

UNITED STATES DISTRICT COURT
DISTRICT COURT OF COLORADO

Juan Agustin Ailon,

Petitioner,

v.

Todd LYONS, Acting Director of Immigration
& Customs Enforcement; George VALDEZ,
Acting Field Office Director of Enforcement
and Removal Operations, Denver Field Office,
Immigration and Customs Enforcement;
Markwayne MULLEN 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. Juan Agustin Ailon brings this petition for a writ of habeas corpus to challenge his unlawful detention as he is detained under 8 U.S.C. 1226(a) and is therefore eligible for bond. Petitioner is in the 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 and ask that the government bear the burden in his bond proceedings.

2. PARTIES

1. Petitioner is a citizen of Guatemala who has been detained by ICE since February 10, 2026. Petitioner has resided in the United States since 2022.
2. George Valdez is the acting ICE Field Office Director of the Denver ICE Field Office and is sued in his official capacity.
3. Respondent Markwayne Mullen 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. Mr. Mullen has ultimate custodial authority over Petitioner and is sued in his 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.

1 5. Respondent Pamela Bondi is the Attorney General of the United States. She is
2 responsible for the Department of Justice, of which the Executive Office for
3 Immigration Review and the immigration court system it operates is a component
4 agency. She is sued in her official capacity.

5 6. Respondent Executive Office for Immigration Review (EOIR) is the federal agency
6 responsible for implementing and enforcing the INA in removal proceedings, including
7 for custody redeterminations in bond hearings.

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

12 3. JURISDICTION AND VENUE

13 1. Petitioner is in physical custody of Respondents. Petitioner is detained at the ICE
14 Detention Center in Aurora, Colorado.

15 2. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. §
16 1331 (federal question), and Article I, section 9, clause 2 of the United States
17 Constitution (the Suspension Clause).

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

20 4. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500
21 (1973), venue lies in the United States District Court for the Colorado, the judicial
22 district in which Petitioner currently is detained.

1 5. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
2 Respondents are employees, officers, and agencies of the United States, and because a
3 substantial part of the events or omissions giving rise to the claims occurred in the
4 District of Colorado.

5 **IV. FACTUAL BACKGROUND**

6 1. Petitioner is an 18-year-old Guatemalan citizen who entered the United States in 2022
7 when he was only 14 years old. Petitioner left Guatemala after his mother and father,
8 the Respondents, concluded that there was no hope for any sort of adequate or safe life
9 for him in Guatemala. Juan's entire family was born and lived in destitute poverty in
10 Guatemala prior to immigrating to the United States, where, for example, they often
11 did not have enough food to eat and where violence was rampant and out of control.
12 Juan was forced to drop out of school after elementary school.

13 2. Petitioner lived with his father and brother until his detention. Petitioner was detained
14 on the way to work along with his father, who has since been removed from the United
15 States. Petitioner was a passenger in the car and had broken no criminal laws.
16 Petitioner has no criminal record. Petitioner is applying for a Special Immigrant
17 Juvenile Visa ("SIJS") with USCIS. Beginning in 1990, Congress created Special
18 Immigrant Juvenile (SIJ) status as part of the Immigration and Nationality Act (INA)
19 to protect vulnerable immigrant children. *See* 8 U.S.C. § 1101(a)(27)(J); 8 U.S.C. §
20 1255(h). In doing so, Congress intended to help "alleviate[] hardships experienced by
21 some dependents of United States juvenile courts by providing qualified [noncitizens]
22 with the opportunity to apply for special immigrant classification and lawful permanent
23 resident status, with [the] possibility of becoming citizens of the United States in the
24

1 future.” See Immigration Act of 1990, Pub.L. No. 101-649, § 153, 104 Stat. 4978
2 (1990) (amending various sections of the INA); Special Immigrant Status, 58 Fed. Reg.
3 42843, 43844 (Aug. 12, 1993).

4 3. On February 10, 2026, Petitioner was detained by immigration officials. On that date,
5 removal proceedings were initiated against Petitioner through the issuance of a notice
6 to appear. The notice to appear charges him as inadmissible for having entered without
7 inspection under INA § 212(a)(6)(A)(i). *Exhibit A*. The notice to appear does not
8 classify him as an arriving alien. *Id.* He has remained in custody since. Petitioner’s
9 apprehension in February of 2026 is his only interaction with immigration authorities
10 in his roughly three and a half years in the United States.

11 1. EXHAUSTION OF ADMINISTRATIVE REMEDIES

12 Petitioner need not exhaust his administrative remedies. Exhaustion is not required
13 where the Petitioner challenges the constitutionality of the agency procedure itself, “such that
14 the question of the adequacy of the administrative remedy is for all practical purposes identical
15 with the merits of the plaintiff’s lawsuit.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). In
16 this case, Petitioner challenges the constitutionality of the procedures by which Respondent
17 reviews his custody status – erroneously finding that he is detained under 8 U.S.C. § 1225. A
18 party need not exhaust administrative remedies, however, when the available remedies would
19 “provide no genuine opportunity for adequate relief” or when “administrative appeal would be
20 futile. *Barco Mercado v. Francis*, No. 25-cv-6582, --- F. Supp. 3d ----, 2025 WL 3295903, at
21 *30 (S.D.N.Y. Nov. 26, 2025); *Garza v. Davis*, 596 F.3d 1198, 1204 (10th Cir. 2010).

22 Petitioner here lacks a genuine administrative remedy. His only avenue for review, the
23 Executive Office for Immigration Review, is bound by the Board of Immigration Judge’s
24

1 precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 224 (BIA
2 2025)(holding that all noncitizens present without admission are subject to mandatory
3 detention under 8 U.S.C. § 1225). *Barco Mercado v. Fancis*, at 30 (“To force Mr. Barco to
4 request a bond hearing from an immigration judge — which would be denied under the BIA's
5 recent decision and, even if it were held, would result in release being denied under that
6 decision — and then appeal that denial to the same BIA that has prevented immigration judges
7 from hearing bond requests in the first place, all before allowing Mr. Barco to seek judicial
8 review of his arrest and redetention, would be "Kafkaesque." Exhaustion of administrative
9 remedies would be futile.”)

10 2. DISCUSSION

11 A. Legal Authority for Immigration Detention

12 The two detention statutes at play in this petition are 8 U.S.C. § 1226 and 8 U.S.C. §
13 1225. 8 U.S.C. § 1226 permits release on bond. 8 U.S.C. § 1225 mandates detention during
14 the removal proceedings. Respondent maintains that Mr. Agustin-Ailon is subject to
15 mandatory detention under § 1225. Petitioner maintains he should be eligible for discretionary
16 release under § 1226.

17 Section 1226(a) sets out a default rule: a noncitizen may be detained pending a decision
18 whether they are to be removed from the United States. *Jennings v. Rodriguez*, 583 U.S. 281,
19 288, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018). 8 U.S.C. § 1226(c) creates an exception to that
20 default rule, explaining that inadmissible aliens with certain criminal histories are subject to
21 mandatory custody and may therefore not seek discretionary release on bond. *Id.*; *Ramon*
22 *Rodriguez Vazquez, v. Drew Bostock, et al.*, 3:25-cv-05240 (W.D. Wash. Apr.24, 2025). The
23 exception in § 1226(c) proves the rule that the detention of inadmissible noncitizens such as
24

1 those present without admission is generally governed under 8 U.S.C. § 1226(a). *Ramon*
2 *Rodriguez Vazquez, v. Drew Bostock, et al.*, 3:25-cv-05240 (W.D. Wash. Apr.24, 2025), at 52.

3 A plain reading of this exception implies that the default discretionary bond procedures
4 in Section 1226(a) apply to a noncitizen who, like Rodriguez, is present without being
5 admitted or paroled but has not been implicated in any crimes as set forth in Section
6 1226(c). See § 1226(a) (Attorney General may release noncitizen on bond “except as
7 provided in subsection (c)”). As the Supreme Court has recognized, when Congress
8 creates “specific exceptions” to a statute’s applicability, it “proves” that absent those
9 exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v.*
10 *Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). This lends strong textual support to
11 Rodriguez’s position that “inadmissible” noncitizens like himself are included within
12 Section 1226.

13 A noncitizen subject to 8 U.S.C. § 1225 is detained mandatorily and may only be
14 released on a grant of parole. *Jennings v. Rodriguez*, 583 U.S. 281, 285. As the Supreme
15 Court recognized, § 1225 is concerned “primarily [with those] seeking entry, *Jennings v.*
16 *Rodriguez*, 583 U.S. 281, 297 (2018), i.e., cases “at the Nation’s borders and ports of entry,
17 where the Government must determine whether a[] [noncitizen] seeking to enter the country is
18 admissible.” *Id.* at 287. Section 1225 is split into two paragraphs (b)(1) and (b)(2) which apply
19 to different subsets of noncitizens. 8 U.S.C. § 1225. Paragraphs (b)(1) and (b)(2) reflect the
20 understanding that § 1225 is concerned with noncitizens seeking entry. Paragraph (b)(1)—
21 which concerns “expedited removal of inadmissible arriving [noncitizens]”—encompasses
22 only the “inspection” of certain “arriving” noncitizens and other recent entrants the Attorney
23 General designates, and only those who are “inadmissible under section 212(a)(6)(c) or
24 212(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

1 “seeking admission” when they *arrive* in the United States or very shortly thereafter. The title
2 explains that this paragraph addresses the “[i]nspection of other [noncitizens],” i.e., those
3 noncitizens who are “seeking admission” but who (b)(1) does not address. Put succinctly, 8
4 U.S.C § 1225(b)(2) mandates the detention of certain noncitizens who are (1) applicants for
5 admission, (2) seeking admission, and (3) not clearly and beyond a doubt entitled to be
6 admitted. 8 U.S.C § 1225(b)(2); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025
7 WL 2977650, at *12 (D. Colo. Oct. 22, 2025); *Barco Mercado v. Francis*, No. 25-cv-6582, --
8 - F. Supp. 3d ----, 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025). “Seeking admission”
9 is a present-tense action¹. *Id.*, at 12; see also *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020)
10 (en banc)(An individual submits an “application for admission” only at “the moment in time
11 when the immigrant actually applies for admission into the United States).

12 **B. Respondent’s recent interpretation of § 1225b defies the plain meaning of the**
13 **statute, the structure of the statute, Supreme Court precedent, and decades of**
14 **practice**

15 **a. The plain language of § 1225b makes it inapplicable to noncitizens present**
16 **in the United States without “seeking admission.”**

17 8 U.S.C. §1225(b)(2) reads in relevant part:

18 (2)Inspection of other aliens

19 (A)In general

20 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant
21 for admission, if the examining immigration officer determines that
an alien seeking admission is not clearly and beyond a doubt entitled to be

22 ¹ “[S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first
23 few minutes of a film would not ordinarily then be described as “seeking admission” to the theater. Rather, that
24 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).

1 admitted, the alien shall be detained for a proceeding under section 1229a of
2 this title.

3 8 U.S.C. § 1225(b)(2). By its own terms, this section is limited to persons who are “applicants
4 for admission,” “seeking admission,” and “not clearly...entitled to be admitted.” *Id.*; *Loa*
5 *Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, at *12 (D. Colo. Oct. 22,
6 2025); *Barco Mercado v. Francis*, No. 25-cv-6582, --- F. Supp. 3d ----, 2025 WL 3295903, at
7 *13 (S.D.N.Y. Nov. 26, 2025). 8 U.S.C. § 1225(a)(1) describes what noncitizens will be
8 “treated as” an applicant for admission for purposes of § 1225.

9 A[] [noncitizen] present in the United States who has not been admitted or who arrives
10 in the United States (whether or not at a designated port of arrival and including
11 a[] [noncitizen] who is brought to the United States after having been interdicted in
12 international or United States waters) shall be deemed for purposes of this chapter an
13 applicant for admission

14 8 U.S.C. § 1225(a)(1). Respondent’s position that all applicants for admission are mandatorily
15 detained under this subsection would render the requirement that they be “seeking admission”
16 superfluous. *Diaz Lopez v. Noem et al*, No. 1:2025cv04089 (D. Colo. 2026), at 6; *Corley v.*
17 *United States*, 556 U.S. 303, 314, 129 S. Ct. 1558, 173 L. Ed. 2d 443 (2009) (“[O]ne of the
18 most basic interpretive canons” is that “a statute should be construed so that effect is given to
19 all its provisions, so that no part will be inoperative or superfluous, void or insignificant.”)
20 (quoting *Hibbs v. Winn*, 542 U.S. 88, 101, 124 S. Ct. 2276, 159 L. Ed. 2d 172 (2004)); see also
21 *Fuller v. Norton*, 86 F.3d 1016, 1024 (10th Cir. 1996). The phrase “seeking” admission
22 requires the noncitizen to be “presently and actively seeking lawful entry into the United
23 States.” *Diaz Lopez v. Noem et al.*, at 6 (citing *Loa Caballero v. Baltazar et al*, No.
24 1:2025cv03120 - (D. Colo. 2025), at 6)(further citations omitted). Therefore, a noncitizen

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

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

5 The structure of the statutes further exposes the limits of Respondent’s interpretation.
6 Section 1226(a) is the “default rule” applying to all persons “pending a decision on whether
7 the [noncitizen] is to be removed.” *Rodriguez Vazquez*, 779 F.Supp.3d at 1246; *Jennings*, 582
8 U.S. at 281. Notably, the plain language of § 1226 applies to people charged as inadmissible
9 for entering without inspection. E.g., 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference
10 to inadmissible individuals makes clear that, by default, inadmissible individuals not subject
11 to subparagraph (E)(ii) are entitled to a bond hearing under subsection (a). As the *Rodriguez-*
12 *Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s
13 applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez-*
14 *Vazquez*, 779 F.Supp.3d at 1256-57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate*
15 *Ins. Co.*, 559 U.S. 393, 400 (2010)). Respondent’s interpretation, if true, would render
16 significant portions of § 1226(c) meaningless.

17 Section 1225 (b)(1) concerns “expedited removal of inadmissible arriving
18 [noncitizens]”—encompasses only the “inspection” of certain “arriving” noncitizens and other
19

20
21 ² The phrase “seeking admission” cannot be subsumed by Petitioner’s treatment as an “applicant for admission.”
22 Such a finding would “violate[] the meaningful-variation canon of statutory interpretation by assigning the same
23 meaning to an ‘applicant for admission’ and a person ‘seeking admission’.” *Diaz Lopez v. Noem et al.*, at 7 (citing
24 *Loa Caballero*, at 6, *Pulsifer v. United States*, 601 U.S. 124, 149 (2024), and *Lopez Benitez*, 795 F. Supp. 3d at
25 488. This interpretation is further supported the differentiation between the class of persons who are actually
26 applying for admission and those who are merely “treated” or “deemed” as applicants for admission. 8 U.S.C.
27 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
28 “treated as” an applicant for admission if their mere non-admission operated as an actual application for admission
29 such that they are “seeking admission” by their mere presence.

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

20 Respondent’s interpretation would further nullify recent congressional acts adding to
21 the mandatory custody exceptions in § 1226(c). *Loa Caballero v. Baltazar*, at 15. Congress’
22 passage of the Laken Riley Act, amending § 1226 reflects a shared understanding that §
23 1226(a) applies to inadmissible noncitizens and not just removable ones. In January 2025,
24

1 Congress amended § 1226, adding § 1226(c)(1)(E). *See* Laken Riley Act, Pub. L. No. 119-1,
2 139 Stat. 3 (2025). Section 1226(c)(1)(E) provides that the "Attorney General shall take into
3 custody any alien who-"

4 (E)(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title;
5 and

6 (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits
7 committing acts which constitute the essential elements of any burglary, theft, larceny,
8 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.

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

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

17 Supreme Court precedent supports Petitioner's reading of 8 U.S.C. § 1225 and 8 U.S.C.
18 § 1226. In *Jennings*, the Supreme Court summarized the interplay between §§ 1226 and 1225
19 as follows:

20
21 In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens]
22 *seeking admission* into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the
23 Government to detain certain [noncitizens] *already in the country* pending the outcome of
24 removal proceedings under §§ 1226(a) and (c).

1 *Jennings v. Rodriguez*, 582 U.S. 281, 289 (2018) (Alito, J., emphasis added). This District
2 Court has already stated that to interpret § 1225(b)(2)(A) to mandate detention for all
3 "applicants for admission" would render the "seeking admission" language superfluous. *Lopez*
4 *v. Noem*, 2026 U.S. Dist. LEXIS 14990, *6 citing 2025 U.S. Dist. LEXIS 208290, [WL2025
5 U.S. Dist. LEXIS 208290 2025 U.S. Dist. LEXIS 208290] at *7. The Supreme Court's
6 framework only makes sense if some noncitizens fall outside the "applicants for admission"
7 category, because treating every noncitizen as such would eliminate any distinction between
8 the two sections.

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

11 More than a quarter-century of practice supports the interpretation that noncitizens like
12 Petitioner are subject to detention under § 1226 rather than §1225. Both the § 1226 and § 1225
13 detention provisions were enacted as part of the Illegal Immigration Reform and Immigrant
14 Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-
15 546, 3009-582 to 3009-583, 3009-585. Following the enactment of the IIRIRA in 1996, EOIR
16 wrote regulations applicable to proceedings before Immigration Judges explaining that, in
17 general, people who entered the country without inspection (also known as "present without
18 admission") were not detainable under § 1225 and instead could only be detained under §
19 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens;
20 Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6,
21 1997) ("Despite being applicants for admission, aliens who are present without having been
22 admitted or paroled (formerly referred to as aliens who entered without inspection) will be
23 eligible for bond and bond redetermination"). Thus, in the following decades, people who
24

1 entered without inspection and did not have certain criminal legal contacts received § 1226(a)
2 bond hearings. That practice was itself consistent with additional decades of pre-IIRIRA
3 practice, in which noncitizens who were not “arriving” or seeking entry into the United States
4 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
5 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting the new § 1226(a) simply
6 “restates” the detention authority previously found at § 1252(a)).

7 Until July of 2025, the parties agreed that 8 U.S.C. § 1226(a) applied to noncitizens
8 like petitioner. *Exhibit B*, at 6 – 8. Respondent adopted the novel interpretation that all
9 noncitizens present without admission are subject to mandatory custody under § 1225 in the
10 context of a “determined campaign to arrest and remove as many noncitizens as possible.”
11 *Barco Mercado v. Francis*, at 24 – 25. The Board of Immigration Appeals adopted that
12 position as a precedential decision in September of 2025. *Matter of Yajure Hurtado*, 29 I. &
13 N. Dec. 216 (B.I.A. 2025). This Court owes no deference to such an interpretation that is “so
14 inconsistent with the text, structure, and history of the relevant statute as well as precedent and
15 the record in this case.” *Barco Mercado v. Francis*, at 24 – 25 (citing *Loper Bright Enters. v.*
16 *Raimondo*, 603 U.S. 369, 385-86, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).)

17 Respondents’ treatment of Petitioner contradicts its own legal position as to his
18 detention. *Loa Caballero v. Baltazar*, at 17. (“Respondents’ treatment of Petitioner appears
19 to conflict with their assertion that he is detained pursuant to § 1225”). *Lopez Benitez v.*
20 *Francis*, ---F. Supp. 3d ---, 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025)
21 (“Respondents’ own exhibits unequivocally establish that Mr. Lopez Benitez was detained
22 pursuant to Respondents’ discretionary authority under § 1226(a). The warrants for Mr. Lopez
23 Benitez’s respective arrests in 2023 and 2025 explicitly authorized those arrests pursuant to
24

1 ‘section 236 of the Immigration and Nationality Act’—i.e., § 1226.’) In this case, Mr. Agustin-
2 Ailon was detained without a warrant. However, his notice to appear classifies him as present
3 without admission rather than as an arriving alien. The Department’s own documents thus
4 bely the Government’s position that Petitioner is detained under § 1225.

5 **C. This District Court and approximately fifty others around the Country have**
6 **agreed that Respondent’s interpretation results in the unlawful mandatory**
7 **detention of petitioner’s similarly situated to Mr. Agustin-Ailon.**

8
9 As this Court found in *Lopez v. Noem*, “[t]his Court following the clear weight of
10 persuasive authority, has already rejected Respondents’ position.” *Lopez v. Noem*, at 5 (citing
11 *Loa Caballero v. Baltazar*, at 5 (“[F]ederal courts have overwhelmingly rejected Respondents’
12 ‘broad interpretation of section 1225(b)(2).’”). Petitioners like Mr. Agustin-Ailon, have
13 prevailed in more than 350 cases decided by more than 160 judges in courts all across the
14 country. *Barco Mercado v. Francis*, at 9 – 10 (appendix A, citations omitted); see also
15 *Morales Lopez v. Baltazar*, 2026 WL 25161 (D. Colo. Jan. 5, 2026); *Nava Hernandez v.*
16 *Baltazar, et al.*, 2025 WL 2996643, at *4 (D. Colo. Oct. 24, 2025); *Garcia Abanil v. Baltazar*,
17 — F.Supp.3d —, 2026 WL 100587, at *4 (D. Colo. Jan. 14, 2026). As it pertains to the § 1225
18 § 1226 issue “[t]his issue is not materially different from an issue this Court has resolved in a
19 prior ruling in another case.” *Martinez-Orellana v. Hagan et al.* 1:26-cv-00355, at 3.

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

22 Petitioner has been in the United States since 2022. His first interaction with
23 immigration authorities was when he was detained in February 2026. Petitioner’s mere
24

1 presence does not amount to “seeking admission” within the meaning of 8 U.S.C. § 1225.
2 Petitioner is therefore properly detained under § 1226(a) and his mandatory detention is
3 unlawful. His continued deprivation of liberty violates his substantive constitutional rights
4 against unlawful restraint. His continued detention without a bond hearing violates his due
5 process rights. His continued detention under § 1225 where that statute does not apply to him,
6 violates § 1226 and § 1225.

7 **E. Petitioner is a member of the *Maldonado-Bautista* national class action, but the**
8 **operation of the class-wide relief in that case has been stayed as it relates to**
9 **Petitioner.**

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

- 14
- 15 1) Have entered or will enter the United States without inspection;
 - 16 2) Were not or will not be apprehended upon arrival; and,
 - 17 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.

18 *Id.* On December 18, 2025, the District Court in *Maldonado Bautista* found that *Yajure*
19 *Hurtado* is no longer controlling as the legal conclusion underlying the decision is no longer
20 tenable. It further ordered that all noncitizens that are class members be issued a bond hearing.
21 Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration
22 Court and the Department of Homeland Security (DHS) blatantly refused to abide by the
23 declaratory relief, subjecting Petitioner to mandatory detention. On February 18, 2026, Judge
24 Sunshine S. Sykes vacated *Yajure Hurtado* and found that Respondents have violated, and

1 continue to violate, the law by detaining Bond Eligible Class Members in contravention of the
2 December 18, 2025 Final Judgment. The Court further held that vacatur was both necessary
3 and proper as Respondents' continued detention of individuals directly undermined the Court's
4 prior orders.

5 On March 6, 2026, *Maldonado Bautista* was temporarily stayed pending a ruling on
6 the government's emergency motion for a stay pending appeal. The Court granted the stay
7 insofar as the judgment extended beyond the Central District of California. As a result, the stay
8 prevents otherwise eligible class members from obtaining bond hearings in Colorado and
9 instead subjects them to mandatory detention. Petitioner is therefore prevented from
10 benefitting from his class membership during the pendency of the stay.

11 **F. CONCLUSION AND REMEDY**

12 The appropriate remedy in this case is immediate release. Typically, the appropriate
13 remedy would be provision of a bond hearing before a neutral decisionmaker. *Loa Caballero*
14 *v. Baltazar*, at 19 – 20. The neutrality of the Executive Officer for Immigration Review can
15 no longer be taken for granted. Several trends call into question the Court's neutrality. First,
16 despite losing hundreds of cases on the same issue – raising the same arguments – and being
17 subject to a national class action that forecloses its interpretation, Respondent insists on
18 unlawfully detaining hundreds of noncitizens under 8 U.S.C. § 1225's. *Cortes v. Guadian*,
19 2026 U.S. Dist. LEXIS 21264, *5 (“Respondents’ undaunted efforts to improperly detain other
20 habeas petitioners under 8 U.S.C. § 1225’s mandatory detention provisions.”) Too often the
21 bond hearings taking place after a successful habeas petition are a “sham” “designed to result
22 in findings...without a fair consideration of the evidence.” *Exhibit C*, at 22. The hearings are
23 “fundamentally flawed or even pre-cooked” resulting in a “[p]redetermined outcome” that
24

1 prolongs detention. *Id.*, at 23. The judges cited in the evidence note that the ordered bond
2 hearings were “stacked against detainees from the start.” *Id.*, at 36. As noted in the initial
3 petition, those judges who were fairly considering bond requests have been removed and
4 replaced. *Id.*, at 41.

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

7 *Id.* Former ICE Chief Counsel Jorge Artieda publicly admitted what any immigration
8 practitioner already knows:

9 detainees “are now being systematically denied bond based on rationales that would
10 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
11 enforced.”

12 *Id.*, at 25. For all of these reasons, courts are increasingly finding that a bond hearing would
13 be “futile[,]” would “not comport with due process[,]” and thus ordering detainees released
14 outright. *Id.*, at 25. Like those noncitizens, Petitioner is “unlikely to get a fair shake in
15 immigration court[]” and should also be ordered released outright. *Id.* Furthermore,
16 Immigration Judges at the Aurora Immigration Court are now finding that they lack jurisdiction
17 to consider bonds on the theory that the Department has not filed a form I-286. *Exhibit C*, at
18 10 – 14, 17 – 21. Though there is no statutory requirement for such a form to be filed, the
19 court is finding that the lack of such a form deprives it of jurisdiction because there is no initial
20 custody determination to redetermine. *Id.* Never mind that Petitioner and others similarly
21 situated are literally in the custody of the Department and in proceedings before the Aurora
22 Immigration Court at the Aurora ICE Detention Facility. Since the Department is refusing to
23 issue a form I-286 as a matter of policy, this novel requirement represents an effective
24 Departmental veto on bond hearings. *Exhibit B*: (“Effective immediately, it is the position of

1 DHS that applicants for admission are...treated in the same manner that ‘arriving aliens’ have
2 historically been treated...Use of the...Notice of Custody Determination (I-286)...will no
3 longer be an option.”). This moving of the goal posts is not unlike the Executive Office for
4 Immigration Review’s decision to ignore the nationwide class action in *Maldonado-Bautista*
5 even before that decision was stayed outside its District. If the court can concoct an artifice to
6 prolong this unlawful detention, experience shows that it will do so. Third, the Assistant Chief
7 Immigration Judge for the Aurora Immigration Court is *sua sponte* referring cases to herself
8 in which bond was granted and reversing those decisions despite jurisdiction for those matters
9 being with the Board of Immigration Appeals. Such self-referral for the purpose of denial lays
10 bare that the Executive Office for Immigration Review has abandoned any pretense of
11 neutrality and is instead participating in this “determined campaign to arrest and remove as
12 many noncitizens as possible.” *Barco Mercado v. Francis*, at 24. Petitioner is thus concerned
13 that any decision at a bond hearing will be informed by the political goal of removing
14 noncitizens rather than a legal analysis of Petitioners danger to the community and flight
15 risk. A bond hearing, though a putative remedy to detention without due process is not likely
16 to resolve Petitioner’s unlawful detention under these circumstances. This Court should order
17 Petitioner released.

18 If the Court is unpersuaded to order Petitioner’s immediate release and instead orders
19 a bond hearing, Petitioner requests the Court specify the conditions necessary to guarantee due
20 process and remedy the violations put forth in this petition. To wit, this Court should order
21 that the Department bear the burden at any bond hearing to prove that Petitioner is a danger to
22 the community or a flight risk by clear and convincing evidence. *L.G. v. Choate*, 744 F. Supp.
23 3d 1172, 1185 (“the current scheme of placing the burden on Petitioner to prove that he should
24

1 be released on bond contravenes due process”). This Court should further direct Respondent
2 to consider Petitioner’s ability to pay when determining the amount of bond. *Sheikh v. Choate*,
3 1:22-cv-01627-RMR, 2022 WL 17075894, * 5 (D. Colo. Jul. 27, 2022) (grant of habeas corpus
4 ordering a bond hearing at which IJ must consider ability to pay); *Viruel Arias v. Choate*, 1:22-
5 cv-02238-CNS, 2022 WL 4467245, *5 (D. Colo. Sept. 26, 2022) (ordering the IJ to
6 “meaningfully consider alternatives to imprisonment such as community-based alternatives to
7 detention including release, parole, as well as [Mr. Hotak’s] ability to pay a bond”); *U.S. v.*
8 *Salerno*, 481 U.S. 739, 754 (1987) (“bail must be set by a court at a sum designed to [prevent
9 flight] and no more”) (citation omitted). If released, the Court should prevent the unilateral
10 imposition of onerous conditions on Petitioner. *Granillo-Chavarria v. Baltasar*, 1:26-cv-
11 00712-WJM, at 11 (D. Colo. Mar. 12, 2026)(“No onerous conditions of release shall be
12 unilaterally imposed by Respondents on Granillo Chavarria, including without limitation
13 mandating that he wear GPS monitoring, submit to mandatory reporting, or have his
14 movements otherwise restricted.”) Petitioner respectfully requests that these conditions be
15 made explicit in the Court’s order in the event that the Court grants the petition.

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).

- 1 6. Respondents' detention of Petitioner pursuant to § 1225 is arbitrary and
2 capricious, and in violation of the Fifth Amendment of the U.S. Constitution.
3 Respondents do not have statutory authority under § 1225 to detain Petitioner.
- 4 7. Respondents' detention of Petitioner without access to bond is arbitrary,
5 capricious, an abuse of discretion, violative of the U.S. Constitution, and without
6 statutory authority, all in violation of 5 U.S.C. § 706(2).

7 **COUNT III**

8 **Respondents Detain Petitioner in Violation of his Fifth Amendment Due Process**

9 **Rights**

- 10 1. Petitioner incorporates by reference the allegations of fact set forth in the preceding
11 paragraphs.
- 12 2. The Government may not deprive a person of life, liberty, or property without due
13 process of law. U.S. Const. Amend. V. "Freedom from imprisonment – from
14 government custody, detention, or other forms of physical restraint – lies at the
15 heart of the liberty that the [Fifth Amendment's due process] Clause protects."
16 *Zadvydas*, 533 U.S. at 690.
- 17 3. Petitioner has a fundamental interest in liberty and being free from official restraint,
18 such as imprisonment in the Aurora Facility.
- 19 4. Respondents' detention of Petitioner without providing him a bond redetermination
20 hearing to determine whether he is a flight risk or danger to others violates his right
21 to Due Process.

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.
- f. Order that Respondents consider Petitioner's ability to pay in setting the bond amount.
- g. Order that Respondents may not unilaterally impose onerous supervision conditions on Petitioner's release.
- h. 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
- i. Grant any other and further relief that this Court deems just and proper.

DATED this 25th of March, 2026.

/s/Tiago Guevara

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CERTIFICATE OF SERVICE

I, Tiago Guevara, hereby certify that on March 25, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and I hereby further certify that I e-mailed the document or paper to USACO Civil Division Chief Kevin Traskos at kevin.traskos@usdoj.gov. Unless otherwise ordered by this Court, Petitioner will serve Respondents via certified mail at the addresses below within three business days and provide an affidavit of service to this Court.

/s/Tiago Guevara

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2052