UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 1:26-cv-

ALEJANDRO MUNDO ZARATE, [redacted]

Petitioner,

v.

GEORGE VALDEZ, Acting Field Office Director, Denver Field Office, Immigration and Customs Enforcement,
JUAN BALTAZAR, Warden, Denver Contract Detention Facility,
MARKWAYNE MULLIN, Secretary, Department of Homeland Security,
PAMELA BONDI, U.S. Attorney General,

Respondents.

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

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1. Respondents continue to subject as many noncitizens as possible to mandatory detention, without regard for how long they have been in the United States or the circumstances surrounding when they first came into the United States. Regardless, as with many individuals caught in Respondents' detention policy, Petitioner Alejandro Mundo Zarate ("Mr. Mundo Zarate") is not a noncitizen in the process of arriving and seeking to enter the United States.

2. Mr. Mundo Zarate entered the United States more than twenty-six years ago, in January 2000, entering without inspection. He has not left the United States since that time.

3. Mr. Mundo Zarate is eligible to seek cancellation of removal based on the extreme and exceptionally unusual hardship that would befall his 11-year-old U.S. citizen son if he were required to leave the country. He has no criminal history or meaningful contact with law

enforcement in the many years he has lived in the United States and has never been prosecuted by immigration authorities.

4. Notwithstanding this long history in the United States, Respondents insist that Mr. Mundo Zarate is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), as an applicant for admission who is seeking admission to the U.S. Respondents apply their detention policy to Mr. Mundo Zarate 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).

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

JURISDICTION AND VENUE

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

7. 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).

8. 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.

9. Venue is proper because Mr. Mundo Zarate's immediate custodian at the 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).

PARTIES

10. Petitioner Alejandro Mundo Zarate is a native and citizen of Mexico. ICE is detaining him at the Denver Contract Detention Facility in Aurora, Colorado. Ex. 1.

11. 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. Mundo Zarate is held. He is sued in his official capacity.

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

13. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA and oversees ICE and ICE's policies, which are responsible for Mr. Mundo Zarate's detention. Secretary Mullin has ultimate custodial authority over Mr. Mundo Zarate and is sued in his official capacity.

14. 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

15. 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.*

16. 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). "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. Mundo Zarate requests the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, given 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. Mundo Zarate 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. Mundo Zarate lives in Colorado, and his counsel's law firm operates primarily in Colorado. He will need to participate in the preparation for and attend any immigration court hearings should the Court order one, and he will incur additional, unnecessary expenses and difficulty in returning to his residence in Colorado should he be released from custody 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. Mundo Zarate was prepared to exhaust his administrative remedies and indeed, had sought a custody redetermination no fewer than *four times* before the immigration court.

22. First, shortly following his detention, Mr. Mundo Zarate moved for custody redetermination but due to the futility of pursuing a custody redetermination following the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), counsel withdrew the request.

23. Next, on December 5, 2025, an immigration judge denied his second request for custody redetermination stating the court had "no jurisdiction." Ex. 2 (IJ Bond Orders).

24. On January 19, 2026, following Mr. Mundo Zarate's third request, another immigration judge found that he had failed to demonstrate that he was a *Maldonado Bautista* class member without explanation (and in the face of DHS's own record evidence establishing that he *was* a class member.) Ex. 2.

25. Most recently, on March 3, 2026, Mr. Mundo Zarate submitted his *fourth* request for reconsideration of bond. On March 6, 2026, the Ninth Circuit issued a stay of two orders in *Maldonado Bautista, et al. v. Santacruz, et al.*, No. 5:25-cv-1873-SSS-BFM (C.D. Cal.), which had temporarily paused Respondents' application of their mandatory detention policy. *See Maldonado Bautista*, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025); 2026 WL 639931 (C.D. Cal. Feb. 25, 2026). On March 23, 2026, yet another immigration judge denied the motion, stating that the court lacked jurisdiction due to the stay. Ex. 2.

26. It is clear that DHS intends to detain Mr. Mundo Zarate absent order from this Court, and there is nothing left for Mr. Mundo Zarate to do before the agency to secure release from Respondents' unlawful custody.

27. Moreover, any failure to exhaust administrative remedies does not bar Mr. Mundo Zarate'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

28. Mr. Mundo Zarate is a native and citizen of Mexico. He entered the United States in January 2000, without inspection, and has not departed the country since that time.

29. Mr. Mundo Zarate lives in Colorado with his common law wife, a Mexican national. The couple has an 11-year-old U.S. citizen son who suffers from a number of health issues. Mr. Mundo Zarate has no criminal history, has deep community ties, including other family in the United States who have lawful status, as well as stable employment as a painter, operating his own business for a number of years.

30. On October 6, 2025, Immigration and Customs Enforcement ("ICE") officers arrested and detained Mr. Mundo Zarate, however ICE only issued an administrative warrant for his arrest *after* detaining him.

31. Further, in the nearly six months he has been detained, ICE has never provided an individualized custody determination assessing Mr. Mundo Zarate's dangerousness and flight risk or explaining the reasons for his detention. Instead, it is clear from his multiple unsuccessful attempts to secure a custody review that Mr. Mundo Zarate is being detained under DHS's mandatory detention policy, and that Respondents consider him an applicant for admission who is currently seeking admission.

LEGAL BACKGROUND

Immigration Detention and Bond

32. 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."). DHS's administrative arrest warrant is produced on a Form I-200.

33. After arrest, DHS must make an initial custody determination, assessing their dangerousness and flight risk, in order to keep someone detained. This is 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).

34. The decision whether to release a noncitizen is an individualized determination first made by DHS. 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.

35. 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).

36. 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).

> 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)

37. 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, including individuals 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").

38. 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 for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States from the United States," unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

39. 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, including those who entered without inspection. While § 1226(c) mandates the detention of certain classes of criminal noncitizens, § 1226(a) sets forth the rule for noncitizens who are 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).

40. Separate from the standard removal proceedings under § 1229a outlined above, Congress created an *expedited* removal process applicable 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 the expedited removal process. *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").

41. 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).

42. 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."

43. 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 long after their initial entry are entitled to the minimal due process provided by standard 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.

44. 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. Yet in July 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it had put forth when IIRIRA was first enacted and embraced in the nearly than four 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."[1]

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. *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).

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

46. Courts that have reviewed this issue—including every case within this district—have almost universally rejected Respondents' new reading of the statute in thousands of decisions across the country. *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-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 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 were 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 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, while 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), it does not preclude DHS from seeking a discretionary stay under 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. Mundo Zarate realleges and incorporates by reference the paragraphs above.

61. Respondents have not provided any basis for Mr. Mundo Zarate's arrest or detention. There was no warrant provided prior Mr. Mundo Zarate's arrest, and ICE has not provided an initial individualize custody determination defending its detention determination.

62. Respondents insist that Mr. Mundo Zarate is detained pursuant to 8 U.S.C. § 1225(b)(2)(A), this Court should grant the petition and order that Mr. Mundo Zarate is subject to detention under § 1226(a) and not § 1225(b)(2). Respondents' application of § 1225(b)(2) to Mr. Mundo Zarate is unlawful because Respondents' statutory construction is wrong, as more than fifteen hundred district court decisions have ruled in the last several months. *See, e.g., supra* ¶ 48.

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—such as Mr. Mundo Zarate—who are already present in the United States whom the government may seek to remove through standard removal proceedings. *Id.* at 303. Indeed, Mr. Mundo Zarate is not subject to § 1225(b)(2) detention because he cannot reasonably be described as "seeking admission" to a country where he has lived for over 26 years. 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 conflated in *Matter of Yajure Hurtado*, would render the phrase "seeking admission" superfluous because it violates the 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.

65. Section 1225's mandatory detention regime only 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) (emphasis added).

66. The ordinary meaning of the terms "seeking" and "admission" do not apply to noncitizens, like Mr. Mundo Zarate, who are not actively seeking inspection to enter the United States. *Jose Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025). Indeed, Mr. Mundo Zarate entered the United States over 26 years ago, in January 2000.

67. 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 if they are subject to specific criminal conduct criteria. *Sampiao*, 2025 WL 2607924, at *8. If all noncitizens who were inadmissible for lack of proper documentation, immigrant intent or entry without inspection were subject to mandatory detention, there would be no reason for Congress to have enumerated separate grounds under which noncitizens with a history of criminal conduct are subject to mandatory detention under § 1226(c). *Id.* Indeed, if Congress intended § 1225(b) detention to extend to all noncitizens who have not been admitted, 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. Mundo Zarate, is not an "applicant for admission" who is "seeking admission" to the United States.

68. Thus, this Court must find that subjecting Mr. Mundo Zarate 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).

69. 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).

70. If the Court orders 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 or otherwise preventing Mr. Mundo Zarate from posting any bond which might be set. "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. Mundo Zarate'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).

71. 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

72. Mr. Mundo Zarate realleges and incorporates by reference the paragraphs above.

73. 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).

74. Mr. Mundo Zarate 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.

75. Respondents' insistence that Mr. Mundo Zarate remain in immigration custody pursuant to these policies—particularly after he was already admitted through a procedurally regular

admission twenty-five years ago—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

76. Mr. Mundo Zarate realleges and incorporates by reference the paragraphs above.

77. 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, after more than 26 years in the United States, Mr. Mundo Zarate is long past the threshold of initial entry. It is well established that noncitizens like Mr. Mundo Zarate 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. Mundo Zarate is not properly detained under § 1225(b)(2), his detention does not comply with due process.

78. Mr. Mundo Zarate 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). Mr. Mundo Zarate entered into the United States in 2000, and Respondents' unjustified and unfounded position that he is still seeking admission before an inspecting immigration officer not only defies belief but violates his liberty right to be free from detention during his removal proceedings.

79. While the government has an interest in ensuring Mr. Mundo Zarate'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 release of noncitizens like Mr. Mundo Zarate pending completion of their removal proceedings.

80. Finally, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to detain noncitizens like Mr. Mundo Zarate without any determination that he is neither a danger nor a flight risk. *See* 8 C.F.R. 236.1(c)(8). Without an order from this Court, there is a high probability that Mr. Mundo Zarate—who has been present in the United States for 26 years, established a small business that supports his common law wife and U.S. citizen son, has citizen and lawful permanent resident family, and is an active member of his community—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.

81. In Respondents' contrasting version of the INA, as espoused in *Matter of Yajure Hurtado*, Mr. Mundo Zarate 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* ¶ 72.

82. 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), or otherwise preventing Mr. Mundo Zarate from posting any bond ordered by an immigration judge. *See supra* ¶ 73.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Order under the All Writs Act that Mr. Mundo Zarate 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. Mundo Zarate's immigration detention;

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

(6) Order Mr. Mundo Zarate's immediate release with all of his personal property, including any driver's license, passport, documents, and any identification cards. *See Cortes v. Guadian*, 2026 WL 327906 (D. Colo. Feb. 6, 2026).

(7) Alternatively, order that Respondents provide Mr. Mundo Zarate with a bond hearing at which the government bears the burden of proof by clear and convincing evidence.

(8) 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.

(9) Grant Mr. Mundo Zarate 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.

Dated: March 26, 2026

Respectfully submitted,

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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 and his family have provided to me. 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 25, 2026

Respectfully submitted,

/s/ Laura L. Lichter

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