Romo cannot reasonably be described as "seeking admission" to a country he has now resided in for over two decades. The titles of 8 U.S.C. § 1225 and § 1226 statutory sections make this distinction clear. *Compare* 8 U.S.C. § 1225 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"), *with* 8 U.S.C. § 1226 ("Apprehension and detention of aliens").

64. Furthermore, equating the term "applicant for admission" with "seeking admission," as EOIR has concluded in *Matter of Yajure Hurtado*, would render the phrase "seeking admission" superfluous because it violates principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings." *Lopez Benitez*, 795 F. Supp. 3d at 489; *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant."); *accord Mendoza Gutierrez*, 2025 WL 2962908, at *7. Section 1225's mandatory detention regime applies to noncitizens who meet three criteria; first, the noncitizen must be "an 'applicant for admission' (a 'term of art' in the INA that includes noncitizens who 'arrive[] in the United States,' as well as those already 'present in the United States who ha[ve]

not been admitted," second, the noncitizen must be "actively 'seeking admission' to the country," and third, the noncitizen must be "one whom an examining immigration officer determines 'is not clearly and beyond a doubt entitled to be admitted.'"); *Lopez Benitez*, 795 F. Supp. 3d at 488 (quoting *Martinez*, 792 F. Supp. 3d at 214).

65. The ordinary meaning of the terms "seeking" and "admission" do not apply to noncitizens, like Mr. Romo, who are not actively seeking inspection to enter the United States. *Jose Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025).

66. Additionally, applying § 1225(b)(2) to all noncitizens except those who have been admitted could not have been Congress's intent because it would render other mandatory detention provisions, such as § 1226(c)(1)(E), unnecessary. *Sampiao*, 2025 WL 2607924, at *8; *Rodriguez Vasquez*, 779 F. Supp. 3d at 1259; *Gomes*, 2025 WL 1869299, at *7. Section 1225(c) requires mandatory detention for individuals who are present in the United States without being admitted or paroled and who are subject to specific criminal conduct criteria. *Sampiao*, 2025 WL 2607924, at *8. If all noncitizens who are inadmissible are subject to mandatory detention, there would be no reason for Congress to have enumerated which inadmissible noncitizens are subject to mandatory detention under § 1226(c). *Id.* If Congress intended § 1225(b) detention to extend to all noncitizens who have not been admitted, the recent amendments would be surplusage. *Sampiao*, 2025 WL 2607924, at *8 (citing *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."). For these reasons, the plain language of § 1225(b)(2)(A) demonstrate that an individual, such as Mr. Romo, is not an "applicant for admission" who is "seeking admission" to the United States.

67. Thus, this Court must find that subjecting Mr. Romo to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is a clear violation of the INA and order his immediate release from custody. *Hotak v. Baltazar*, 1:25-cv-556 (D. Colo. Feb. 25, 2026); *Yanez Chavez v. Baltazar*, 2026 WLL 516934 (D. Colo. Feb. 26, 2026); *Martinez-Orellana*, 1:26-cv-355 (D. Colo. Feb. 13, 2026); *see also Vargas v. Bondi*, 2025 WL 3300446, at *5 (W.D. Tex. Nov. 12, 2025), *report and recommendation adopted Vargas v. Bondi*, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025).

68. Alternatively, the Court should order a bond hearing at which the government bears the burden of proof by clear and convincing evidence. *See L.G. v. Choate*, 744 F. Supp. 3d 1172, 1187 (D. Colo. 2025); *Martinez Escobar v. Baltazar*, 2026 WL 503313, at *5 (D. Colo. Feb. 24, 2026). This standard is proper because the clear and convincing standard applies to civil detention where liberty is at stake. *Id.* Moreover, "these are not normal circumstances." *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (recognizing that the case involves a continuing constitutional violation and shifting the burden to the government at a bond hearing "likely will reduce the risk of the continuing erroneous deprivation of Petitioner's liberty interests).

69. If the Court order a bond hearing, it should also issue an order precluding Respondents from invoking the automatic stay of any bond order relating to the immigration judge's order. "In effect, the automatic stay provision renders the Immigration Judge's bail determination an empty gesture." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 669 (D.N.J. 2003). Notably, in order to invoke the automatic stay, the government would not need to provide "any 'special justification'" to outweigh Mr. Romo's "constitutional liberties so as to justify his continued detention without bail." *Id.* at 669; *accord Leal Hernandez v. Noem*, 2025 WL 2430025, at &12-13 (D. Md. Aug. 24, 2025). This Court should similarly conclude that it "cannot characterize Petitioner's continued confinement as anything but arbitrary" and "in violation of

substantive due process." *Ashley*, 288 F. Supp. 2d at 669. Indeed, there is "near unanimity" nationwide that "DHS's application of the automatic stay pursuant to 8 C.F.R. § 1003.19(i)(2) violates a non-citizen's due process under the Fifth Amendment." *Merchan-Pacheo*, 2026 WL 88526, at *9; *accord Arana-Hernandez*, 2026 WL 696642, at *1. This Court should therefore preclude Respondents from invoking the automatic stay in this case if it orders a bond hearing and if the immigration judge grants release upon payment of a monetary bond. *Merchan-Pacheo*, 2026 WL 88526, at *9.

**COUNT TWO**
***Violation of Substantive Due Process***
***Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226***

70. Mr. Romo realleges and incorporates by reference the paragraphs above.

71. 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 Clause protects." *Zadvydas v. Davis*, 533 U.S.678, 690 (2001). Indeed, the liberty interest in freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

72. Mr. Romo has a fundamental interest in liberty and being free from official restraint, and the government's new, erroneous classification of him as an "arriving alien" who is "seeking admission" to the United States and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) without any avenue to challenge that detention violates his substantive right to due process.

73. Respondents' insistence that Mr. Romo remain in immigration custody pursuant to these policies is a violation of his due process rights. The Court should order his release.

**COUNT THREE**
***Violation of Procedural Due Process***
***Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226***

74. Mr. Romo realleges and incorporates by reference the paragraphs above.

75. The Supreme Court has been clear that for noncitizens "on the threshold of initial entry . . . [w]hatever the procedure authorized by Congress is, it is due process." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (emphasis added). However, Mr. Romo is no longer on the threshold of initial entry. It is well established that noncitizens like Mr. Romo who "once passed through our gates, even illegally" are entitled to greater constitutional protections. *Id.*; *see also Zadvydas*, 553 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders."). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Because Mr. Romo is not properly detained under § 1225(b)(2), his detention does not comply with due process.

76. Mr. Romo has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed that even for noncitizens, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. And the Supreme Court, recognizing the strong private interest in remaining free from detention, has held "that detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (cleaned up).

77. While the government has an interest in ensuring Mr. Romo's appearance at his removal proceedings and protecting the community, the government cannot plausibly justify their position that the is subject to mandatory detention based on "administrative burdens" when it has, for the past three decades, consistently allowed for bond for noncitizens like Mr. Romo who have established a presence in the United States after previously entering without inspection.

78. Finally, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to detain noncitizens like Mr. Romo without a determination that he is neither a danger nor a flight risk. Without an order from this Court, there is a high probability that Mr. Romo will continue to be detained even though his continued detention serves no non-punitive purpose as it is unnecessary to protect the community or to ensure his appearance at his removal proceedings.

79. In Respondents' contrasting version of the INA, as espoused in *Matter of Yajure Hurtado*, Mr. Romo is stripped of any mechanism to require the government to justify his detention. Such a lack of any process, necessarily leading to an erroneous deprivation of liberty, cannot be supported by the Constitution. Release is the appropriate remedy. Alternatively, the Court should order a constitutionally compliant bond hearing at which the government bears the burden of proof. *See supra* ¶ 68.

80. The Court should also issue an order precluding Respondents from invoking the automatic stay of any bond order pursuant to 8 C.F.R. § 1003.19(i). *See supra* ¶ 69.

**PRAYER FOR RELIEF**

Based on the foregoing, Mr. Romo requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Order under the All Writs Act that Mr. Romo not be removed from this District while this petition is pending;

(3) Issue an order requiring Respondents to show cause why this Petition should not be granted within three days, or not more than fourteen days;

(4) Declare that 8 U.S.C. § 1225 does not govern Mr. Romo's immigration detention;

(5) Declare that Respondents have violated Mr. Romo's due process rights by asserting he is detained under 8 U.S.C. § 1225;

(6) Order Mr. Romo's immediate release with all of his personal property, including any driver's license, passport, employment authorization documents, and any identification cards. *See Cortes v. Guadian*, 2026 WL 327906 (D. Colo. Feb. 6, 2026). Alternatively, order that Respondents provide Mr. Romo with a bond hearing at which the government bears the burden of proof by clear and convincing evidence;

(7) Order that the government cannot invoke the automatic stay provision under 8 C.F.R. § 1003.19 if this Court orders a bond hearing and the immigration judge grants release upon payment of a monetary bond.

(8) Grant Mr. Romo leave to forthwith file a motion for attorneys' fees and costs of this suit under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2), *et seq.*; and

(9) Grant any further relief this Court deems just and proper.

March 23, 2026

Respectfully submitted,

*/s/ Jessica A. Dawgert*

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**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have based this petition based on document that Petitioner's family and his immigration counsel have provided. Based on that evidence, I hereby verify that the statements made in this Petition for a Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 23, 2026

Respectfully submitted,

*/s/ Jessica A. Dawgert*

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