UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

MILLER MILAN ARRIOJA BLANCO,

Petitioner,

v.

GEORGE VALDEZ, Field Office Director of Enforcement and Removal Operations, DENVER Field Office, Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; TODD BLANCHE, Acting U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; JUAN BALTAZAR, Warden of Aurora ICE Processing Center,

Respondents.

Case No. 1:26-cv-3312

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This case challenges the government's authority to indefinitely detain a noncitizen without any finding of dangerousness or flight risk. It asks that this Court grant the petitioner release from unlawful immigration detention or a bond hearing before a neutral arbiter.

2. Petitioner, Miller Milan Arrioja Blanco, is in the physical custody of Respondents at the AURORA ICE DETENTION CENTER. He faces unlawful and indefinite detention because the Department of Homeland Security (DHS), in direct collaboration with the adjudicative body with jurisdiction over immigrants (the Executive Office of Immigration Review) (EOIR), have concluded Petitioner is subject to mandatory detention.

3. Petitioner is a native and citizen of Venezuela. Petitioner entered the United States without inspection on August 23, 2023, through El Paso, Texas. Petitioner was designated an alien present in the United States who has not been admitted or paroled, and issued a Notice to Appear ("NTA"), charging him as inadmissible, pursuant to section 8 U.S.C. § 212 (a) (6) (A) (i). The NTA states the incorrect date of entry and is defective. *See* NTA, Exhibit 1. Petitioner filed an I-589 asylum application with USCIS on June 20, 2024. *See* I-589 Page 1 and Signature page, Exhibit 2. The asylum application was subsequently transferred to the Executive Office for Immigration Review ("EOIR") on August 28, 2025. However, the I-213 on file incorrectly states that Petitioner has no pending applications for relief. *See* I-213, Exhibit 3.

4. Petitioner was detained on July 13, 2026, while exiting the Jefferson County Jail, after being released on $1000 bond, following his arrest on fabricated assault charges. There is no ICE arrest warrant on file, despite claims in the I-213.

5. Petitioner's warrantless arrest and detention is a direct violation of the Order issued by the U.S. District Court of Colorado in *Ramirez Ovando v Noem*, which precludes

warrantless arrests in this District unless, pre-arrest, the arresting officer has probable cause to believe that the individual is in the United States in violation of United States immigration laws and probable cause that the person being arrested is likely to escape before a warrant can be obtained, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(2). *See Ramirez Ovando, et al. v Noem*, 1:25-cv-03183-RBJ, "Order", Document 49 at 61, (D. Colo., November 25, 2025).

6. At the time of the Petitioner's detention, he was the sole financial provider for three young children. His five-year old child, [redacted] has complicated medical issues and has had ten surgeries related to his diagnosis of hydrocephalus. He has chronic kidney infections and is also on the autism spectrum. Petitioner's partner has Type I diabetes and stage 3 kidney disease. *See* Medical Records and Doctor's Letter, Exhibit 4. Shortly after Petitioner was detained, his partner suffered Ketoacidosis and had to be hospitalized in the ICU. Due to her medical conditions, she is unable to work and provide sufficient childcare for their children. Petitioner's unlawful detention is an extreme burden on his family and is potentially life-threatening for them, because they need his help on a daily basis to manage their medical conditions and earn money to pay for their treatments.

7. On July 21, 2026, Petitioner's bond request was denied for lack of jurisdiction on the basis that Petitioner was subject to mandatory detention, pursuant to INA § 236(c)(1). Petitioner is not subject to mandatory detention under INA § 236(c)(1) based on criminal grounds, as Respondents allege. He has never been charged with, arrested for, or convicted of any offense enumerated under INA § 236(c)(1)(E)(ii) ("Laken Riley Act"), including burglary, theft, larceny, shoplifting, assault of a law enforcement officer, or any crime resulting in death or serious bodily injury to another person. Petitioner has never admitted to committing such offenses or to engaging in conduct that constitute the essential elements of such offenses as

defined by the laws of any state. In *Matter of Guerra*, 25 I&N Dec. 37, 40 (BIA 2006), the Court set forth a series of factors that Immigration Judges could look to when considering whether to release a noncitizen from custody including: (1) whether the [noncitizen] has a fixed address in the United States; (2) the [noncitizen's] length of residence in the United States; (3) the [noncitizen's] family ties in the United States, and whether they may entitle the [noncitizen] to reside permanently in the United States in the future; (4) the [noncitizen's] employment history; (5) the [noncitizen's] record of appearance in court; (6) the [noncitizen's] criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the [noncitizen's] history of immigration violations; (8) any attempts by the [noncitizen] to flee prosecution or otherwise escape from the authorities; and (9) the [noncitizen's] manner of entry to the United States.

8. Petitioner satisfies each factor identified in *Matter of Guerra*, 25 I&N Dec. 37, 40 (BIA 2006). Prior to detainment, Petitioner resided at [redacted], where he lived with his partner and children for nearly three years. As previously stated, Petitioner is the sole financial provider for his household and plays an indispensable role in maintaining the stability and well-being of his family. Second, since entering the United States, Petitioner has established deep, stable, and meaningful ties to his community. He has become a committed member of a local Lutheran Church, obtained a driver's license, maintained a job as a rideshare driver, and paid taxes. *See* Tax Statement, Exhibit 5. These facts demonstrate long-term residence, integration, and reliability. He regularly volunteers as a member of the church, contributing his time and talents in service to the community. His involvement reflects moral character, accountability, and community engagement.

9. Petitioner has never failed to appear for any immigration appointment or proceeding and

has demonstrated full compliance with all requirements to date. His charges arise from an altercation with a neighbor, who has continuously harassed and threatened his family with deportation, and who instigated a fight and lied to the police about it. Witnesses and video evidence support Petitioner's assertions that he acted in self-defense and that the neighbor continued to threaten and menace Petitioner's family with a metal bat after Petitioner was arrested. Petitioner has no prior criminal history and no conduct suggesting he poses a danger to the community. Petitioner warrants release and due process to properly defend against his criminal charges. See Witness Statement, Exhibit 6

10. ICE claims the authority to indefinitely detain Petitioner without a bond hearing under the Immigration and Nationality Act ("INA") § 235(b), 8 U.S.C. § 1225(b). In separate subsections, that statute provides for the detention of asylum seekers who pass a credible fear interview "for further consideration of the application for asylum," id. § 1225(b)(1)(B)(ii), as well as detention of all other noncitizens whom an immigration official believes are not "clearly and beyond a doubt entitled to admission for a proceeding under 1229a of this title [removal proceedings before an immigration judge]." id. § 1225(b)(2)(A). Collectively, the Department of Homeland Security ("DHS") refers to these noncitizens as "arriving aliens." 8 C.F.R. § 1.2.

13. The government interprets § 1225(b) to require mandatory detention without a bond hearing of all arriving aliens, for the indefinite length of time necessary to complete removal proceedings, even if that time becomes unreasonably prolonged. *See Matter of X-K-*, 23 I. & N. Dec. 731, 732 (BIA 2005) ("There is no question that Immigration Judges lack jurisdiction [for a bond hearing] over arriving aliens who have been placed in . . . removal proceedings . . . ."); 8 C.F.R. § 1003.19(h)(2)(i)(B) (stating that an immigration judge may not conduct a custody determination of an "arriving alien").

14. Petitioner's prolonged, indefinite detention pending removal proceedings violates the U.S. Constitution's Fifth Amendment because it deprives Petitioner of liberty without due process of law and the Immigration and Nationality Act because it is not authorized by the statute.

15. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus and order petitioner's release from custody, with appropriate conditions of supervision if necessary. In the alternative, petitioner requests that this Court conduct or order an immigration judge to conduct a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the reviewing court considers alternatives to detention that could mitigate risk of flight.

JURISDICTION

16. Petitioner is in the physical custody of Defendants. Petitioner is detained at the AURORA ICE DETENTION CENTER in AURORA, COLORADO.

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

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

VENUE

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

Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Petitioners are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the DISTRICT OF COLORADO.

REQUIREMENTS OF 28 U.S.C. § 2243

20. The Court must grant the petition for writ of habeas corpus or order Defendants 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, Defendants must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

21. 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).

PARTIES

22. Petitioner, CMiller Milan Arrioja Blanco, is a citizen of Venezuela who has been in immigration detention since the 13th of July, 2026.

23. Defendant, George Valdez, is the Director of the Denver Field Office of ICE's Enforcement and Removal Operations division; however, on information and belief, the DHS is rotating their Field Office Director without publishing a schedule of rotation. As such, George Valdez or his unknown, unannounced provisional replacement is

Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He or his acting counterpart is named in his or her official capacity.

24. Defendant, Markwayne Mullin, is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

25. Defendant, Department of Homeland Security (DHS), is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

26. Defendant, Todd Blanche, is the acting Attorney General of the United States. He 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. He is sued in his official capacity.

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

28. Defendant, Warden Juan Baltazar, is employed by the private, for-profit detention corporation contracted by the Government as an agent to confine immigrants at GEO Aurora Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

29. Peter McNeilly, is the U.S. Attorney for the District of Colorado, and, thus, responsible for responding to this Writ on behalf of the Government Petitioners.

LEGAL FRAMEWORK

30. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

31. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *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), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

32. The BIA interprets § § 1225(b)(1)(B)(ii) as mandating detention of arriving aliens pending removal proceedings. *See Matter of X-K-*, 23 I. & N. Dec. at 732 ("There is no question that Immigration Judges lack jurisdiction [for a bond hearing] over arriving aliens who have been placed in . . . removal proceedings . . . ."). Exhaustion before the BIA would therefore be futile.

33. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, subject to exceptions, *see* 8 U.S.C. § 1231(a)–(b).

34. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of her detention. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009). Any requirement of administrative exhaustion is therefore purely discretionary.

35. In making that decision, the Court should consider the urgency of the need for immediate review. "Where a person is detained by executive order . . . the need for collateral review

is most pressing. . . . In this context the need for habeas corpus is more urgent." *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

36. Moreover, where the agency has predetermined a dispositive issue, no further action with the agency is necessary. *See, e.g., Monestime v. Reilly*, 704 F. Supp. 2d 453, 456-57 (S.D.N.Y. 2010) (holding that administrative challenges to a noncitizen's classification under the mandatory detention statute would be futile given the agency's precedent on the issue); *Garcia*, 615 F. Supp. 2d at 180 (same).

37. Further, "the BIA [Board of Immigration Appeals] does not have jurisdiction to adjudicate constitutional issues . . . ." (quotations and citation omitted). *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002). Because Petitioner raises a constitutional due process claim in his habeas petition, exhaustion of his due process claims would be futile.

38. Petitioner asserts the respondents are detaining him in violation of the INA, its implementing regulations, and the Fifth Amendment while her asylum claim works its way through the immigration courts.

39. The Court should find Petitioner's due process claim dispositive. The Fifth Amendment guarantees that "[n]o person shall be…deprived of life, liberty, or property, without due process of law[.]" U.S. Const. amend. V. The clause "applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It is thus "well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993).

40. The Supreme Court has long recognized that "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1976). Courts look to three factors when considering what process is due in a given situation: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

41. All three factors weigh heavily in Petitioner's favor. First, his interest in freedom from detention "lies at the heart of the liberty" the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. Second, the risk of erroneous deprivation of that interest is substantial here. Petitioner provides an essential role in maintaining health and financial responsibilities for his family, given their medical conditions. His detention has created a family health crisis. Additionally, Petitioner has established deep community ties and maintained employment as a ride share driver while caring for his family. By timely filing an asylum application, he has complied with immigration requirements. His entire motive for seeking asylum in the United States is to keep his family safe and healthy.

FACTS

42. Petitioner has resided in the United States in Lakewood, Colorado since 2023, and currently resides physically in Aurora, Colorado, where he is detained.

43. After his entry into the United States, Petitioner was issued a Notice to Appear, which found that Petitioner is subject to 8 U.S.C. § 212 (a) (6) (A) (i) of the INA. as an alien who has not been admitted or paroled.

44. On July 13, 2026, Petitioner was detained by DHS-contracted agents without being issued an arrest warrant, which has been ruled an unlawful arrest in the U.S. District of Colorado.

45. Petitioner's detention has inflicted profound harm on his partner and children, who have complex medical conditions and are experiencing extreme and emergent hardship in his absence.

46. Following Petitioner's arrest and transfer to AURORA DETENTION CENTER, the immigration court will not issue a custody determination to continue Petitioner's detention, and Petitioner is subject to mandatory detention. Petitioner's unlawful detention can not be litigated before that body, who collaborated with the DHS – who is a party to these contested proceedings – to adopt the DHS position wholesale, because such efforts would be futile. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community, and at the risk of life-threatening consequences for his family members.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

47. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

48. Petitioner's prolonged detention under § 236(c)(1) without any individualized assessment of the need for detention deprives petitioner of due process of law. The Court should therefore order release from unconstitutional detention.

49. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

50. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). For this reason, even "removable and inadmissible aliens are entitled to be free from detention that is arbitrary and capricious," id. at 721 (Kennedy, J., dissenting). That constitutional protection is unaffected by the government's authority to make rules for "admission" that regulate the immigration status of noncitizens. See 8 U.S.C. § 1101(a)(13)(A) (defining admission as "the lawful entry of the alien").

51. "A statute permitting indefinite detention of an alien would raise a serious constitutional problem" under the Fifth Amendment's Due Process Clause. Id. at 690. That serious constitutional problem is raised by the government's reading of § 1225(b). It interprets the statute to permit the indefinite detention of a noncitizen whom the government has not found to be removable or inadmissible, but instead granted the right to remain in the United States pending removal proceedings after demonstrating a credible fear of persecution to an asylum officer.

52. In *Zadvydas v. Davis*, the Supreme Court rejected the government's argument that its immigration powers permit it to indefinitely detain noncitizens after the conclusion of

removal proceedings. *Id.* at 695. Since then, the government has repeated that same argument to justify prolonged, indefinite detention pending removal proceedings.

53. Each time, federal courts have roundly rejected it. Every Court of Appeals to consider prolonged detention under INA § 236(c), 8 U.S.C. § 1226(c)—a statute that, like § 1225(b) mandates detention of inadmissible noncitizens pending removal proceedings—holds it limited to a reasonable period by the Due Process Clause. *See Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199 (11th Cir. 2016); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015); *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir.2011); *Ly v. Hansen,* 351 F.3d 263 (6th Cir. 2003). None of these decisions distinguishes between previously admitted and inadmissible noncitizens. Instead, they find that due process limits the period that any noncitizen may be held in prolonged mandatory detention pending removal proceedings.

54. In doing so, they follow *Demore v. Kim*, 538 U.S. 510, 518 (2003). *Demore* identified mandatory detention pending removal proceedings as a "brief period," lasting "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal."

55. The ability to apply for humanitarian parole under 8 U.S.C. 1182(d)(5)(A) does not provide due process for noncitizens detained under § § 236(c)(1). Parole does not provide a neutral forum to contest the necessity of ongoing detention. Instead it is a purely discretionary process, administered by the jailer. Neither the detained noncitizen nor counsel are provided an in-person hearing to contest facts leading to the parole decision.

And no review of that decision is available. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) (describing parole process).

56. Moreover, release on parole is only available for "urgent humanitarian reasons or significant public benefit," 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(b). Neither of those criteria evaluate the constitutionally permissible rationales for continued, prolonged detention during removal proceedings: whether the detained noncitizen is a flight risk or danger to his community. *See R.I.L-R v. Johnson,* 80 F. Supp. 3d 164, 188 (D.D.C. 2015) ("The *Zadvydas* Court clearly identified a pair of interests that can, under certain circumstances, suffice to justify the detention of noncitizens awaiting immigration proceedings: 'preventing flight' and 'protecting the community' from aliens found to be 'specially dangerous.'") (citing *Zadvydas v. Davis*, 533 U.S. at 690–92)).

57. Finally, parole was also available to inadmissible noncitizens who challenged prolonged detention under § 1226(c). Yet every Court of Appeals to consider § 1226(c) has nonetheless ruled it limited to a reasonable period by the Due Process Clause. The ability to apply for parole is therefore an inadequate substitute for due process.

SECOND CLAIM FOR RELIEF

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT § 235(b), 8 U.S.C. § 1225(b)

58. Petitioner re-alleges and incorporates by reference the paragraphs above.

59. Under the statutory interpretation doctrine of constitutional avoidance, the Court should construe § 1§ 236(c)(1) as limited to a reasonably brief period, extendable only if the government shows justification for detention at a bond hearing.

60. Though the government's interpretation of § § 236(c)(1) as permitting indefinite mandatory detention is unconstitutional, "[w]hen the validity of an act of the Congress is

drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Crowell v. Benson*, 285 U.S. 22, 62 (1932); *see also Zadvydas*, 533 U.S. 678 at 689 (citing *Crowell*). This doctrine of statutory interpretation is known as constitutional avoidance.

61. "[T]he Supreme Court has instructed that, where one possible application of a statute raises constitutional concerns, the statute as a whole should be construed through the prism of constitutional avoidance." *Rodriguez v. Robbins*, 715 F.3d 1127, 1141 (citing *Clark v. Martinez*, 543 U.S. 371, 380 (2005)). "Thus, the dispositive question is not whether the government's reading of § 1225(b) is permissible in some (or even most) cases, but rather whether there is any single application of the statute that calls for a limiting construction." Id.

62. In *Martinez*, the Court analyzed § 1231(a)(6), a statute it had previously read as a matter of constitutional avoidance to limit mandatory detention after the conclusion of removal proceedings to a presumptively reasonable period of six months. *Zadvydas v. Davis*, 533 U.S. 678. The same statute applied to both admitted and inadmissible noncitizens, but the government argued that the same limit on detention did not apply to inadmissible noncitizens because they were not entitled to the same constitutional protections. *Martinez*, 543 U.S. at 380.

63. The text of the statute did not distinguish between the two classes, however, and "[t]o give these same words a different meaning for each category would be to invent a statute rather than interpret one." Id. at 378. Because the same statutory text applied to both groups, and detention for more than six months raised constitutional concerns for at least

the admitted noncitizens, every noncitizen subject to the statute was entitled to the same reading limiting mandatory detention. "The lowest common denominator, as it were, must govern." Id. at 380.

64. Section § 236(c)(1) would therefore "raise a serious constitutional problem," *Zadvydas*, 533 U.S. at 690, if read to deny a bond hearing to individuals in prolonged detention. Thus, as a matter of constitutional avoidance, the statute must be read to require a bond hearing when detention becomes unreasonably prolonged. *Ricketts v. Simonse*, 2016 WL 7335675; *Arias v. Aviles*, 2016 WL 3906738 *4-*10.

65. In this case, Petitioner's detention, pursuant to a warrantless arrest, and at the emergent detriment of his family's health is prolonged and unlawful. The detention is also prolonged and unlawful, given the facts and circumstances of his case, including the overall length of his detention and separation from his children, the promptness of proceedings, the complexity of the case, the reasonable foreseeability of continued, lengthy litigation, and the conditions of confinement. *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 474-478 (outlining factors that govern when mandatory detention becomes prolonged).

66. Moreover, delay caused by "individual actions by various actors in the immigration system, each of which takes only a reasonable amount of time to accomplish, can nevertheless result in the detention of a removable alien for an unreasonable, and ultimately unconstitutional, period of time." *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 223.

67. The reasonableness of ongoing detention must also consider "whether an alien challenges aspects of the Government's case that present real issues, for example: a genuine factual

dispute; poor legal reasoning; reliance on a contested legal theory; or the presence of a new legal issue." It is impermissible to "effectively punish these aliens for choosing to exercise their legal right to challenge the Government's case against them by rendering the corresponding increase in time of detention as reasonable." *Chavez-Alvarez*, 783 F.3d at 476.

68. The reasonable foreseeability of continued, lengthy litigation is also relevant to whether Petitioner's current detention is constitutional. Id. at 477-78 (noting that the government "could have reasonably predicted that [the noncitizen's] appeal would take a substantial amount of time, making his already lengthy detention considerably longer").

69. Finally, this Court "cannot ignore the conditions of confinement." Id. at 478. Where immigration detention takes place in a penal setting, prolonged detention is more likely to be unconstitutional. "Merely calling a confinement 'civil detention' does not, of itself, meaningfully differentiate it from penal measures. As the length of the detention grows, the weight given to this aspect of [a noncitizen's] detention increases." Id. (internal citations omitted).

70. Petitioner's prolonged detention raises all of these concerns. On May 5, 2026, DHS confirmed it shut down the office dedicated to serving as a watchdog for those in immigration detention, which is alarming, given the lack of accountability for maintaining humane conditions in immigration detention facilities. Prior to the shut down of the watchdog office, the death rate has already surged alongside swelling immigration detention numbers, with some 60,000 migrants now detained. Under prior administrations, the government funded detention capacity to hold roughly half that figure.

71. Under the facts and circumstances of this case, Petitioner's continued detention is unreasonably prolonged. This Court should therefore grant immediate release or order a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the Court considers alternatives to detention that could mitigate flight risk. *See Rodriguez*, 804 F.3d 1060, 1086-89 (outlining constitutionally adequate procedural protections at a prolonged detention bond hearing).

THIRD CLAIM FOR RELIEF

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT § 236(a), 8 U.S.C. § 1226(a)

72. Petitioner re-alleges and incorporates by reference the paragraphs above.

73. The Court should find that petitioner's detention pending removal proceedings is authorized not by § 236(c)(1), but by the discretionary detention statute at § 1226(a), entitling petitioner to immediate release or a bond hearing before an immigration judge.

74. Pending removal proceedings, detention is authorized by section 1226(a), entitling Petitioner to a bond hearing. *See Matter of X-K-*, 23 I. & N. Dec. at 731 ("Immigration Judges have custody jurisdiction over aliens in . . . removal proceedings . . . .").

75. Moreover, as explained above in the Second Claim for Relief, the doctrine of constitutional avoidance requires this Court to "first ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided." Crowell v. Benson, 285 U.S. 22, 62. In light of the text and overall construction of § 236(c)(1), the statute may be fairly construed to limit mandatory detention if it violates

due process. The Court must do so in order to avoid the constitutional question raised by the government's reading.

76. Petitioner's interpretation of § 236(c)(1) as inapplicable to Petitioner also accords with the government's own practice of detaining other recent arrivals under § 1226(a) once they pass a credible fear interview and their removal proceedings have commenced. Both noncitizens who present themselves at the border and those who enter without inspection and are subsequently arrested near the border are initially detained under § 1225(b)(1)(B)(ii) for expedited removal proceedings. *See Matter of X-K-*, 23 I. & N. Dec. 731, 734.

77. Once the government determines that either arriving aliens or entrants without inspection have a credible fear of persecution, it refers them to nonexpedited removal proceedings. Yet for entrants without inspection alone, the government, until very recently, detained under § 1226(a) once removal proceedings commenced. Id. This entitles entrants without inspection, but not those who present themselves to an officer to seek asylum, to an immediate bond hearing.

78. This Court should therefore hold that petitioner's detention pending removal proceedings is governed by § 1226(a), entitling him to immediate release or a bond hearing upon request before an immigration judge.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the District of Colorado while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Defendants to show cause why this Petition should not be granted within three days;

d. Issue a Writ of Habeas Corpus requiring that Defendants release Petitioner or, in the alternative, provide Petitioner with a constitutionally adequate bond hearing pursuant to 8 U.S.C. § 1226(a) before a neutral arbiter within seven days;

e. If ordering a bond hearing, expressly direct DHS to comply with its evidentiary burden of proving dangerousness/flight risk by clear and convincing evidence

f. Declare that Petitioner's detention is unlawful;

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

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

DATED this 22nd day of July, 2026.

/s/ Ciara Faber, **Esq.**

Ciara Faber, Esq.
Colorado Bar No. 44299
Monarch Legal Movement LLC
3917 E 26th Ave. Pkwy.
Denver, CO 80205
Telephone: (909) 240-7447
Email: ciaraffaber@gmail.com

Attorney for Petitioner