Angela Alvero (SBN 864404)
Angela@LegalAllen.com
Law Offices of Wilfredo O. Allen
2250 S.W. 3rd Ave., Ste. 301
Miami, FL 33129
Telephone: (305) 854-5955

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

LAZARO ALBERTO LAPINELL ALONSO,

Petitioner,

v.

JUAN BALTASAR, Warden of the Denver Contract Detention Facility, acting in his official capacity; KELEI WALKER, Field Office Director or Acting Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, acting in her official capacity; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement, acting in his official capacity; MARKWAYNE MULLEN, Secretary of the United States Department of Homeland Security, acting in his 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.: 1:26-cv-1365

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

INTRODUCTION

1. LAZARO ALBERTO LAPINELL ALONSO ("Petitioner") has been residing in the United States since October 25, 2023. He was allowed entry into the United States at the Paso del Norte Port of Entry in El Paso, Texas and given humanitarian parole by Respondents on October 25, 2023. (*See* Ex. 1, Humanitarian parole, I-94). Petitioner filed a timely I-485

application for Adjustment of Status on February of 2025 with the United States Citizenship and Immigration Services ("USCIS"). (*See* Ex. 2, Biometrics Appointment Notice). He has resided in Florida since his parole.

2. While in removal proceedings, Petitioner has reported as instructed to the Immigration and Customs Enforcement ("ICE") and presented himself to immigration court as required. On October 13, 2025, Petitioner was arrested for multiple counts of Uttering a False Check and related offenses. On November 13, 2025, the charges were No Actioned, (See Ex. 3, Eleventh Judicial Circuit of Florida case disposition report). On February 9, 2026, the Immigration Judge granted Petitioner's Motion to Terminate Proceedings so he can proceed to adjust his status under the Cuban Refugee Adjustment Act of November 2, 1966 ((Pub. L. No. 89-732, 80 Stat. 1161) before USCIS. (*See* Ex. 4, Order of the Immigration Judge dated February 9, 2026). On March 12, 2026, DHS filed an appeal challenging the Immigration Judge's Order terminating proceedings with the Board of Immigration Appeals. (*See* Ex. 5, BIA Receipt for Appeal filed March 12, 2026). Petitioner remains detained.

3. Petitioner, at this moment, is detained at the Denver Contract Detention Facility, 3130 Oakland Street, Aurora Colorado. (*See* Ex. 6, ICE Detainee Locator). Petitioner has no arrests other than the one on October 13, 2025, whose charges were later No Actioned by the State of Florida. He has never been charged with any other crime or convicted of any crime and there has been no change in his circumstances since he was placed in detention on October 13, 2025. Therefore, he was detained due to the interceding Department of Homeland Security ("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 the Denver Contract Detention Facility. He is pending removal proceedings with a Notice to Appear ("NTA") that has been filed with the EOIR under 8 U.S.C. § 1229a (*See* Ex. 7, Notice To Appear). Thus, rendering his ongoing detention 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. 8, Cuban passport) who was given humanitarian parole into the United States on October 25, 2023, at the Paso Del Norte Port of Entry in El Paso, Texas.

6. Petitioner did not have a custody redetermination (bond) hearing because he is an

arriving alien and an immigration judge would have found he lacked jurisdiction.

8. This case presents a purely legal question appropriate for habeas review: whether a noncitizen who presents himself at the border for admission can be indefinitely detained, if he had been paroled for a period of over one year, without violating his due process rights under the Fifth Amendment of the United States Constitution. 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).

9. Multiple decisions in this District have held that non-citizens residing at liberty and in compliance with DHS, who present no danger to the community or risk of flight, but are nonetheless re-detained without a violation of their release terms and facing indefinite detention, are being detained in violation of the Fifth Amendment of the United States Constitution. *See, Moreno Santana v. Baltazar et al*, No. 1:26-cv-00787-WJM (D. Colo. Mar. 13, 2026; *see also*, *Merchan-Pacheo v. Noem*, 2026 WL 88526, at *4 (D. Colo. Jan. 12, 2026); L.G. *v. Choate*, 744 F. Supp. 3d 1172, 1181 (D. Colo. 2024).[1]

10. 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 within seven days.

11. 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*. Regardless of whether the noncitizen has a criminal record. *Matter of Yajure Hurtado*

[1] Multiple courts that have been presented with Due Process arguments after appellate review adversely decided statutory arguments have done the same. *See*, *Sincheat Ariguana v. Bondi, et al*, No. 3:26-cv-00471-DB (W.D. Texas Feb. 23, 2026); *Hernandez Diaz v. U.S. Department Of Homeland Security, et al*, No. 3:26-cv-00437-DB (W.D. Texas Feb 20, 2026); *Ramirez Delgado v. Noem, et al*, No. 3:26-cv-00405-KC (W.D. Texas February 19, 2026); *Valenzuela Sanchez v. Noem*, No. 3:26-cv-00404-KC (W.D. Texas February 19, 2026); *Alvarado v. Noem, et al*, No. 3:26-cv-00393-KC (W.D. Texas Feb. 18, 2026); *Perez-Alvarado v. Noem, et al*, No. 3:26-cv-00386-KC (W.D. Texas Feb. 18, 2026); *Benavides Reyes v. Noem, et al,* No. 3:26-cv-00382-KC (W.D. Texas Feb. 18, 2026); *Benitez-Martinez v. Noem, et al*, No. 3:26-cv-00410-DB (W.D. Texas Feb. 17, 2026); *Morales-Quirino v. Anda-Ybarra, et al*, No. 3:26-cv-00323-DB (W.D. Texas Feb. 17, 2026); *Rodriguez Flores v. Bondi, et al*, No. 3:26-cv-00338-DB (W.D. Texas February 11, 2026); *Duran Aguila v. Warden, et al*, No. 3:26-cv-00241-KC (W.D Texas Feb. 9. 2026).

was vacated by *Maldonado Bautista v. Santacruz*, 5:25-cv-01873 (C.D. Cal Feb. 18, 2026).

12. Use of these provisions to indefinitely detain non-citizens who were previously released and did not violate any terms of release is a violation of due process. As such, Petitioner seeks an order allowing him to obtain an individualized determination of the necessity for his continued prolonged detention.

JURISDICTION

13. 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.

14. 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, nor could he - he was never subject to expedited removal.

15. Finally, Section 1252(a)(2)(B)(ii) does not apply because Petitioner is not seeking review of a discretionary custody determination; there was none. 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

16. Venue lies in this District under 28 U.S.C. § 2241(a) and (d), because Petitioner is detained at Denver Contract Detention Facility which is within the District of Colorado. *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). JUAN BALTAZAR, acting in his official capacity as Warden of the Denver Contract Detention Facility, 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

17. Petitioner, LAZARO ALBERTO LAPINELL ALONSO, is a native and citizen of Cuba, detained by ICE at Denver Contract Detention Facility within the District of Colorado. He brings this petition pursuant to 28 U.S.C. § 2241 to challenge the legality of his continued detention.

18. Respondent, JUAN BALTASAR, in his official capacity as Warden of the Denver Contract Detention Facility, is the immediate custodian and the official responsible for Petitioner's physical detention.

19. Respondent, KELEI WALKER, in her official capacity as Field Office Director ("FOD"), Denver 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.

20. 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.

21. Respondent, MARKWAYNE MULLEN, in his 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.

22. 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 hears Petitioner's immigration proceedings.

23. 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.

24. 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.

25. 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

26. Petitioner is a native and citizen of Cuba who was given humanitarian parole by Respondents on October 25, 2023 at the Paso Del Norte Port of Entry in El Paso, Texas. Petitioner has resided continuously in the United States since October 25, 2023.

27. Petitioner was detained by ICE on October 13, 2025, after he was arrested on a check cashing charge that was later No Actioned.

28. Prior to October 13, 2025, Petitioner had been given humanitarian parole into the United States by Respondents on October 25, 2022.

29. On October 25, 2023, CBP issued a NTA charging Petitioner as an arriving alien removable under 8 U.S.C. § 1182(a)(7)(A)(i)(I).

30. Petitioner has never committed a crime, been convicted of a crime, or been arrested for any other crime than the arrest of October 13, 2025, that was later No Actioned. (*See*, Ex. 9, Miami-Dade Sheriff's Office Records Search).

31. Presently, Petitioner remains detained at the Denver Contract Detention Facility.

EXHAUSTION OF REMEDIES

32. 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 be futile. 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.

CONSTITUTIONAL VIOLATION

33. "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).

34. 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.

35. "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 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 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.[2]

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,

[2] To be certain, there are District Courts in jurisdictions throughout the nation that have also found a due process violation in the circumstances presented in the instant case. In the interest of avoiding a battle of string cite length, a representative sample is provided: *Carmona-Torres v. Tindall et. al*, No. 3:26-cv-00130-RGJ (W.D. Ky. March 4, 2026); *Dokvadze v. Lowe, et al.*, No. 3:26-cv-00361-RDM (M.D. Pa., Mar. 3, 2026); *Diallo v. Noem, et al*, No. 1:26-cv-00318-JPW (M.D. Pa., Feb. 27, 2026); *Flores-Lazo v. Noem, et al*, No. 2:26-cv-00149-SMD-KRS (D. N.M., Feb. 20, 2026); *Hassan Mohamed v. Noem, et al*, No. 5:26-cv-04001-CJW (N.D. Iowa, February 12, 2026) (fn. 8); *Solano v. Mason et al*, 2:26-cv-00045 (S.D. W.V., Feb. 4, 2026); *N-E-M-B v. Wamsley, et al*, No. 3:25-cv-00989-SI (D. Ore., Dec. 9, 2025); *Barco Mercado v. Francis, et al*, No. 1:25-cv-06582-LAK (S.D. N.Y., Nov. 26, 2025); *Jacobo Ramirez, et al. v. Noem, et al*, No. 2:25-cv-02136-RFB (D. Nev., Nov. 24, 2025); *Verdugo Lopez v. Anderson, et al*, No. 1:25-cv-00621-BLW (D. Id. Nov. 19, 2025); *Faizyan v. Casey et al*, No. 3:25-cv-02884-RBM (S.D. Cal., Nov. 17, 2025); *Hernandez Marcelo v. Trump, et al*, No. 25-cv-00094 (S.D. Iowa Sept. 10, 2025); *Reynosa Jacinto v. Trump et al*, 25-cv-03161-JFB (D. Neb., Aug. 19, 2025).

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 given humanitarian parole by Respondents and spent two 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.

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 two years ago while his removal proceedings were initiating, 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).

2. Respondents are not exempt from the Fifth Amendment to the United States Constitution.

Respondents behave as if they alone have been given the authority, unique amongst all manner of state actors, to unilaterally deny any process to non-citizens when they seek to detain them in the various processing centers, detention centers, local jails, and private prisons they have enlisted across the country. The constitutional infirmity in the position taken by Respondents is best illustrated by the following situation that may be hypothetical but is also most certainly not extraordinary in any way.

A non-citizens father and his non-citizen teenage son are at liberty in the United States. Even a cursory review of the numerous *habeas corpus* cases pending in the District Courts throughout the country will reveal the myriad ways that this circumstance may arise and result in years spent while such non-citizens attempt to negotiate their way through the maze and slog through the muck that is Respondents' immigration system. This particular father and son are on their way to the son's local public high school because he is in danger of suspension due to poor grades, attendance or conduct, or any combination of the three. They must go see the school administration because there is no doubt that the Constitution requires that they be provided due process before the school can impose discipline such as a suspension. *See*, *Goss v. Lopez*, 419 U.S. 565 (1975) (due process provides a property right for students in their education, so a hearing is required before they are deprived of it).

If the non-citizen father by chance should run a red light on his way to the school and be stopped by a local police officer, the officer can give him a traffic ticket that provides an opportunity to go before a magistrate and contest his guilt and the appropriateness of any penalty. No one would suggest the officer has the authority to tear up his driver's license or to remove funds from his wallet to pay a fine. Again, the Constitution requires that the non-citizen

be given due process.

However, Respondents argue that, if in the course of localized enforcement activity, Respondents' agents come upon the scene and encounter this father and son, they can be immediately taken into custody and are subject to indefinite detention without the possibility of review by anyone. Neither an Immigration Judge nor a District Court Judge has any say on the matter. This cannot be correct. As recently stated by Hon. Roy Bale Dalton Jr. in the Middle District of Florida: "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." *Guiaiquire v. Quinones et al*, No. 6:26-cv-169-RBD-RMN (M.D. Fla. Feb. 3, 2026). Petitioner respectfully suggests that the focus not be solely on what the Constitution guarantees Petitioner; but that it is just as important as to what it prohibits Respondents from doing.

3. Petitioner's detention by Respondents without notice of the intent to revoke his prior release, an individualized assessment of his flight risk and dangerousness, and an opportunity to respond at a hearing before being detained violates his rights under the Due Process Clause of the Fifth Amendment.

In *Bonilla Chicas v. Vergara, et al*, No. 5:26-CV-00131 (S.D. Texas, Feb. 20, 2026), Judge Diana Saldana explained in detail how the Respondents have been violating the constitutional rights of non-citizens like Petitioner. That analysis is adopted and re-stated herein.

Petitioner asserts that §1252(b)(2) is unconstitutional as applied to him because he has acquired a protected liberty interest in his freedom from detention by virtue of his long-standing presence in the country and the significant ties that he has established. As-applied due process challenges remain an available avenue to challenge mandatory detention provisions of the INA. In *Jennings v. Rodriguez*, the Supreme Court considered whether the constitutional avoidance canon required the government to grant periodic bond hearings to noncitizens facing prolonged detention under 8 U.S.C. §§ 1225 and 1226 and held that it did not require periodic bond hearings as a matter of statutory construction. 583 U.S. at 291. But in deciding the statutory construction argument, the Supreme Court expressly left unanswered whether the petitioners'

detention without a bond hearing raised constitutional due process issues and instead remanded the issue for further consideration in the lower courts. *Id.* at 312 ("Consistent with our role as 'a court of review, not of first view' 'we do not reach' "respondents' constitutional arguments on their merits." (citation omitted)).

One year later, in *Nielsen v. Preap*, the Supreme Court rejected a statutory challenge to the mandatory detention under 8 U.S.C. § 1226(c) for noncitizens with criminal convictions who were not detained by immigration authorities immediately after their release from criminal custody. 586 U.S. at 418–20. The Court took care to clarify that "[o]ur decision today on the meaning of that statutory provision does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute as we have now read it." *Id.* Then, in *Johnson v. Arteaga-Martinez*, the Government conceded before the Supreme Court "that as-applied constitutional challenges remain available to address 'exceptional' cases" in the context of immigration detention. 596 U.S. 573, 583 (2022). Thus, this Court may consider Petitioner's due process challenge in the instant case, even if he is properly subject to mandatory detention under 8 U.S.C. § 1252(b)(2) per *Buenrostro-Mendez* as a matter of statutory construction. See *Buenrostro-Mendez*, 2026 WL 323330, at *1 (noting that the court only addressed "the statutory interpretation issue posed by these alien petitioners"); *see also Hassen v. Noem*, No. 3:26-cv-48-DB, Dkt. No. 8 at *4 n.1 (W.D. Tex. Feb. 9, 2026) ("*Buenrostro-Mendez* does not change this case's outcome on procedural due process grounds."); *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923, at *7 (W.D. Tex. Oct. 21, 2025) ("the Court need not consider whether the agency's new mandatory detention policies reflect a proper reading of the INA. The issue, instead, is whether those policies have been applied to [Petitioner] in an unconstitutional manner.")

Thus, the primary question before the Court is the scope of Petitioner's due process rights as a noncitizen detained under 8 U.S.C. § 1252(b)(2) for the purpose of removal proceedings. Various district courts have recognized "a person may obtain a liberty interest through their presence in the country, particularly where that presence is with the express permission of the Government." *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 685–86 (W.D. Tex. 2025)); *see also Chinchilla v. De Anda-Ybarra*, 2025 WL 3645178, at *5 (W.D. Tex. Dec. 16, 2025) (finding that a petitioner who had lived in the "United States for over four years and attends his local church" possessed "a strong liberty interest in his freedom from detention because he has established a life here"); *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-00773-JKP, 2025 WL 2976923 at *9

(W.D Tx., oct. 21, 2025) ("Because he spent nearly three years at liberty in the United States, [petitioner] possesses a cognizable interest in his freedom from detention."). Moreover, the interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas*, 533 U.S. at 690 ("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.").

Given that Petitioner has a cognizable liberty interest in his freedom from detention that is protected by due process, the re-detention of Petitioner under Respondents' mandatory detention scheme without any type of notice, individualized assessment, or opportunity to be heard is impermissible under applicable Supreme Court precedent. It is well established that due process typically "requires some kind of a hearing before the State deprives a person of liberty or property. *Zinermon*, 494 U.S. at 127 (citing *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985) ("'[T]he root requirement' of the Due Process Clause" is " 'that an individual be given an opportunity for a hearing *before* he is deprived of any significant protected interest'"; hearing required before termination of employment (emphasis in original)); *see also Santosky v. Kramer*, 455 U.S. 745, 769–70 (1982) (requiring full evidentiary hearing prior to the termination of parental rights); *Vitek v. Jones*, 445 U.S. 480, 496–97 (1980) (requiring adversary hearing prior to transferring inmate to a mental hospital); *Addington v. Texas*, 441 U.S. 418, 432–33 (1979) (requiring full evidentiary hearing governed by a standard higher than "preponderance of the evidence" prior to civil commitment); *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 18 (1978) (requiring a hearing before cutting off utility service); *Goss v. Lopez*, 419 U.S. 565, 579 (1975) (requiring informal hearing before suspension of students from public school, "*some* kind of notice and . . . *some* kind of hearing" (emphasis in original)).

In a recent decision, *Hassen v. Noem, et al*, No. 3:26-cv-00048-DB (W.D. Texas, Feb. 9, 2026), Honorable David Briones explained how the government can create a liberty interest in the immigration context that is not dependent on, and does not arise from, the specific statute that Respondents rely on to justify continued, prolonged detention without an individualized custody determination. Senior Judge Briones was faced with the case in which an Ethiopian national entered the United States in 2024 and presented himself near a port of entry and declared his fear of returning to Ethiopia. He was initially placed in expedited removal proceedings and detained,

but following a credible fear interview, his expedited removal order was vacated, and he was placed in full removal proceedings. He was then issued a Notice to Appear charging him as an alien present in the United States who has not been admitted or paroled and then released on parole into the U.S. for a period of one year. Despite fully complying with all conditions of release imposed by ICE for over a year, he was arrested by ICE officials while appearing for a scheduled appointment on January 9, 2026.

The Order entered by Senior Judge Briones makes clear that the statutory designations are meaningless. The Court dismissed an argument that the Petitioner in that case was subject to mandatory detention under 8 U.S.C. § 1225(b)(1), rather than the "catchall provision" contained in 8 U.S.C. § 1225(b)(2). The Court similarly rejected a distinction based on the difference between parole and release on recognizance. Instead, the Court based its decision squarely on due process considerations:

> The Court reiterates its original holding that noncitizens who have "established connections" in the United States by virtue of living in the country for a substantial period acquire a liberty interest in being free from government detention without due process of law. *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020). Because the Government released Petitioner and permitted him to live in the United States for over a year, they cannot revoke that liberty without an individualized determination of the need to do so (emphasis added).

Petitioner in the instant case, like Petitioner in *Hassen v. Noem*, has been allowed to live in the United States for more than a year. The value of the life that he has established here is incalculable to him, regardless of whether or not Respondents recognize or appreciate it. He may, or may not, be entitled to continue to enjoy that life based on the outcome of his proceedings in immigration court. For now, he only requests that this Court acknowledge its value by providing it with the protection of due process.

CLAIMS FOR RELIEF

Count One

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.

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 31st day of March, 2026.

LAZARO ALBERTO LAPINELL ALONSO

By his attorney:

/s/ Angela Alvero
Angela Alvero (SBN 864404)
Angela@LegalAllen.com
Law Offices of Wilfredo O. Allen
2250 S.W. 3rd Ave., Ste. 301
Miami, FL 33129
Telephone: (305) 854-5955

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 31st day of March, 2026.

/s/ Angela Alvero
Angela Alvero (SBN 864404)
Angela@LegalAllen.com
Law Offices of Wilfredo O. Allen
2250 S.W. 3rd Ave., Ste. 301
Miami, FL 33129
Telephone: (305) 854-5955

Attorney for Petitioner