IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MIGUEL **ANDRES-FRANCISCO**,

Petitioner,

v.

ASSISTANT DIRECTOR, U.S. Department of Homeland Security ("**DHS**") Immigration and Customs Enforcement ("**ICE**") Enforcement and Removal Operations ("**ERO**") **Miami Field Office**; and **DIRECTOR**, **U.S. DHS ICE ERO Miami Field Office**;

Respondents.
_____/

CASE NO.

JUDGE:

MAGISTRATE JUDGE

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

COMES NOW the Petitioner, MIGUEL ANDRES-FRANCISCO, by and through undersigned counsel, and hereby brings this Petition and sues Respondents and alleges as follows:

I. INTRODUCTION

1. The Petitioner is a citizen and national of Guatemala. *See* Exh. 1 (DHS Employment Authorization Card)

2. The Petitioner is in Respondents' physical custody at the Glades County Detention Center, an immigration detention center under Respondents' and their agents' direct control within this district in Moore Haven, Florida. *See* ICE Online Detainee Locator Search Results at Exh. 2.

3. The Petitioner respectfully requests *inter alia* that: (1) this Honorable Court issue an Order to Show Cause ("OSC") within three days pursuant to 28 U.S.C. § 2243; (2) declare that Respondents have violated the Immigration and Nationality Act ("INA"); (3) declare that Respondents have violated the Petitioner's Fifth Amendment Due Process Rights; (4) grant a Writ of Habeas Corpus and order Respondents to release him from custody or conduct a bond hearing; and (5) order other relief as described herein.

4. This action arises under the United States Constitution and the INA, 8 U.S.C. §§ 1101 *et seq.*, as the Petitioner challenges detention as a violation of: the Due Process Clause of the Fifth Amendment of the U.S. Constitution; the INA and regulations thereunder; and the Administrative Procedure Act ("APA").

5. In addition, this Honorable Court has jurisdiction over this complaint under: 28 U.S.C. § 2241 (power to grant Writ of Habeas Corpus); the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (United States Respondent); and APA, 5 U.S.C. § 555(b), 5 U.S.C. § 702 (APA waiver of sovereign immunity), 5 U.S.C. § 704 (no other adequate remedy), and 5 U.S.C. § 706 (compel agency action unlawfully withheld or unreasonably delayed).

6. This Honorable Court may grant relief pursuant to 28 U.S.C. § 2241 and the All Writs Act, 28 U.S.C. § 1651.

II. VENUE

7. Venue is proper in this division and this district under 28 U.S.C. § 1391(b), 28 U.S.C. § 1391(e)(1) (United States respondent resides in this district), 28 U.S.C. § 1391(e)(2) (cause of action arose in this district), and 28 U.S.C. § 1391(e)(4) (petitioner resides in this district and no real property is at issue). *See also* Local Rule 1.04(a) (Divisions).

8. The Petitioner is in Respondents' physical custody within this district at the Glades County Detention Center, an immigration detention center under the direct control of Respondents and their agents. *See* 28 U.S.C. § 2241(a) (providing for habeas petitions "within [courts'] respective jurisdictions"); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) ("The plain language of the habeas statute [...] confirms the general rule that for core habeas petitions challenging physical confinement, jurisdiction lies in only one district: the district of confinement").

III. PARTIES

9. Petitioner MIGUEL ANDRES-FRANCISCO is a citizen and national of Guatemala who is in Respondents' physical custody; Respondents have assigned him Alien Registration No. [redacted].

10. The Petitioner brings a suit against the Respondent DHS ICE ERO Miami Field Office Assistant Director. In this official capacity, he is responsible for the Glades County Detention Center and the Broward Transitional Center and he is a legal custodian of the Petitioner

11. The Petitioner brings a suit against the Respondent DHS ICE ERO Miami Field Office Director. In this official capacity, he is responsible for the ICE

Field Office with administrative jurisdiction over the Petitioner and he is a legal custodian of the Petitioner.

IV. CUSTODY

12. The Petitioner is in Respondents' physical custody within this district at the Glades County Detention Center under the direct control of Respondents and their agents. *See* 28 U.S.C. § 2241(c) (civil habeas statute applies to individuals who are "in custody").

V. STATEMENT OF THE FACTS

13. The Petitioner was born on [redacted], in Guatemala. *See* Exh. 1 (Employment Authorization card).

14. On or about December 03, 2022, the Petitioner entered the United States without inspection and he has not departed since this entry. *See* Exh. 3 (copy of Motion for Bond Redetermination dated January 06, 2026).

15. On or about February 01, 2024, the DHS U.S. Citizenship and Immigration Services ("USCIS") National Benefits Center approved the Petitioner's Petition for Amerasian, Widower, or Special Immigrant (Form I-360) and granted the Petitioner deferred action and placed him on a waiting list as a Special Immigrant Juvenile ("SIJ"). *See* Exh. 1 (I-360 Approval Notice).

16. The Petitioner's counsel in his removal and bond proceedings, Hector Rivera, Esq. of Rivera Gainza, P.A., has indicated that the Respondents began detaining the Petition on or about November 20, 2025, first at their Florida Soft Side

Detention Center, and then on or about December 10, 2025, the Respondents transferred the Petitioner to the Glades County Detention Center.

17. On or about January 06, 2026, the Petitioner, through his counsel, filed a Motion for Bond Redetermination with the Immigration Court. *See* Exh. 3.

18. On or about January 16, 2026, the Immigration Judge issued an Order finding that "[t]he court lacks authority to redetermine [the Petitioner's] custody status because [he] is present in the United States without admission and is subject to mandatory detention pursuant to section 235(b)(2)(A) of the INA [8 U.S.C. § 1225(b)(2)(A)]." *See* Exh. 4 (Order citing to *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025)).

VI. LEGAL BACKGROUND

A. Habeas Corpus Petition Rights

19. The right to file a habeas corpus petition pursuant to 28 U.S.C. § 2241 provides "a means of reviewing the legality of Executive detention." *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)).

20. Congress provided that district courts have the power to grant a writ of habeas corpus to a person who is in custody in violation of the Constitution or laws of the United States. *See* 28 U.S.C. § 2241(c)(3).

21. The Supreme Court has noted that habeas corpus review has historically played an important role in immigration cases:

> Before and after the enactment in 1875 of the first statute regulating immigration, 18 Stat. 477, [...] [habeas corpus] jurisdiction was regularly invoked on behalf of noncitizens, particularly in the immigration context.

> [...] In case after case, courts answered questions of law in habeas corpus proceedings brought by aliens challenging Executive interpretations of the immigration laws.

St. Cyr, 533 U.S. at 305-06.

22. "At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *Id.* at 301.

B. Detention Under the INA

23. Within the INA, 8 U.S.C. § 1225 governs inspection, detention, and removal of applicants for admission.

24. The INA defines applicants for admission as aliens "present in the United States who ha[ve] not been admitted" or those "arriv[ing] in the United States." 8 U.S.C. § 1225.

25. Applicants for admission "must be inspected by immigration officers to ensure that they may be admitted into the country consistent with U.S. immigration law." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

26. "U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under [8 U.S.C.] §§ 1225(b)(1) and (b)(2)." *Id.* at 289.

27. "Section 1225(b)(1) applies to all aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack valid documentation." *Id.*

28. Such aliens are generally subject to expedited removal proceedings "without further hearing or review" unless the alien expresses "an intention to apply

for asylum" or a fear of persecution, which requires referral for a credible fear interview. *Id.* at § 1225(b)(1).

29. Additionally, "[s]ection 1225(b)(2) is broader" and "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287.

30. Aliens subject to § 1225(b)(2) are detained for removal proceedings "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted" into the country. 8 U.S.C. § 1225(b)(2)(A).

31. Detention under § 1225(b)(2) is mandatory. *See id.*

32. Alternatively, the INA "also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289.

33. Section 1226(a) provides that when an alien has been "arrested and detained pending a decision on whether the alien is to be removed from the United States," the Attorney General may either continue to detain an individual or release the individual on bond or conditional release. 8 U.S.C. § 1226(a).

34. "Federal regulations provide that aliens detained under [section] 1226(a) receive bond hearings at the outset of detention." *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

35. In recent decisions filed within this Division of the Middle District of Florida, the Judges have found that they maintain jurisdiction to consider whether 8

U.S.C. §§ 1225(b)(2) or 1226(a) apply to petitioners. *See Ajtum v. Hardin*, Case No. 2:26-cv-00057-SPC-DNF, 2026 WL 232402, at **1-2 (M.D. Fla. Jan. 29, 2026) (finding that action falls outside scope of jurisdiction-stripping provisions as 8 U.S.C. §§ 1252(g) and (b)(9)); *Bautista v. Sec'y U.S. Dept. of Homeland Sec.*, Case No. 2:26-cv-75-JES-DNF, 2026 WL 183556, at *1 (M.D. Fla. Jan. 23, 2026) (noting Court has rejected argument that 8 U.S.C. §§ 1252(g) and (b)(9) strip the Court of jurisdiction over claims); *Lopez v. Hardin*, Case No. 2:25-cv-830-KCD-NPM, 2025 WL 3022245, at **2-3 (M.D. Fla. Oct. 29, 2025) (finding 8 U.S.C. §§ 1252(g) and (b)(9) do not strip the Court of jurisdiction over claims).

36. The Courts have also consistently found that the detention of petitioners that present similar facts as those that the Petitioner presented in the instant matter is governed by 8 U.S.C § 1226(a) and not § 1225(b)(2). *See Ajtum*, 2026 WL 232402, at *2; *Bautista*, 2026 WL 183556, at *1; *Lopez*, 2025 WL 302245, at **4-5 (finding petitioner not applicant for admission based on statutory analysis).

37. The U.S. Court of Appeals for the Fifth Circuit recently issued a decision in which it agreed with Respondents' interpretation of the INA to find that petitioners that entered without inspection were subject to mandatory detention, but to date the Courts in this Division have "respectfully disagree[d]" with the decision. *See Malikov v. Bondi*, Case No. 2:26-cv-00172-SPC-NPM, 2026 WL 395296, at *1 n.1 (M.D. Fla. Feb. 12, 2026) citing *Buenrosto-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (noting that the Fifth Circuit's decision "is not binding here, and it contradicts the vast majority of district court opinions addressing the issue", rejecting majority's reasoning

and finding dissent more persuasive, and noting that a circuit split is likely based on a preliminary decision in *Castanon-Nava v. U.S. Dept. of Homeland Sec.*, 161 F.4th 1048, 1060-63 (7th Cir. 2025)); *see also Vasquez Lopez v. Warden, Glades County Detention Center*, Case No. 2:26-cv-147-JEM-NPM, 2026 WL 369362, at *2 (M.D. Fla. Feb. 10, 2026).

38. In another recent decision, a District Court Judge in the Eastern District of Pennsylvania noted that the Government acknowledged as follows in the opening brief opposing a challenge to *Matter of Yajure Hurtado*:

> Rios-Porras' petition concerns whether an alien who is present in the United States without admission is properly subject to mandatory detention (*i.e.*, detention without the prospect of release on bond) during the pendency of his administrative removal proceedings pursuant to 8 U.S.C. § 1225(b)(2), and the Court's jurisdiction to consider a petition for release. This legal question has been considered by numerous courts in the wake of the [BIA] decision in *Matter of Yajure Hurtado* [...]. **Nearly all of the resulting decisions have rejected the government's position, including numerous decisions from this District.**

Rios Porras v. O'Neill, No. CV 25-6801, 2025 WL 3708900, at *1 (E.D. Pa. Dec. 22, 2025) (emphasis in original).

39. On November 20, 2025, a District Court judge for the Central District of California granted partial summary judgment for four petitioners who brought a challenge to the policy in *Matter of Yajure Hurtado*, holding that the government's policy is inconsistent with the plain language of the INA and that petitioners are properly subject to § 1226(a). *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). Five days later, on November 25, 2025, the Court certified a nationwide class of individuals who are being subject to the government's new no bond policy—the Bond Eligible Class—and

expressly "extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (emphasis added).

40. The district court certified the following Bond Eligible Class:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Maldonado Bautista, 2025 WL 3288403, at *9.

C. Due Process Constitutional Rights

41. The Due Process Clause of the Fifth Amendment provides that "[n]o person [...] [shall be] deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

42. "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 [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

43. Immigration detention must always "bear [...] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003).

44. "[T]he Due Process Clause [of the Fifth Amendment] applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693-94 (citing *Wong Wing v. U.S.*, 163 U.S. 228 (1896)).

45. "Detention during deportation proceedings [i]s a constitutionally valid aspect of the deportation process [...] [and] the Due Process Clause does not require [the government] to employ the least burdensome means to accomplish its goal," but civil detention of noncitizens is not without limits. *Demore*, 538 U.S. at 523, 528.

46. Specifically, civil immigration detention is constitutional only in "certain special and narrow nonpunitive circumstances" and it must "bear a reasonable relation to the purpose" of the detention. *Zadvydas*, 533 U.S. at 690 (citations, brackets, and quotations omitted).

47. "Rather than punishment, immigration detention must be motivated by the two valid regulatory goals that the government has previously argued motivate the statute: 'ensuring the appearance of aliens at future immigration proceedings and preventing damage to the community." *Ozturk v. Trump*, No. 25-CV-374, 2025 WL 1145250, at *20 (D. Vt. Apr. 18, 2025) (quoting *Zadvydas*, 533 U.S. at 690).

48. Due process cases recognize a broad liberty interest in deportation and removal proceedings. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (deportation "visits a great hardship on the individual and deprives him or the right to stay and live and work in the land of freedom").

49. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test that the Supreme Court set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

50. Procedural due process "imposes constraints on government decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Id.* at 332.

51. Once a petitioner has identified a protected liberty or property interest, the Court must determine whether the respondents have provided constitutionally sufficient process. *See id.* at 332-33.

52. In making this determination, the Court balances (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." *Id.* at 335.

D. SIJ Status and Deferred Action

53. In 1990, Congress created SIJ Status ("SIJS") to provide relief to noncitizen children living in the United States who have been abused, neglected, or abandoned, or similarly mistreated by one or both parents. *See* Immigration Act of 1990, Pub. L. 101-649, § 153, 104 Stat. 4978 5005-06 (1990) (codified at 8 U.S.C. § 1101(a)(27)(J)).

54. In 1991, Congress amended the INA to address inadmissibility issues caused by unlawful entries or unlawful presence for SIJ beneficiaries by providing that such beneficiaries "shall be deemed, for purposes of [adjustment of status], to have been paroled into the United States," and exempting them from adjustment bars based on failure to maintain status or unauthorized employment. Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 ("MTINA"), Pub. L. No. 102-232, § 302(d)(2), 105 Stat. 1733, 1744 (1991) (codified at 8 U.S.C. § 1255(h)(1), (2)).

55. SIJ beneficiaries may only file an adjustment application when an immigrant visa is immediately available and they are present in the United States. *See* USICS Policy Manual, Vol. 7, Part F, Ch.7.C (providing that SIJS beneficiaries must be physically present in the United States at the time of filing and adjudication of an adjustment application).

56. In 1994, Congress expanded the SIJ program to include children whom a court "has legally committed to, or placed under the custody of, a [...] [state] agency or department." Immigration and Nationality Technical Corrections Act of 1994 ("INTCA"), Pub. L. No. 103-416, § 219, 108 Stat. 4305 (1994) (codified at 8 U.S.C. §§ 101-225); *see also* 8 C.F.R. § 204.11 (legacy Immigration and Naturalization Service ("INS") regulations that increased eligibility to individuals under age 21).

57. In 2008, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), which codified regulatory policy where SIJ eligibility could come from dependency on a state juvenile court or

placement in the custody of an individual or entity appointed by a state juvenile court. Pub. L. 110-457, § 235(d)(1)(A), 122 Stat. 5044, 5079-80 (2008) (codified at 8 U.S.C. § 1101(a)(27)(J)).

58. The TVPRA also exempted SIJ beneficiaries from inadmissibility after entering the United States without admission or parole or at an unauthorized time or place, making SIJ beneficiaries eligible to adjust status even if entering the United States without inspection. *Id.* at 5080 (codified at 8 U.S.C. § 1255(h)(2).

59. To qualify for SIJ Status, petitioners must be under the age of 21 at the time of filing, unmarried, and physically present in the United States. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11.

60. A state court of competent jurisdiction must have issued an order either (1) declaring the petitioner dependent upon the court, or (2) committing the petitioner to the custody of a state department or agency, or placing the petitioner under custody of an individual or entity appointed by the state or court. *See* 8 C.F.R. § 204.11(c).

61. Petitioners must also submit a predicate state court order making specific findings that (1) it is not viable for the petitioner to reunify with a parent or parents due to abuse, neglect, abandonment, or a similar basis under state law, and (2) it would not be in the petitioner's best interest to be returned to their or their parent's country of nationality or last habitual residence. *Id.*

62. The Secretary of Homeland Security may only revoke SIJS for "good and sufficient cause," and the Secretary must provide notice and an opportunity to present evidence in opposition to the revocation. 8 U.S.C. § 1155; 8 C.F.R. § 205.2; *see also* 8

C.F.R. § 205.2(c) & (d) (notice of revocation and opportunity to appeal); *id.* § 205.2(a) (only USCIS officer authorized to approve SIJ petition in first instance may revoke petition).

63. Although SIJS renders youth eligible to apply to adjust status, a visa must be immediately available and there is an annual limit on visas available to SIJ beneficiaries. *See* 8 U.S.C. §§ 1255(h), 1153(b)(4) (noting the relevant visa as the employment-based fourth preference special immigrant category visa).

64. In a recent decision, the District Court in the Eastern District of New York noted that there is a backlog of more than 150,000 individuals who have received SIJS classification but cannot apply for adjustment of status because of unavailable visas. *See A.C.R. v. Noem*, --- F.Supp.3d ----, Case No. 25-CV-3962 (EK)(TAM), 2025 WL 3228840, at *2 (E.D.N.Y. Nov. 19, 2025).

65. "In response to the backlog, [in 2022] USCIS announced a deferred-action program for individuals with SIJS." *Id.* (citation to record omitted).

66. "Deferred action is 'an act of administrative convenience to the government that gives some cases lower priority'." *Id.* (citing 8 C.F.R. § 274.a12(c)(14)); *see also* 8 C.F.R. § 236.21(c)(1) (defining deferred action as "a form of enforcement discretion not to pursue the removal of certain aliens for a limited period in the interest of ordering enforcement priorities in light of limitations on available resources, taking into account humanitarian considerations and administrative convenience").

67. In *A.C.R.*, the Court explained that "USCIS justified the [deferred action] policy on several grounds" and the agency specifically found as follows:

- The policy "further[ed] congressional intent to provide humanitarian protection" for SIJS recipients, because Congress "likely did not envision that [SIJS] petitioners would have to wait years before a visa became available" and thereby be left "in limbo". [...].
- The policy would "conserve []DHS resources by focusing on the enforcement of higher priority cases, such as noncitizens who pose a threat to national security, public safety, and border security." [...]. This was because, in the agency's view, SIJS recipients were "unlikely to be enforcement priorities." [...].
- The policy would "provide[ ] significant benefits to the U.S. labor pool and the economy in general," outweighing any additional costs imposed on the states for "schools, services, or driver's licenses." [...].
- The policy would vindicate the reliance interests of SIJS recipients, who had expected to remain in the United States and be able to apply for employment authorization after SIJS approval. [...].

A.C.R., 2025 WL 3228840, at *2 (citations to policy omitted).

68. Under the SIJS deferred action policy, "USCIS automatically considered whether an SIJS petitioner should receive deferred action" and "[a] successful applicant would benefit from deferred action for four years and could apply for renewal within 150 days of expiration." *Id.* at **2-3 (citations to policy omitted).

69. "On June 6, 2025, USCIS publicly issued a new policy statement that rescinded [the SIJS deferred action program." However, "SIJS beneficiaries with existing deferred action or employment authorization could retain those benefits until they expired but would not be permitted to renew them." *Id.* at *3. (citations to record omitted).

E. The APA

70. Federal agencies must comply with the APA when crafting and enforcing decisions, regulations, and legislative rules. 5 U.S.C. § 553.

71. Courts have authority to review and invalidate final agency actions that are not in accordance with the law, exceed agency authority, lack substantial evidence, or are arbitrary and capricious. 5 U.S.C. § 706.

72. Under the APA, this Honorable Court has authorization to compel agency action that has been unreasonably delayed. 5 U.S.C. § 706(1).

73. An agency must "conclude a matter presented to it [...] within a reasonable time." 5 U.S.C. § 555(b).

74. "A person suffering legal wrong because of agency action [...] is entitled to judicial review thereof." 5 U.S.C. § 702. Agency action includes the failure to act. *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 62 (2004).

VII. CLAIMS FOR RELIEF

COUNT I

INA AND APA VIOLATION

75. Petitioner ANDRES-FRANCISCO repeats and re-alleges paragraphs 1 through 74 as though fully set forth herein.

76. Respondents have violated the INA and APA in applying the mandatory detention statute at 8 U.S.C. § 1225(b)(2) to the Petitioner. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216.

77. Respondents must consider the Petitioner's Bond Motion pursuant to the discretionary detention provision at 8 U.S.C. § 1226(a)

78. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201.

79. By denying the Petitioner a bond hearing under 8 U.S.C. § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate the Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista.*

80. Respondents have violated the INA and APA in applying the mandatory detention statute at 8 U.S.C. § 1225(b)(2) to the Petitioner. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216.

81. Respondents must consider the Petitioner's Bond Motion pursuant to the discretionary detention provision at 8 U.S.C. § 1226(a)

82. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201.

83. By denying the Petitioner a bond hearing under 8 U.S.C. § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate the Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista.*

84. Moreover, when the government agency has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes, such that the agencies are bound to follow their own

"existing valid regulations." *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268 (1954).

85. The *Accardi* doctrine also requires agencies comply with procedures set forth in operative manuals and binding guidance. *See Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

86. By detaining the Petitioner, Respondents have violated the SIJ Deferred Action policy and deferred action regulations. *See* 8 C.F.R. § 236.21(c)(1) (defining deferred action).

COUNT II

FIFTH AMENDMENT VIOLATION

87. Petitioner ANDRES-FRANCISCO repeats and re-alleges paragraphs 1 through 74 as though fully set forth herein.

88. Respondents have failed to provide the Petitioner with due process pursuant to the Fifth Amendment.

89. Due process requires that Respondents provide the Petitioner with a prompt and constitutionally adequate bond hearing before an IJ with jurisdiction under 8 U.S.C. § 1226(a).

90. Respondents' decision to subject the Petitioner and others like him to mandatory detention affords the Petitioner no due process. *See Barco Mercado v. Francis*, Case No. 25-cv-6582 (LAK), --- F. Supp. 3d ----, 2025 WL 3295903, at *12 (S.D.N.Y. Nov. 26, 2025) ("[R]edetention pursuant to the wrong statute violate[s] due process.").

VIII. RELIEF REQUESTED

WHEREFORE, Petitioner ANDRES-FRANCISCO prays that this Honorable Court grant the following relief:

1. Accept jurisdiction over this action.

2. Issue an Order to Show Cause pursuant to 8 U.S.C. § 2243 directing Respondents to file a return in three days of the Order directing Respondents to show cause why the Court should not grant a Writ of Habeas Corpus.

3. Issue a Writ of Habeas Corpus requiring Respondents to produce the Petitioner and return him to his valid deferred action status, or, alternatively, to conduct a bond hearing pursuant to 8 U.S.C. § 1226(a).

4. Declare that Respondents have violated the INA.

5. Declare that Respondents' detention of the Petitioner violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution.

6. Award Petitioner ANDRES-FRANCISCO reasonable costs and attorney fees for bringing this action.

7. Grant such further relief as Petitioner ANDRES-FRANCISCO may request and/or this Honorable Court deems just and proper under the circumstances.

Respectfully submitted this 17th day of February, 2026,

By: **/s/ Andrew W. Clopman**

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VERIFICATION

Pursuant to 28 U.S.C. § 2242, undersigned counsel certifies under penalty of perjury that I am submitting this verification because I am one of the Petitioner's attorneys and I have discussed the facts within this Petition with the Petitioner's counsel, Rivera Gainza, PA, who remains in communication with the Petitioner. Pursuant to these discussions, I have reviewed the foregoing petition and that, to the best of my knowledge, the facts therein are true and accurate and the attachments to the petition are true and correct copies of the originals.

Respectfully submitted this 17th day of February, 2026,

By: **/s/ Andrew W. Clopman**

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