UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Juan Antonio BARCENAS NUNEZ *Petitioner,* v. JUAN BALTASAR, WARDEN, Aurora Detention Center, FIELD OFFICE DIRECTOR, Denver Field Office, U.S. Immigration and Customs Enforcement TODD M. LYONS, Director, U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General; *in their official capacities,* *Respondents.*	**Case No.** 1:26-cv -01394 **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241** **ORAL ARGUMENT REQUESTED**

INTRODUCTION

1. Petitioner, Juan Antonio Barcenas Nunez, is a citizen of Mexico who last entered the United States on or about October 10, 2003, and has and has remained in the country continuously since that time.

2. Petitioner was served with a Notice to Appear ("NTA") by ICE on January 30, 2026, and is charged under INA § 212(a)(6)(A)(i) as having entered the United States without admission or inspection. *See Exhibit 1*, Notice to Appear.

3. Based on this allegation in Petitioner's removal proceedings, on March 12, 2026, an Immigration Judge found that Mr. Barcenas Nunez was in fact subject to section 1225(b)(2)(A) and denied Mr. Barcenas Nunez's request for bond citing to "the plain language of section

235(b)(2)(A)…Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)." *See* Exhibit 2, Immigration Judge Bond Decision and Exhibit 3, Form I-213.

4. Mr. Barcenas Nunez has been in ICE custody since January 30, 2026. He is detained at the Aurora Detention Facility in Aurora, Colorado. *See* Exhibit 4, ICE Detainee Locator Results.

5. The July 8, 2025 DHS policy directs all ICE personnel to treat individuals deemed inadmissible under § 1182(a)(6)(A)(i)—namely, those who entered the United States without admission or inspection—as subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A). This sweeping directive exposes millions of noncitizens to mandatory detention without access to a bond hearing, irrespective of the length of their residence in the United States or any individualized assessment of flight risk or danger to the community.

6. On September 5, 2025, the Board of Immigration Appeals ("BIA" or "Board") unlawfully reinterpreted the INA by issuing a precedent decision, binding on all immigration judges, holding that an Immigration Judge ("IJ") has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. *Id.*

7. Prior to this decision, noncitizens like Petitioner who had lived in the U.S. for many years and were apprehended by ICE in the interior of the country were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges. Instead, in conflict with nearly thirty years of legal precedent, Respondents now consider Mr. Barcenas Nunez subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) without any opportunity for release on bond while his removal proceedings are pending.

8. Mr. Barcenas Nunez's detention on this basis violates the plain language of the INA and its implemented regulations.

9. Section 1225(b)(2)(A) applies only to people who are both an "applicant for admission" and "seeking admission" to the United States. It does not apply to people who, like Mr. Barcenas Nunez previously entered the country and are now living in the United States. Detention of such individuals is governed by a different statute, section 1226(a), which allows for release on conditional parole or bond. That statute expressly applies to people who are, like Mr. Barcenas Nunez who are "already present in the United States" and are charged as inadmissible for having entered without inspection. *See Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018).

10. Mr. Barcenas Nunez has resided in the United States for over twenty (20) years and was apprehended in the interior of the U.S. He should not be considered an "applicant for admission" who is "seeking admission." Rather, consistent with decades of precedent, he should be detained pursuant to 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond.

11. Accordingly, this Court should grant the instant petition for a Writ of Habeas Corpus and order that Mr. Barcenas Nunez be immediately released from ICE custody. In the alternative, Respondents should be ordered to provide him with a fair bond hearing within three (3) court days.

JURISDICTION AND VENUE

12. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

13. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution

(Suspension Clause).

14. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

15. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

16. Venue is proper because Petitioner is detained at the Aurora Detention Facility in Aurora, Colorado, which is within the jurisdiction of this District and Petitioner's immediate physical custodian is in this District. *See* 28 U.S.C. § 1391(b). *See* Exhibit 4.

REQUIREMENTS OF 28 U.S.C. § 2243

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

18. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

PARTIES

19. Petitioner, Mr. Barcenas Nunez, is a citizen of Mexico and has lived in the United States

with his family for over twenty years. Mr. Barcenas Nunez is currently detained at immigration detention facility in Aurora, Colorado. He is in custody, and under the direct control, of Respondents and their agents. *See* Exhibit 4.

20. Respondent Juan Baltasar is the warden of the above-identified immigration detention facility, and he or she has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Mr. Barcenas Nunez.

21. Respondent Director is sued in his or her official capacity as the Acting Field Office Director of the Denver Field Office of U.S. Immigration and Customs Enforcement. He or she is responsible for the administration and enforcement of ICE's detention and removal functions, including custody determinations under 8 U.S.C. § 1226. Respondent Field Office Director is a legal custodian of Mr. Barcenas Nunez.

22. Respondent Director Todd Lyons is sued in his official capacity as the Acting Director of the U.S. Immigration and Customs Enforcement ("ICE"). He is responsible for the administration and enforcement of ICE's detention and removal functions, including custody determinations under 8 U.S.C. § 1226. Respondent Director Lyons is a legal custodian of Mr. Barcenas Nunez.

23. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, Respondent Secretary Mullin is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Mr. Barcenas Nunez's detention. Respondent Secretary Mullin is a legal custodian of Mr. Barcenas Nunez

24. Respondent Pamela J. Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Attorney General Bondi is a legal custodian of Mr. Barcenas Nunez.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

25. A bond hearing was held and bond was denied. Additional administrative exhaustion is unnecessary as it would be futile. *See e.g.*, *Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

It would be futile for Petitioner to seek a custody redetermination hearing before an IJ because of the BIA recent decision holding that anyone who has entered the U.S. without inspection is now considered an "applicant for admission" who is "seeking admission" and therefore subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in Yajure Hurtado renders exhaustion futile). Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

26. Petitioner has never been afforded a constitutionally adequate bond hearing. The IJ in his case refused to hold his bond hearing and cited to the erroneous interpretation of the statutes as reason to deny his bond hearing. *See* Exhibit 2. No IJ has ever determined, on the basis of the

evidence presented by the government, that Mr. Barcenas Nunez is a danger to the community or a flight risk. His removal proceedings are not final. He has no final order of removal.

STATEMENT OF FACT

27. Mr. Barcenas Nunez has lived in the United States for over twenty (20) years and has built a tranquil life with his wife, adult children, and grandchildren. He is the owner of his own commercial and residential window cleaning business.

28. On January 30, 2026, Mr. Barcenas Nunez was the subject of a targeted enforcement action resulting in his detention at the Aurora Detention Center. Mr. Barcenas Nunez attempted to request bond as he was held under § 212(a)(6)(A)(i) but was denied with the IJ citing to the reinterpreted standard of § 1225(b)(2)(A).

LEGAL FRAMEWORK

29. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

30. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Other noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

31. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

32. Lastly, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)-(b).

33. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

34. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

35. Before the IIRIRA, most people detained within the United States—even those who entered without inspection—were entitled to a custody hearing, while people apprehended at the border were only eligible for release on parole. *See* 8 U.S.C. § 1252(a) (1994). When it enacted IIRIRA, Congress explained that section 1226(a) "restates the current provisions in section [1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

36. When EOIR issued regulations implementing IIRIRA in 1997, it explained that "[D]espite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination." *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). EOIR's new regulations explained that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Id.

37. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. *See* 8

U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)). In contrast, those who were stopped at the border were only entitled to release on parole. See 8 U.S.C. § 1252(a)(1994); see also H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

27. Most recently, Respondents have adopted a different interpretation of section 1225(b)(2)(A). On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

38. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies, regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

39. On September 5, 2025, the BIA parroted this novel interpretation in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the BIA departed from the INA's text, federal precedent, and existing regulation and held that all noncitizens who are present in the United States without admission are subject to mandatory detention under section 1225(b)(2)(A) and are ineligible for bond hearings. *Yajure Hurtado*, 29 I&N at 216. Specifically, the BIA argued that "under the plain reading of the INA," noncitizens "who are present in the United States without admission are applicants for admission as defined under" section 1225(b)(2)(A). *Id.* at 220.

40. Respondents new legal interpretation is plainly contrary to the statutory framework and its implementing regulations. Indeed, for many decades, Respondents had applied § 1226(a) to

people like Mr. Barcenas Nunez. Respondents' new policies are thus not only contrary to law, but are also arbitrary and capricious in violation of the Administrative Procedure Act ("APA"). They were also adopted without complying with the procedural requirements of the APA.

41. Federal courts do not owe deference to agency interpretation of statutes. Rather, they exercise "independent legal judgment" to interpret statutes. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 401 (2024). Thus, while the IJ was bound by the BIA's interpretation in *Matter of Yajure Hurtado*, this Court is not. *See Pizarro Reyes*, 2025 WL 2609425, at *6 (citing *Loper Bright*, 603 U.S. at 413).

42. Since Respondents adopted their new policies, court after court has rejected their new interpretation of the INA's detention authorities and instead have consistently found that § 1226 not §1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV.5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D.

Md. Aug. 24, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos*, 2025 WL 2642278; *Pizarro Reyes* 2025 WL 2609425; *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal.* Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Rivera Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Campos Leon v. Forestal*, No. 1:25-CV-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Barrajas v. Noem*, No. 4:25-CV-00322-SHL-HCA, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Lopez v. Hardin*, No. 2:25-CV-830-KCD-NPM, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025).

43. The government has not identified any authority, other than the BIA's recent decision in *Matter of Yajure Hurtado*, finding that noncitizens such as Mr. Barcenas Nunez, who have been present in the United States for many years are subject to section 1225(b)(2)(A).

44. Courts have uniformly rejected DHS and EOIR's new interpretation because it is contrary to the INA. As the *Lopez Santos* court and others have explained, the plain text of the statutory provisions demonstrates that section 1226(a), not section 1225(b)(2)(A), applies to people like Mr. Barcenas Nunez. *See* 2025 WL 2642278.

45. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024).

46. As other courts have concluded, "[f]or section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025); *see also Lopez Benitez*, 2025 WL 2371588, at *5. As an initial matter, Respondents here have failed to show in this case that an "examining immigration officer" made these determinations. The government points solely to the Notice to Appear issued on January 30, 2026. But that document does not contain any such findings by the immigration officer.

47. Section 1225(b) "applies primarily to aliens seeking entry into the United States," while section 1226 "applies to aliens already present in the United States." *Jennings*, 583 U.S. at 297, 303; *see also Lopez Santos*, 2025 WL 2642278, at *4 (explaining that both statutes are necessary because they "differentiat[e] between the detention of arriving aliens who are seeking entry into the United States under § 1225 and the detention of those who are already present in the United States under § 1226."). Indeed, "'our immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.'" *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)).

48. "It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989).

49. The government argues section 1225(b)(2)(A) applies to all noncitizens living in this county who did not lawfully enter, regardless of how long they have lived here or whether they ever took any affirmative step to seek admission. The government's proposed interpretation of the statute ignores the plain meaning of the phrase "seeking admission." *Martinez*, 2025 WL 2084238, at *6. "Seeking" means "asking for" or "trying to acquire or gain." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/seeking. And the use of a present participle, "seeking," "necessarily implies some sort of present-tense action." *Martinez*, 2025 WL 2084238, at *6. The term "admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). And "entry" has long been understood to mean "a crossing into the territorial limits of the United States." *Hing Sum v. Holder*, 602 F.3d 1092, 1100–01 (9th Cir. 2010) (quoting *Matter of Pierre,* 14 I & N Dec. 467, 468 (1973)). To piece this together, the phrase "seeking admission" means that one must be actively "seeking" "lawful entry." *See Lopez Benitez*, 2025 WL 2371588, at *7.

50. Section 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The section's title refers to "*Inspection* by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing." 8 U.S.C. § 1225 (emphasis added). As several courts have noted, "[t]he added word of 'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already." *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes*, 2025 WL 2609425, at

*5).

51. "Inspection" is a process that occurs at the border or other ports of entry. *See Posos-Sanchez v. Garland*, 3 F.4th 1176, 1183 (9th Cir. 2021) (explaining that "inspection and authorization" must "take place at a 'port of entry'" for one to be considered to have "lawfully entered"); 8 C.F.R § 235.1(a) ("Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. port-of-entry when the port is open for inspection."). The § 1225(b) statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

52. Furthermore, the text of section 1225 repeatedly refers to inspections, a term generally understood to refer to determinations of admissibility at time of entry. *See* Brief for American Immigration Lawyers Association and Capital Area Immigrants' Rights Coalition as Amici Curiae Supporting Plaintiffs' Motion for Preliminary Injunction, *Farmworker Ass'n of Fla. v. DeSantis*, 23-cv-226655-RKA, 716 F.Supp.3d 1312 (S.D. Fla. filed Aug. 25, 2023). The use of "inspection" indicates that the statute is concerned with people who have recently arrived in the United States.

53. Section 1225(b)(2)(A) applies to noncitizens "seeking admission." The use of the present participle in section 1225, further demonstrates that its applicability does not extend to people already present in the United States. *See United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes."). The present participle "denotes an ongoing process" that "necessarily implies some sort of present-tense action."

Martinez, 2025 WL 2084238, at *6 (citations and internal quotations omitted) (concluding that noncitizen was not subject to detention under section 1225(b)(2)(A) because they were not seeking admission).

54. Section 1225(b)(2)(A) applies to noncitizens "seeking admission." The use of present participle in the phrase "seeking admission" implies a "present-tense action" and does not apply to a person who has been living in the country for decades. *Martinez*, 2025 WL 2084238, at *6;

55. Here, Petitioner is not actively "seeking" "lawful entry" because he already entered the United States – over twenty years ago. If anything, Petitioner is seeking to remain in the United States. As *Lopez Benitez* noted:

> [S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively "seeking admission" to the United States, it cannot, according to its ordinary meaning, apply to [petitioner], because he has already been residing in the United States for more than two years.

Lopez Benitez, 2025 WL 2371588, at *7; *see also Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025) ("[S]eeking admission' implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection.").

56. The regulations enacting section 1225(b)(2) similarly use the present participle to refer to "arriving aliens". 8 C.F.R. § 235.2(c). These regulations define "arriving alien" as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. §

1.2. A person who has been living in the United States for decades is plainly not "coming or attempting to come into the United States." *Id*

57. While petitioner could be considered an "applicant for admission" because he is allegedly an "alien present in the United States who has not been admitted," as defined at 8 U.S.C. § 1225(a)(1), the government has failed to show that, over 30 years after he entered the country, petitioner was actively "seeking admission." The government's "selective reading of the statute. . . ignores its 'seeking admission' language." *Martinez*, 2025 WL 2084238, at *6. "If, as the government argues, [section] 1225(b)(2)(A) was intended to apply to all 'applicant[s] for admission,' there would be no need to include the phrase 'seeking admission' in the statute." *Lopez Benitez*, 2025 WL 2371588, at *6. "That is, rather than stating that mandatory detention is required for any 'applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted,' the statute would instead provide for mandatory detention for any 'applicant for admission, if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.'" *Id.* (quoting 8 U.S.C. § 1225(b)(2)(A)). The rule against surplusage counsels that "'every clause and word of a statute' should have meaning." *See United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883)); *League of California Cities v. Fed. Commc'ns Comm'n*, 118 F.4th 995, 1019 (9th Cir. 2024) ("The rule against surplusage generally prohibits [a court] from interpreting [a statute] in a way that 'mak[es] a part of it unnecessary.'" (quoting *NLRB v. Aakash, Inc.*, 58 F.4th 1099, 1105 (9th Cir. 2023)). The government's position would make the "seeking admission" language meaningless and violate the rule against surplusage. *Martinez*, 2025 WL 2084238, at *6; *Lopez Benitez*, 2025 WL 2371588, at *6.

58. The government's argument also disregards the context of sections 1225 and 1226 and the broader statutory scheme. As the Supreme Court noted in *Jennings*, section 1225 applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287. Section 1225 "authorizes the Government to detain certain aliens *seeking admission* into the country," whereas section 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.*, 583 U.S. at 289 (emphasis added).

59. Another problem with the government's argument is that application of section 1225(b)(2)(A) to noncitizens already in the country would render superfluous a recent amendment to section 1226(c). *See Gomes*, 2025 WL 1869299, at *5. Although section 1226(a) sets out a discretionary detention scheme, section 1226(c) provides an exception which mandates detention for certain criminal noncitizens. *See* 8 U.S.C. § 1226(c)(1)(E). Section 1226(c)(1)(E), which was added to the statute in 2025 by the Laken Riley Act, mandates detention for any noncitizen (i) who is inadmissible under section 1182(a)(6)(A)(i) as an "alien present in the United States without being admitted or paroled," *and* (ii) who "is charged with, arrested for, convicted of, or admits" to committing certain crimes. 8 U.S.C. § 1226(c)(1)(E) (emphasis added); *see Gomes*, 2025 WL 1869299, at *5 (explaining statutory section).

60. If every "applicant for admission"—which is defined, as relevant here, as an "alien present in the United States who has not been admitted," *see* 8 U.S.C. § 1226(a)(1)—is already subject to mandatory detention under section 1225(b)(2)(A), as the government contends, there would have been no need for the new section 1226(c)(1)(E), which mandates detention for every noncitizen who is "present in the United States without being admitted or paroled" *and* who has been "charged with, arrested for, or admits to" committing certain crimes, *see* 8 U.S.C.

§ 1226(c)(1)(E). Reading section 1225 as the government proposes would thus render section 1226(c)(1)(E) superfluous. *See Gomes*, 2025 WL 1869299, at *5; *Lopez Benitez*, 2025 WL 2371588, at *7; *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025); *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025) ("The Court will not find that Congress passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2).").

61. The government responds that Congress passed the Laken Riley Act to "foreclose loopholes." Doc. 7 at 8. The government does not identify any such loophole. If the government's argument were correct, every noncitizen present in the United States without admission would already be subject to mandatory detention, and there would be no loophole to address. A more satisfactory explanation for the passage of the Laken Riley Act provision is that Congress understood that not all noncitizens present in the United States who entered without lawful admission were subject to mandatory detention under section 1225(b)(2)(A), and Congress wanted to ensure that those who had certain criminal histories would be detained. *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, *12 (D. Minn. Aug. 15, 2025) ("[C]ourts 'do not lightly' find that Congress adopted 'two separate clauses in the same law to perform the same work.' The Court will not find that Congress passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2)." (quoting *United States v. Taylor*, 596 U.S. 845, 857 (2022)).

62. "When Congress acts to amend a statute, [the Court] presume[s] it intends its amendment to have real and substantial effect." *See Stone v. I.N.S.*, 514 U.S. 386, 397 (1995); *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."). Section

1226(c)(1)(E) is a detention provision; it has no other purpose. *See* 8 U.S.C. § 1226(c)(1)(E). If all noncitizens present in the United States without lawful admission were subject to mandatory detention under section 1225(b)(2)(A) already—as the government argues—section 1226(c)(1)(E) would be superfluous. *Maldonado*, 2025 WL 237441, at *12 ("If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless.").

63. Accordingly, the mandatory detention provision of section 1225(b)(2)(A) does not apply to people like Mr. Barcenas Nunez who have already entered and were residing in the United States when they were apprehended. Instead, Mr. Barcenas Nunez is detained under section 1226(a), which requires a bond hearing.

CLAIMS FOR RELIEF

COUNT ONE
Violation of the INA

64. Petitioner realleges and incorporates by reference the allegation of fact set forth in the preceding paragraphs.

65. Upon information and belief, Mr. Barcenas Nunez has resided in the U.S. for over twenty years. He is therefore neither an arriving alien nor an alien who is now seeking admission to the United States.

66. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under section 1226(a), unless they are subject to sections 1225(b)(1), 1226(c), or 1231.

67. As noted in the attached exhibits, the Department of Homeland Security itself stated that Mr. Barcenas Nunez's detention is because he is an "alien present in the United States who has not been admitted or paroled" and is charged as being subject to removal under § 212(a)(6)(A)(i) and not under § 1225(b)(2) as is cited in the IJ's decision to deny his bond hearing. *See* Exhibits 2 and 3.

68. The continued application of section 1225(b)(2) to Petitioner, resulting in his mandatory detention, is unlawful and violates the INA.

COUNT TWO
Violation of Bond Regulations

69. Petitioner realleges and incorporates by reference the allegation of fact set forth in the preceding paragraphs.

70. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

71. An administrative agency is required to adhere to its regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). In 1997, after Congress amended the INA through IIRIRA, EOIR and the then Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of Aliens," the agencies explained that "[d]espite being applicants for admission, *aliens who are present without having been admitted or paroled* . . . will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under section 1226 and its implementing regulations.

72. Federal regulations require the government to grant bond hearings to people detained under section 1226(a) at the outset of their detention. 8 C.F.R. § 1236.1(d)(1); *see Jennings*, 583

U.S. at 306.

73. Nonetheless, pursuant to *Matter of Yajure Hurtado*, and in violation of long-standing regulations, EOIR now has a policy and practice of applying section 1225(b)(2) to individuals like Petitioner.

74. The continued application of section 1225(b)(2) to Petitioner, resulting in his mandatory detention, violates federal regulations.

75. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of Aliens," the agencies explained that "[d]espite being applicants for admission, *aliens who are present without having been admitted or paroled* . . . will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under section 1226 and its implementing regulations.

76. The continued application of section 1225(b)(2) to Petitioner, resulting in his mandatory detention, violates federal regulations.

COUNT THREE
Fifth Amendment Substantive Due Process

77. Petitioner realleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

78. Petitioner's ongoing detention violates his substantive due process rights because his liberty is being restricted without justification. *See Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3).

79. The Fifth Amendment's Due Process Clause prohibits the federal government from

depriving any 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).

80. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch,* 494 U.S. 113, 127 (1990).

81. Under the framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976), the balance of interests strongly favors Petitioner's release. The sufficiency of any process afforded is determined by weighing three factors: (i) the private interest that will be affected by the official action, (ii) the risk of erroneous deprivation of that interest through the available procedures, and (iii) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). "The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time." *M.S.L. v. Bostock*, No. 25-cv-1204, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025) (citing *Mathews*, 424 U.S. at 348).

82. The government's infringement on Petitioner's liberty interest triggers a right to contest that infringement, for example, through a hearing before the right is deprived. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569–70 (1972).

83. Petitioner's private interest in freedom from detention s profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom 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.").

84. Further, courts have recognized that immigrants who the government granted a limited form of immigration relief and allowed to live in the country for years "under the understanding that [they are] unlikely to be subject to enforcement proceedings" possess a cognizable liberty interest. *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *10-11 (W.D. Tex. Oct. 2, 2025) (finding a person who lived in the U.S. for twenty years, including thirteen years with deferred action, has a cognizable liberty interest) (quoting *Gamez Lira v. Noem*, No. 1:25-CV-00855-WJ-KK, 2025 WL 2581710, at *3 (D.N.M. Sept. 5, 2025)).

85. Respondents' failure to grant an individualized hearing on whether Petitioner's detention is justified to prevent flight or mitigate risk of danger to the community creates the highest risk of erroneous deprivation of liberty. *See Zadvydas*, 533 U.S. at 690.

86. Respondents incur no additional burden by providing Petitioner with such process because it merely comports with both the requirements of the INA and the constitutional protections guaranteed by the Fifth Amendment. "Further, any fiscal or administrative burdens Respondents may assert by having to provide a bond hearing are also diminished given [...] the government has conducted such hearings for the past thirty years until a change in the agency's interpretation of the law." *See Vieira v. Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 at *4 (W.D. Tex. Oct. 16, 2025).

87. The risk of erroneous deprivation is exceptionally high. Petitioner has deep ties to his community in Colorado.

88. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

89. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

90. Mr. Barcenas Nunez has a private right to a bond hearing because he is properly detained under a statute, 8 U.S.C. § 1226, that allows for release on bond. Because he was denied any hearing or any other of the procedural protections that such a significant deprivation of his liberty interest would require, his continued detention violates his procedural due process rights. *See Mathews*, 424 U.S. at 332–33.

91. Mr. Barcenas Nunez has a fundamental interest in his liberty. The only permissible detention purposes under section 1226—preventing danger and flight risk—are not present here, unlawfully infringing upon Petitioner's liberty interest. *See Zadvydas*, 533 U.S. at 690–91; *Demore v. Kim*, 538 U.S. 510, 528 (2003).

92. Considering these factors, Petitioner respectfully requests that this Court order his immediate release from custody or provide him with a bond hearing within seven days.

COUNT FOUR
Fifth Amendment Procedural Due Process

93. Petitioner realleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

94. Courts have found that individuals in Petitioner's position are entitled to a bond hearing and that an individual's entitlement to due process under the Fifth Amendment is not capped by the statute governing his detention. *See Vieira v. Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025

WL 2937880 at *4 (W.D. Tex. Oct. 16, 2025)(rejecting the argument that an immigration detainee "is not entitled to more process than what Congress provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a)," when that detainee is challenging their detention rather than removal, and was detained after living in the U.S. for years rather than on arrival).

95. Denial of a bond hearing under section 1225(b)(2) "creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement pending resolution of his removal proceedings," particularly when the petitioner is not a flight risk or danger and has lived in the U.S. for a prolonged period. *Id.* at *7. The value of an additional safeguard through a bond hearing to determine "whether continued detention is necessary to ensure presence at removal hearings and safety for the community" is high. *Id.*

96. For these reasons, Mr. Barcenas Nunez's ongoing detention is unconstitutional. He should be immediately released.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Order that he shall not be transferred outside of Colorado while this habeas petition is pending;
3. Issue an Order to Show Cause ordering Respondents to show cause why this petition should not be granted within three days.
4. Issue a Writ of Habeas Corpus requiring that Respondents release him, or in the alternative provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
5. Declare that his detention is unlawful;

6. Grant him any preliminary relief to which he shows himself to be entitled;
7. Award him his attorney's fees and costs under the Equal Access to Judice Act, as amended, 18 U.S.C. § 2412, and on any other basis justified under law;
8. Grant him any other and further relief that this Court deems just and proper.

Dated: _____

Respectfully submitted,

/s/Marcela Mendoza Marquez
Marcela Mendoza Marquez
Your Colorado Bar ID #
Your law office
Your law office address
Telephone number
Fax number (if you have one)
Email address

Counsel for Petitioner

EXHIBIT LIST

Exhibit 1, Notice to Appear, Form I-862;

Exhibit 2, Immigration Judge's Decision;

Exhibit 3, Record of Deportable/Inadmissible Alien, Form I-213;

Exhibit 4, ICE Detainee Locator.

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Juan Antonio Barcenas Nunez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 2nd day of April, 2025.

/s/*Marcela Mendoza Marquez*
Marcela Mendoza Marquez
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed to _____

at _____ on ____ of April, 2026.

_____

Signature