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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JOSE CARLOS PEREZ ACANDA,

Petitioner,

v.

DAVID HARDIN, Glades County Sherriff and Warden of the Glades County Detention Center, acting in his official capacity; GARRETT J. RIPA, Field Office Director of the Miami Immigration and Customs Enforcement Office, acting in his official capacity; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement, acting in his official capacity; KRISTI NOEM, Secretary of the United States Department of Homeland Security, acting in her official capacity; PAMELA BONDI, Attorney General of the United States, acting in her official capacity; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; EXECUTIVE OFFICE OF IMMIGRATION REVIEW; and DEPARTMENT OF HOMELAND SECURITY,

Respondents.
_____/

CASE NO.: 26-cv-567

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

INTRODUCTION

1. JOSE CARLOS PEREZ ACANDA ("Petitioner") has been residing in the United States since July 6, 2022. He was detained by Customs and Border Patrol ("CBP") on August 17, 2022, near Rio Grande Valley, Texas. Petitioner was released from custody under an Order of Release on Recognizance on August 19, 2022. (*See* Ex. 1, Form I-213). Petitioner filed a timely

I-589 application for Asylum, Withholding of Removal and Protection under the Convention Against Torture on November 27, 2022, with the United States Citizenship and Immigration Services ("USCIS"). (*See* Ex. 2, Receipt of I-589). He has resided in Florida since his release.

2. While in removal proceedings, Petitioner has reported as instructed to the Immigration and Customs Enforcement ("ICE") Field Office. Petitioner also presented himself to immigration court as required. On December 3, 2025, Petitioner presented himself to the immigration court. At that time, the Department of Homeland Security ("DHS") dismissed proceedings against him. Waiting outside the courtroom, were masked ICE officers ready to detain Petitioner. Petitioner was originally charged under 8 C.F.R. §1182(a)(6)(A)(i). DHS decided to dismiss proceedings for the sole purpose of taking Petitioner into custody and placing him in expedited removal proceedings. Petitioner is now charged under 8 C.F.R. §1182(a)(6)(A)(i) and §1182(a)(7)(i)(I). (See Ex. 3 Composite, Notice to Appear ("NTA") and Notice of Order of Expedited Removal). This was done knowing that Petitioner had an I-589 that had been filed two months after he entered the United States.

3. Petitioner, at this moment, is detained at Glades County Detention Center, 1279 East SR 78, Moore Haven, Florida (*See* Ex. 4, ICE Detainee Locator). Petitioner's detention began moments after an entry of dismissal by an immigration judge. (*See* Ex. 5, EOIR Court & Appeals System printout). Petitioner has never been charged with any crime or convicted of any crime and there has been no change in his circumstances since he was placed in detention on December 3, 2025. Therefore, he was detained due to the interceding DHS interpretation of their detention authority under 8 U.S.C. §§ 1225 and 1226. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) ("*Matter of Yajure Hurtado*").

4. Petitioner is in the physical custody of Respondents at Glades County Detention Center. He was served with a new NTA. Although he has already filed an application for Asylum, DHS will not place Petitioner in INA § 240 proceedings until he is given a credible fear interview. Petitioner demonstrated a credible fear of persecution or torture on February 15, 2026. (*See* Ex. 3, *supra)*. Petitioner's ongoing detention is unlawful. Petitioner files this petition for writ of habeas corpus under 28 U.S.C. § 2241.

5. Petitioner is a citizen and national of Cuba (*See* Ex. 6, Cuban passport) who entered the United States on or about August 17, 2022, near Rio Grande Valley, Texas to seek asylum. Petitioner was encountered near the border and was detained.

6. In *Maldonado Bautista, et. al. v. Santacruz, et. al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 2026), District Court Judge Sykes certified a nationwide class of Bond Eligible Class Members consisting of noncitizens who are in immigration detention and being denied access to a bond hearing based on the government's allegation that they entered the United States without admission or inspection. The Court subsequently ruled that the Bond Eligible Class Members are being illegally detained pursuant to 8 U.S.C. §1225(b)(2)(A), and vacated both the underlying DHS policy used to support such detention and also the BIA decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Petitioner in the instant case is clearly a Bond Eligible Class member.

7. Petitioner did seek a custody redetermination (bond) hearing before IJ Stuart Siegel after he was arrested outside an immigration courtroom. The IJ found that he lacked jurisdiction, circumventing Federal District Judge Sykes' vacatur of *Matter of Yajure Hurtado*, and held the following: "[t]he Court lacks of [sic] jurisdiction because Respondent was placed in ER, and, thus the Courts jurisdiction. see Matter of M-S, -27 I&N Dec. 509 (A.G. 2019) and Matter of Q Li, 29 I&N Dec. 66 9BIA 2025)." The IJ also added, "post Yajure Hurtado case." (*See* Ex.7, Order of the Immigration Judge, 2/26/2026)). "Where administrative body is shown to be biased or has otherwise predetermined the issue before it" exhaustion is not required. *See McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); *see also Shalala v. 111. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). Once again, Respondents, including the EXECUTIVE OFFICE OF IMMIGRATION REVIEW ("EOIR") have denied a Bond Eligible Class member an actual bond hearing, something with which IJ Stuart A Siegel has always historically been complicit.

8. This case presents a purely legal question appropriate for habeas review: whether a noncitizen encountered in the interior of the United States almost three-and-a-half years after entry, who has never applied for admission, is detained under 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b). Petitioner does not challenge the initiation of removal proceedings, nor any discretionary custody determination. *See Madu v. US. Att'y Gen.*, 470 F.3d 1362, 1367-8 (11th Cir. 2006). Multiple decisions in this District have held that long-term residents encountered in the interior under these circumstances are detained under § 1226(a), not § 1225(b). *See, Guiaiquire v. Quinones et al*, No. 6:26-cv-169-RBD-RMN (M.D. Fla. Feb. 3, 2026) ("If you're living in the United States, and armed men take you off the street when you've done nothing wrong, a judge must decide whether you're dangerous before the Government can keep you

indefinitely locked up, separated from your family, deprived of your livelihood, and stripped of your dignity and purpose, until it gets around to deciding whether to deport you."); *see also Nahadianfard v. Bondi, et al,* No. 6:26-cv-00157-GAP-RMN (M.D. Fla. Feb. 12, 2026); *Santana Solis* v. *Mordant et al,* No.: 2:26-cv-00159-SPC-DNF (M.D. Fla. Feb. 11, 2026); *Marquez Perez v. Quinones, et al*, No. 6:26-cv-228-GAP-DCI (M.D. Fla. Feb. 9, 2026); *Brito v. Warden, et al*, No. 2:26-cv-128-JES-DNF (M.D. Fla. Feb. 5, 2026); *Pierre v. Gonzalez, et al*, No. 2:26-cv-141-JES-NPM (M.D. Florida Feb. 5, 2026); *Lleo Rodriguez v. Quinones, et al*, No. 6:26-cv-187-PGB-DCI (M.D. Fla. Feb 5, 2026); *Lira Fernandez v. Quinones, et al,* No. 6:26-cv-186-CEM-NWH (M.D. Fla. Feb 5, 2026); *Salinas Ramirez v. Mordant,et al*, No. 2:26-cv-47-KCD-NPM (M.D. Fla., Feb. 3, 2026); *Uzcategui Rodriguez v. Quinones, et al*, No. 6:26-cv-183-RBD-DCI (M.D. Fla Jan. 30, 2026); *Silveira-Granado v. Hardin, et al*, No. 2:26-cv-00055-SPC-NPM (MD Florida Jan. 29, 2026); *Sardinas v. Noem, et al*, No. 2:26-cv-00067-SPC-NPM (M.D. Fla., Jan. 29, 2026); *Rivero v. Mina et al*, No. 6:26-cv-66-RBD-NWH (M.D. Fla. Jan. 26, 2026); *Giron Bautista v. Secretary, et al*, No. 2:26-cv-75-JES-DNF (M.D. Fla., Jan. 23, 2026); *Mendoza Jacobo v. Ripa, et al*, No. 2:25-cv-1190-KCD-NPM M.D. Fla. Jan.20, 2026); *Lopez Arevalo v. Hardin, et al*, No. 2:26-cv-00018-SPC-DNF (MD Florida Jan. 15, 2026); *Padilla Orellana v. Warden, et al,* No. 2:25-cv-01195-SPC-NPM (M.D. Fla. Jan. 6, 2026); *Cortes Flores v. Warden, et al*, No. 2:25-cv-1162-KCD-NPM (M.D. Fla. Jan. 5, 2026); *Valle Ortiz v. Mordant, et al*, No. 2:25-cv-1114-KCD-DNF (M.D. Fla. Dec. 23, 2025); *Gonzalez Carmona v. Ripa, et al*, No. 2:25-cv-1128-SPC-DNF(M.D. Fla. Dec.17, 2025); *Patel v. Hardin*, No. 2:25-cv-870-JES-NPM, 2025 WL 3442706 (MD. Fla. Dec. 1, 2025); *Vasquez Carcamo v. Noem, et al*, No. 2:25-cv-922, 2025 WL 3041895 (MD. Fla. Nov. 7, 2025). *Hinojosa Garcia v. Noem, et al*, No. 2:25-cv-879-SPC-NPM (M.D. Fla. Oct. 31, 2025); *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM (M.D. Fla. Oct. 29, 2025).[1]

[1] It can fairly be said that a nationwide consensus has developed adopting this view. In addition to *Maldonado Bautista, supra, see Guerrero Orellana v. Moniz, et al*, No. 1:25-cv-12664-PBS (District of Mass. Dec. 19, 2025) (both cases certifying classes and granting partial summary judgment for class members in substantially identical positions to Petitioner). Notable recent decisions of the approximately 177 decisions rejecting the government's position on detention for uninspected entrants to the United States include: *Ruiz Mejia v. Noem*, No. 1:25-cv-1227, 2025 WL 3041827 (W.D. Mich. Oct. 31, 2025); *Hernandez Lopez v. Hardin*, No. 2:25-CV- 830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *J.G.O. v. Francis*, No. 25-CV-7233, 2025 WL 3040142 (S.D.N.Y. Oct. 28, 2025); *Puerto-Hernandez v. Lynch*, No. 1:25-cv-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *J.A.C.P. v. Wofford*, No. 1:25-cv-01345, 2025 WL 3013328 (E.D. Cal. Oct. 27, 2025); *Nava Hernandez v. Baltazar*, No. 1:25-CV-03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Rodriguez Carmona v. Noem*, No. 1:25-cv-1131, 2025 WL 2992222 (W.D. Mich. Oct. 24, 2025); *De Fatima Lomeu v. Soto*, No. 25cv16589, 2025 WL 2981296 (D.N.J. Oct. 23, 2025); *Del Cid v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025);

9. Petitioner respectfully requests an order directing Respondents to release Petitioner from custody; or in the alternative, to release Petitioner from custody subject to appropriate supervision; or in the alternative, to provide an actual custody redetermination hearing under § 1226(a) within seven days.

10. Section 1225(b)(2)(A) states that an applicant for admission shall be detained for removal proceedings. It is the position of both DHS and EOIR (which houses both the BIA and immigration judges), that 8 U.S.C. §1225(b)(2)(A) applies to all individuals who arrived in the United States without documents, regardless of how long they have lived in the United States and regardless of how far they were from the border when they were apprehended. *See Matter of Yajure Hurtado*. However, § 1225(b)(2)(A) does not apply to individuals, like Petitioner, who are present in the United States for a significant period – in this case almost three-and-a-half years. Instead, such individuals are subject to detention under a separate statute, 8 U.S.C. § 1226(a), and are eligible for release.

11. Early in July 2025, ICE released a memorandum instructing attorneys to coordinate with the Department of Justice, the agency housing EOIR to reject bond redetermination hearings for applicants who had arrived in the United States without documents. *See* ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission, AILA (July 8, 2025), https://shorturlat/XF71Y ("Lyons Memo").[2]

12. EOIR applied this amended reasoning in a May 15, 2025, BIA decision, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), finding that a noncitizen who had entered the United States without documents was ineligible for bond, despite not being placed in expedited removal

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Bethancourt Soto v. Soto, No. 25-CV-16200, --- F. Supp. 3d ---, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 WL 2968042 (D. Md. Oct. 21, 2025); *Contreras-Cervantes v. Raycraft*, No. 2:25-CV-13073, 2025 WL 2952796 (E.D. Mich. Oct. 17, 2025); *Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP,--- F. Supp. 3d ---, 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025); *Alejandro v. Olson*, No. 1:25-CV-02027, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *Rico-Tapia v. Smith*, --- F. Supp. 3d ---, 2025 WL 2950089 (D. Haw. Oct. 10, 2025); *Padron Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025; *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, g they ha2025); *Giron Reyes v. Lyons*, --- F. Supp. 3d ---, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Patel v. Hardin*, No. 2:25-cv-870-JES-NPM, 2025 WL 3442706 (MD. Fla. Dec. 1, 2025); *Vasquez Carcamo v. Noem*, No. 2:25-cv-922, 2025 WL 3041895 (MD. Fla. Nov. 7, 2025). A federal District Court Judge, in a class action lawsuit involving a class that Petitioner would presumptively belong to, has explicitly vacated both *Matter of Yajure Hurtado* and the policy it mirrored. *See, Maldonado Bautista et al v. Santacruz et al*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026).

[2] "ICE Says Many In Immigration Detention No Longer Qualify For Bond Hearings," CBS News (Jul. 15, 2025) https://www.cbsnews.com/news/ice-immigration-detention- bond-hearings/ ; "ICE declares millions of undocumented immigrants ineligible for bond hearings," The Washington Post (Jul. 15, 2025) https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented- immigrants-bond-hearings/

proceedings. *Matter of Yajure Hurtado* followed. Since that decision, virtually all courts throughout the country have rejected the government's unlawful reversal of nearly three decades of settled immigration practice regarding the scope of mandatory detention pursuant to 8 U.S.C. §§ 1225 and 1226. *See* FN. 1. Placing Petitioner in expedited removal proceedings only for the purpose of detaining him and curtailing his due process rights to a full asylum hearing is unlawful and unconscionable. It took additional months before Petitioner has a credible fear interview. It was clear from the fact that he already has an I-589 application filed with USCIS that he would show that he has a credible fear of being returned to Cuba.

13. Nonetheless, Respondents continue to maintain that noncitizens who entered the United States without inspection, even years prior such as Petitioner and were previously released from immigration custody are subject to mandatory detention, because they are deemed to be on-going applicants for admission within the meaning of U.S.C. §1225(b)(2)(A).

14. This interpretation of the relevant law is a violation of the statute and due process. As such, Petitioner seeks an order of injunctive relief to be released from custody and to set aside relief under the Administrative Procedure Act ("APA") requiring that he be released immediately from ICE custody.

JURISDICTION

15. This Court has jurisdiction under 28 U.S.C. § 2241 to review the legality of Petitioner's continued detention. Habeas jurisdiction is available to noncitizens challenging the statutory basis of immigration detention. *See Madu*, 470 F.3d at 1366-68 (11th Cir. 2006). Petitioner is not challenging the initiation of removal proceedings or any discretionary decision regarding custody. Instead, he challenges only the government's legal conclusion that his detention is governed by 8 U.S.C. § 1225(b) rather than 8 U.S.C. § 1226(a). Such a "pure question of statutory interpretation" falls squarely within habeas jurisdiction. *Id.* at 1367.

16. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar review. Section 1252(a)(5) and § 1252(b)(9) apply only to challenges to removal orders and claims arising from removal proceedings. Petitioner raises neither. *See Id.* at 1367—68 ("Section 1252 does not preclude habeas review of claims that are independent of challenges to removal orders"). Section 1252(g) does not apply because Petitioner does not challenge the Attorney General's decision to commence proceedings, adjudicate proceedings, or execute any removal order. *See*

Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999). Section 1252(e) is inapplicable because Petitioner does not challenge the validity of any expedited removal order.

17. Finally, Section 1252(a)(2)(B)(ii) does not apply because Petitioner is not seeking review of a discretionary custody determination; the immigration court made no such determination, it expressly found the Court lacked jurisdiction to make such determination. 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).

VENUE

18. Venue lies in this District under 28 U.S.C. § 2241(a) and (d), because Petitioner is detained at Glades County Detention Center which is within the Middle District of Florida. *See Rumsfeld v. Padilla*, 542 US. 426, 434-35 (2004) (proper respondent in a habeas petition is the immediate custodian in the district of confinement). DAVID HARDIN, as Glades County Sherriff and Warden of the Glades County Detention Center is a proper respondent, as the official with immediate physical custody over Petitioner. *See Id.* at 435. The additional federal officials are included in their official capacities because they possess legal authority over Petitioner's detention under the Immigration and Nationality Act ("INA").

PARTIES

19. Petitioner, JOSE CARLOS PEREZ ACANDA, is a native and citizen of Cuba, detained by ICE at Glades County Detention Center within the Middle District of Florida. He brings this petition pursuant to 28 U.S.C. § 2241 to challenge the legality of his continued detention.

20. Respondent, DAVID HARDIN, or Glades County Sherriff and Warden of the Glades County Detention Center, in his official capacity, is the immediate custodian and the official responsible for Petitioner's physical detention.

21. Respondent, GARRETT J. RIPA, in his official capacity as Field Office Director ("FOD"), Miami Field Office, US. Immigration and Customs Enforcement is responsible for the custody, detention, and removal operations for individuals detained within the geographic area encompassing Petitioner's place of confinement.

22. Respondent, TODD LYONS, in his official capacity as Senior Official Performing

the Duties of the Director of ICE, directs the agency that exercises authority over the detention, custody, and supervision of noncitizens pursuant to the INA.

23. Respondent, KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security, is the highest official within the DHS, which is charged with administering and enforcing federal immigration laws, including detention authority under the INA.

24. Respondent, PAMELA BONDI, in her official capacity as Attorney General of the United States, acting in her official capacity, presides over the Executive Office for Immigration Review, which oversees the Immigration Judge that would hear Petitioner's request for release from custody.

25. Respondent, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT is an agency within the Department of Homeland Security charged with the enforcement of immigration laws, including the detention and removal of noncitizens.

26. Respondent, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, ("EOIR") is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including authority of hearing custody redeterminations in bond hearings for noncitizens who are detained by the DHS.

27. Respondent, DEPARTMENT OF HOMELAND SECURITY is the federal department responsible for administering and enforcing the INA, including statutory authority governing the detention of certain noncitizens.

UNDISPUTED FACTS

28. Petitioner is a native and citizen of Cuba who entered the United States without inspection near Rio Grande Valley, Texas, on August 17, 2022. Petitioner has resided continuously in the United States since that time.

29. Petitioner was detained by ICE on December 3, 2025, after removal proceedings were dismissed against him. He was detained outside an immigration courtroom by masked ICE officers.

30. Prior to December 3, 2025, Petitioner had been detained but was released under the following circumstances and conditions: he was apprehended by Customs and Border Protection on August 17, 2022, shortly after entering the United States. He was released under an Order of Release on Recognizance on August 19, 2022.

31. On December 3, 2025, DHS moved in front of an immigration judge to dismiss proceedings against Petitioner. Petitioner was detained by masked ICE officers outside the courtroom.

32. Presently, Petitioner remains detained at Glades County Detention Center. At a custody redetermination hearing, Immigration Judge Stuart A Siegel found he lacked jurisdiction because Petitioner was placed in expedited removal proceedings. The immigration judge relied on *Matter of M-S*, - 27 I&N Dec. 509 (A.G. 2019) and *Matter of Q Li*, 29 I&N Dec. 66 (BIA 2025). The immigration judge noted that it was a post *Yajure Hurtado* case. Prior to being re-detained on December 3, 2025, Petitioner had no criminal arrests, convictions, nor had he committed any crimes. (*See*, Ex. 8, Miami-Dade County Clerk of the Courts Records Search).

EXHAUSTION OF REMEDIES

33. There is no statutory exhaustion requirement for habeas challenges to the legal basis of immigration detention under 28 U.S.C. § 2241. *See Madu* at 1366—68 (11th Cir. 2006). Even if exhaustion applied, it would have been futile. EOIR will not grant Petitioner a bond because he is not in § 240 proceedings yet. However, had the immigration judge considered Petitioner's custody redetermination evidence, Petitioner would have presented his history of presenting himself to ICE when required, as well as his history of attendance at court proceedings. He would have presented documentary evidence of his sponsor's financial ability to support him, if necessary, and willingness to assure Petitioner's presence in court. Proof of Petitioner's employment and income as well as proof of filing tax returns. There would have been ten letters addressing Petitioner's good moral character and support for a bond in the matter. Petitioner would have established that he was free of any criminal record. As the Supreme Court has held, exhaustion is excused where "the administrative body is shown to be biased or has otherwise predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); *see also Shalala v. 111. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). This District has already held in identical circumstances that an administrative appeal would be futile because the result is predetermined by binding agency precedent. *See Patel*, 2025 WL 3442706, at 3.; *Vasquez Carcamo*, 2025 WL 3041895, at 3. Because the agency lacks authority to provide a custody redetermination under 8 U.S.C. § 1226(a), exhaustion would be futile.

STATUTORY BACKGROUND

34. Section 1226(a) provides that, "[o]n a warrant issued by the Attorney General," a noncitizen arrested and detained pending a decision on removal "may continue to be detained" or "may be released on bond" or conditional parole. 8 U.S.C. § 1226(a)(1) - (2). The statute authorizes the Attorney General to make both the initial custody determination and subsequent custody redeterminations. Implementing regulations assign authority for custody redeterminations to Immigration Judges. *See* 8 C.F.R. § 1003.19(a).

35. Section 1225 governs the inspection and processing of applicants for admission. Under section 1225(b)(1) and (b)(2), certain applicants for admission who are determined to be inadmissible "shall be detained" pending further consideration of their application or removal. These provisions apply only to "applicants for admission" as defined by the INA.

36. The INA defines "admission" 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). With limited exceptions not relevant here, a noncitizen who has entered the United States without inspection is not considered an "applicant for admission" at a later date solely by virtue of being encountered inside the country. Rather, the term applies to individuals who present themselves for inspection at a port of entry or who are treated as seeking admission under specific statutory provisions.

37. Section 1182(a)(6)(A)(i) renders an individual inadmissible if they are "present in the United States without being admitted or paroled." Section 1182(a)(7)(A)(i)(I) applies to "an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa" or other entry documents. The two grounds serve distinct statutory functions: § 1182(a)(6)(A)(i) describes unlawful presence after entry without inspection, while § 1182(a)(7) presumes an ongoing or contemporaneous "application for admission." Petitioner was charged under a new NTA that alleged both for the sole purpose of keeping him detained. At no point in time has Petitioner been an applicant for admission.

38. Under 1226(a), individuals detained pending removal proceedings are entitled to custody redeterminations before an Immigration Judge unless detained under statutory provisions that expressly withhold such authority. *See* 8 C.F.R. § 1003.19(h). By contrast, individuals detained under § 1225(b) are not eligible for bond redetermination because detention is mandatory for applicants for admission falling within that section.

39. The Department of Justice's 1997 regulations implementing the Illegal Immigration Reform and Immigrant Responsibility Act reaffirmed that noncitizens who entered without inspection and were later arrested inside the United States are detained under § 1226(a) and may seek bond before an Immigration Judge. *See Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) (explaining that aliens "arrested in the interior" fall under the Attorney General's general detention authority).

40. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court distinguished the detention schemes of §§ 1225, 1226, and 1226(c), holding that each operates according to its terms and that bond eligibility turns on the statutory authority under which the individual is detained. The Court reiterated that §§ 1225(b) and 1226(a) impose mandatory detention, while § 1226(a) allows discretionary release.

41. This case does not involve 8 U.S.C. § 1231 or post-removal-order custody. Petitioner will be in § 1229a proceedings and subject only to the pre-order detention provisions of the INA.

CONSTITUTIONAL VIOLATION

42. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S, 292, 306 (1993)). "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." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

43. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 US. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 US. at 690.

44. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In this case, to determine the due process to be afforded to Petitioner, the Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative

burdens that the substitute procedural requirement would entail. *Id.* at 335.

LEGAL ARGUMENT

1. Petitioner is entitled to an individualized determination of his custody status under the applicable statutes.

The statutory scheme governing immigration detention distinguishes between individuals detained as applicants for admission and those detained after entry while removal proceedings are pending. For individuals arrested in the interior of the country who have already entered without inspection, detention is governed by 8 U.S.C. § 1226(a). That provision authorizes the Attorney General to determine custody status during removal proceedings and permits release on bond or conditional parole. This framework applies to noncitizens who, like Petitioner, entered the United States without inspection years earlier and were encountered inside the country rather than at a port of entry. The implementing regulations have long recognized this distinction, continuing that individuals "arrested in the interior" after unlawful entry fall under the general detention authority of Section 1226(a).

Mandatory detention under 8 U.S.C. § 1225(b), by contrast, applies only to persons who are processed as applicants for admission. The statute predicates mandatory detention on that status and references individuals who present themselves for inspection, who are placed in expedited removal screening, or who otherwise fall within the statutory definition of an applicant for admission. The definition of admission, set forth at 8 U.S.C. § 1101(a)(13)(A), requires lawful entry after inspection and authorization. Individuals who enter without inspection are not transformed into applicants for admission simply because they are later encountered inside the United States during enforcement operations. The statutory structure does not permit treating long-settled interior residents as if they were arriving at the border. The application of § 1225(b)(2) to permit the continued detention of Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. 5 U.S.C. §706(2).

Because removal proceedings would be pending under Section 1229a and no statutory provision mandates custody, Petitioner falls squarely under Section 1226(a) as a matter of law. Under that provision, Immigration Judges retain authority to conduct custody redetermination unless expressly divested of jurisdiction. "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, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). Petitioner has a fundamental interest in liberty and being free from official restraint, which the government may not deprive without due process of law. U.S. Const., Amendment V.

Where an agency declines to exercise statutory authority based on a legal error, habeas jurisdiction is appropriate to correct the misclassification. As aforementioned, this Court, as well as others around the nation have repeatedly held interior arrests of long-term residents who entered without inspection fall under Section 1226(a) and that detention under Section 1225(b) is not authorized in such circumstances.[3] These decisions reflect the statutory structure enacted by Congress and the longstanding regulatory distinction between applicants for admission and individuals arrested within the United States. Petitioner's continued detention without access to a custody redetermination therefore rests on an error of law that warrants relief.

2. Petitioner is entitled to an individualized determination of his custody status under the Fifth Amendment to the United States Constitution.

The legal arguments supporting Petitioner's claims under the Fifth Amendment have been expressly and thoughtfully set out by the Honorable Kathleen Cardone in her Opinion and

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[3] *See, e.g., Vincens-Marquez v. Soto*, No. 25-16906 (KSH), 2025 WL 3097496 (D. N]. Nov. 6, 2025); *Beltran, et. al v. Noem*, No. 25- cv-2650—LL-DEB, 2025 WL 3078837 (SD. Cal. Nov. 4, 2025); *Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (SD. Ga. Nov. 4, 2025); *Flores v. Olson*, 25 C 12916, 2025 WL 3063540 (ND. Ill. Nov. 3, 2025); *J.A.M. v. Streeval*, No. 4:25-cv-342 (CDL), 2025 WL 3050094 (M.D. Ga Nov. 1, 2025); *Ramirez Valverde v. Olson*, No. 25-CV-1502, 2025 WL 3022700 (ED. Wis. Oct. 29, 2025); *Hernandez Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM, 2025 WL 3022245 (MD. Fla. Oct. 29,2025); *Orellana v. Noem*, No. 4:25-CV-112-RGJ, 2025 WL 3006763 (W.D. Ky. Oct. 27, 2025); *Tomas Elias v. Hyde*, No. 25- cv-540-JJM-AEM, 2025 WL 3004437 (D. R.I. Oct. 27, 2025); *Aguilar Guerra v. Joyce*, 2:25-cv-534-SDN, 2025 WL 2986316 (D. Maine Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, No. 25 cv-l3004, 2025 WL 2985256 (D. NJ. Oct. 23, 2025); *Gomez Garcia v. Noem*, No. 5:25- cv-02771-ODW (PDx), 2025 WL 2986672 (CD. Cal. Oct. 22, 2025); *Caballero v. Baltazar*, No. 25-cv-03120NYW, 2025 WL 2977650 (D.Colo. Oct. 22, 2025); *Ochoa Ochoa v. Noem*, N0. 25-CV-10865, 2025 WL 2938779 (ND. 111. Oct. 16, 2025); *N.A. v. Larose*, No. 25 cv-2384-RSH-BLM, 2025 WL 2841989 (SD. Cal. Oct. 7, 2025); *Lopez- Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Sampiaa v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (ED. Mich. Sept. 9, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25—cv-02180-DMS MM, 2025 WL 2549431 (SD. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (ED. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Ramirez Claviiov v. Kaiser*, No. 25-CV06248-BLF, 2025 WL 2419263 (ND. Cal. Aug. 21, 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv- 01789-ODW (DFMx), 2025 WL 2379285 (CD. Cal. Aug. 15, 2025); *Maldonado v. Olson*, No. 25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. 25-CV-02157-PHX-DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. 25-CV- 02157-PI-1X-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Diaz Martinez v. Hyde*, No. 25CV-l l613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Games v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025).

Order in *Erazo Rojas v. Noem et al*, EP-25-CV-443-KC (WD. Tx. Oct. 30, 2025), which will be repeated here with absolute agreement.

To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976)." *Martinez v. Noem ("Martinez II")*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). Those factors are: (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*, 424 U.S. at 335. "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).

a. Private Interest

As to the first element, "'[t]he interest in being free from physical detention' is 'the most elemental of liberty interests'." *Martinez II*, 2025 WL 2598379, at *2 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Respondents' position can only be justifiable if Petitioner does not acquire a liberty interest until his detention becomes unreasonably prolonged, because he is mandatorily detained under § 1225(b) and does not have a statutory right to a bond hearing. However, once released from immigration custody, noncitizens acquire "a protectable liberty interest in remaining out of custody on bond." *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025, WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025), at *10–11 (quoting *Diaz v. Kaiser*, No. 25-cv-5071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025)); accord *M.S.L.*, 2025 WL 2430267, at *8 ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.") (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).

Because he was released from immigration custody and spent almost three-and-a-half years at liberty in the United States, Petitioner possesses a strong interest in his continued freedom from detention.

b. Risk of Erroneous Deprivation

Under the second *Mathews* factor, the Court considers "whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Martinez II*, 2025 WL 2598379, at *3 (quoting *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. May 21, 2025)). Regardless of whether or not Petitioner has previously had a custody determination hearing, such a request would be futile because in recent cases, IJs have "declined to exercise jurisdiction, finding that [the petitioner was] subject to mandatory detention under § 1225." *Lopez-Arevelo*, 2025 WL 2691828, at *11 (quoting *Espinoza v. Kaiser*, No. 25-cv-1101, 2025 WL 2581185, at *11 (E.D. Cal. Sept. 5, 2025)). Thus, there is a high risk that Petitioner will continue to be erroneously deprived of his liberty. In fact, Chief Immigration Judge Teresa L. Riley issued nationwide "guidance" effectively instructing IJs across the country to stay the course of violating the rights of Bond Eligible Class Members. And the IJs complied. (*See Maldonado Bautista, et. al. v. Santacruz, et. al.*5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 2026)).

Respondents may argue that the process afforded to Petitioner in his removal proceedings is sufficient due process. As discussed above, insofar as those procedures relate to Petitioner's removal and not his detention, they do not ameliorate the risk that he will be erroneously deprived of his liberty while his removability is assessed. Any appeal to the humanitarian parole process, which is "sparsely granted in only the most extenuating circumstances," does not provide a constitutionally adequate vehicle to seek his release. *Id.* at 12. Deficiencies in the humanitarian parole process, including the lack of a neutral arbiter, a statement of reasons, or an appeal process, create a high risk that a noncitizen will be erroneously deprived of their liberty. *See Santiago*, 2025 WL 2792588, at *11.

In terms of available alternatives and their probable benefits, agency decisionmakers regularly "conduct[] individualized custody determinations . . . consider[ing] flight risk and dangerousness." *Velesaca v. Decker*, 458 F. Supp. 3d 224, 242 (S.D.N.Y. 2020) (citation omitted); *see also* 8 C.F.R. §§ 236.1(c)(8), 1003.19(h)(3). Indeed, under "decades of DHS's own practices" prior to 2025, noncitizens "who are present without having been admitted or paroled" just like Petitioner, received bond hearings. *Chogllo Chafla v. Scott*, Nos. 25-cv-437, -438, -439, 2025 WL 2688541, at *8 (D. Me. Sept. 22, 2025) (citations omitted). This is precisely the type of proceeding that would give Petitioner an opportunity to be heard and to receive a

meaningful assessment of whether he is dangerous or likely to abscond, and it would greatly reduce the risk of an erroneous deprivation of his liberty. Therefore, the second *Mathews* factor weighs in favor of Petitioner.

c. Government's Interest

Respondents do not have an interest in detaining Petitioner without a bond, other than perhaps their general interest in enforcing the INA as they interpret it. But again, assuming Respondents' interpretation of the statute is correct, Petitioner's constitutional interest in his liberty exists above and apart from the INA. *See A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) ("[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.") (citation omitted). Certainly, the Government has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community. But the decision to release Petitioner almost four years ago before he was even placed in removal proceedings, in and of itself, "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd 905 F.3d 1137 (9th Cir. 2018). While there is no evidence in the record indicating that Petitioner would be a flight risk or a danger to the community, if any such concerns exist, they would be squarely addressed through a bond hearing. *See Martinez II*, 2025 WL 2598379, at *4. Thus, the third *Matthews* factor also weighs in favor of Petitioner.

Since all *Mathews* factors support Petitioner's position, the Court should find that his detention without an individualized assessment of flight risk and dangerousness deprives him of his constitutional right to procedural due process under the Fifth Amendment of the United States Constitution. Thus, he is entitled to a bond hearing. *See, e.g., Lopez-Arevelo*, 2025 WL 2691828, at *13.

The importance of vindicating these rights can never be overstated:

> . . . [F]or a person deprived of their liberty without due process, it can be the most important thing in their life, and its denial the worst that has ever happened to them. Everyone is entitled to due process, but, unfortunately, not everyone has received it.
>
> . . . [D]ue process requires adequate notice and a meaningful hearing to determine whether a seizure is legally correct and based on accurate facts. If the government may simply seize someone without due process, there is no check on its ability to seize anyone.
>
> One might say, "I don't care because that only happens to THOSE people." Perhaps. But what if someone here legally, or even a United States citizen, is afforded no due process after being seized by mistake? *Or by a choice*?

> Fortunately, our Constitution demands more, including the rule of law, as opposed to the rule of unchecked executive fiat.

Solano v. Mason et al, 2:26-cv-00045, pp. 1-2. (S.D. West Virginia, Feb. 4, 2026).

CLAIMS FOR RELIEF

Count One

Denial of Custody Redetermination Based on Legal Error

Petitioner realleges and incorporates the preceding allegations. Petitioner is detained during the pendency of removal proceedings and is not subject to any statutory provision mandating custody. Petitioner is detained under the statutory framework set forth in 8 U.S.C. § 1226(a), which authorizes discretionary release on bond and assigns immigration judges authority to conduct custody redeterminations.

Notwithstanding these findings, DHS still has Petitioner detained without holding a credible fear interview so he can appear before an immigration judge to adjudicate his custody status. Therefore, based solely on a legal conclusion that Petitioner is subject to mandatory detention as an applicant for admission under 8 U.S.C. § 1225(b) he remains detained.

Where continued detention is based solely on misapplication of the governing statute, habeas corpus is the appropriate means to correct the classification and requires the agency to conduct a custody redetermination or release Petitioner from custody.

Count Two

Violation of the Fifth Amendment of the United States Constitution

Petitioner realleges and incorporates the preceding allegations. Petitioner is detained during the pendency of removal proceedings and is not subject to any statutory provision mandating custody. Petitioner has a right under the Fifth Amendment of the United States Constitution and its guarantee of due process to an individualized determination of his custody while his status in the United States is determined by the immigration courts.

Failure to release Petitioner outright or some other form of supervised release or on bond is depriving Petitioner of his freedom and subjecting him to custody in violation of the Fifth Amendment of the United States Constitution.

Where continued detention is based on a violation of constitutional protections, habeas corpus is the appropriate means to address the violation and requires the agency to provide an

individualized custody determination or release Petitioner from custody altogether.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

a. Assume jurisdiction over this matter;

b. Issue an order to show cause under 28 U.S.C. § 2243 ordering Respondents to answer within 3 days;

c. Issue a writ of habeas corpus directing Respondents to release Petitioner from custody; or in the alternative, to release Petitioner from custody subject to appropriate supervision; or in the alternative, to provide a custody redetermination hearing under § 1226(a) within seven days;

d. Enjoin Respondents from continuing to detain Petitioner without providing a custody redetermination consistent with Section 1226(a) and;

e. Award costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and

f. Grant such further relief as the Court deems just and proper.

Respectfully submitted on this 1st day of March, 2026.

JOSE CARLOS PEREZ ACANDA

By his attorney:

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Attorney for Petitioner

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Petition for Habeas Corpus are true and correct.

Executed this 1st day of March, 2026.

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