FILED
U.S. District Court
District of Kansas
05/14/2026
Clerk, U.S. District Court
By: SND Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KEINER FARITH ASPRILLA MOSQUERA
Petitioner,
v.

MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; CHRISTOPHER CHAMBERLIN Acting Assistant Field Office Director for the Kansas City ICE; and, JACOB WELSH, Chase County, Kansas, Sheriff
Respondents.

Case No. 26-3132-JWL

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

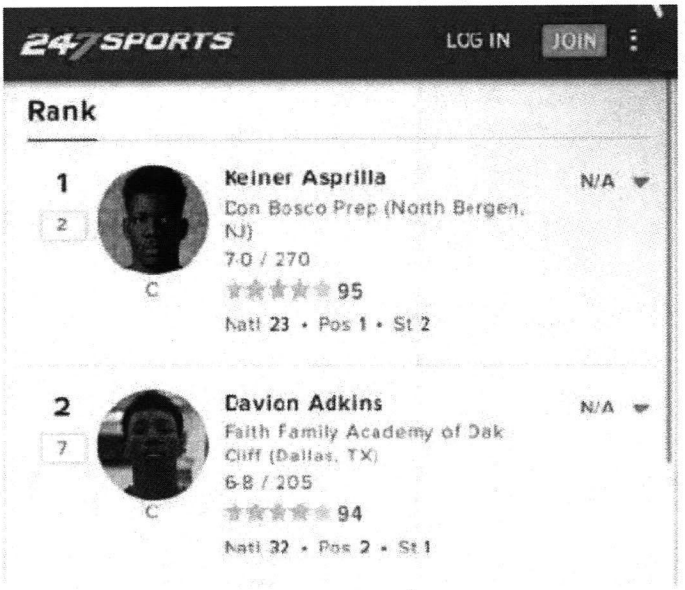
Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner, Keiner Farith Asprilla Mosquera is currently detained by U.S. Immigration and Customs Enforcement ("ICE") at the Chase County Jail in Cottonwood Falls, Kansas. He is detained despite having been granted a bond of $7500.00 by the Immigration Court, and despite his ability and willingness to pay that bond. He is neither a danger to the community nor is he a flight risk. The immigration Judge granted bond under 8 U.S.C. 1226(a). **(See attached Exhibit A; Bond order and decision)**.

2. Petitioner last entered the United States on August 27, 2023, as an F-1 student. He is an internationally ranked basketball player who lives in New Jersey. Given his talent, Petitioner was being recruited by some premiere basketball programs in college basketball, including:

By all measures, he is destined for greatness, with a potential NBA career awaiting him. At the time of his detention, Petitioner was the #1 ranked high center in the country.



3. In addition to being ranked so highly, Petitioner was being recruited by some of the premier basketball programs in college basketball.



4. Petitioner's troubles began when he visited the University of Missouri for a recruiting trip with the Mizzou basketball team During the trip, he had consensual sex with a young woman, who later falsely accused him of sexual assault. This accusation led to his arrest and detention in criminal custody. On January 21, 2026, the Boone County Prosecutor's Officer

dropped all charges against Petitioner. The next day, Petitioner was transferred to ICE custody.

5. For nearly 100 days, Petitioner has remained in custody of ICE-despite an Immigration Judge having granted him bond on February 3, 2026. Respondents filed a notice of intent to appeal the bond on the same day, with a simple form. The EOIR-43 indicates, in relevant part, "Filing this form on 2/3/2026 automatically stays the Immigration Judge's custody re-determination decision. *See* 8 C.F.R. §1003.19(i)(2)." The automatic stay occurs without the ability of the Petitioner to contest it in any way. Attached to the notice is a statement that "the evidentiary record supports the contentions justifying the continued detention of the alien and the legal arguments are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent." **(See attached Exhibit B; EOIR Form 43)**

6. There is no intervening "precedent" that allows the Agency to continue to detain while DHS exercises its right to a discretionary appeal. INA§ 236(c) applies to criminal aliens, and the Petitioner is not a criminal alien. Although he was charged in April 2025 with serious sexual offenses, those charges were outright dismissed. The Form 43 and the attached certification do not provide any legal basis for detention to continue.

7. Nonetheless, Respondents filed their notice of appeal with the Board, thus perfecting their appeal on February 12, 2026.

8. Under the plain language of the regulations, "If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal." That time has lapsed and the Board has not rendered a decision.

9. The Petitioner's continued detention violates the plain language of the INA and its implementing regulations. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process

Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As Courts have recently recognized, this is "the most elemental of liberty interests." *E.A. T.-B.*, 2025 WL 2402130, at *3 (citation modified).

REQUIREMENTS OF 28 U.S.C. § 2243 AND APPLICATION FOR AN ORDER TO SHOW CAUSE

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

11. Petitioner respectfully submits that these matters should be expedited under 28 U.S.C. § 2243 to allow Petitioner to resume his education and his basketball opportunities. Although he is in possession of a valid I-20, he must be released from custody to complete the reinstatement process and resume his student and basketball activities.

12. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

13. Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests that the Court issue an order to all Respondents requiring them to show cause why the Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution; should not be granted and why Respondents should not be ordered to release Petitioner from detention.

PARTIES

14. Petitioner Keiner Farith Asprilla Mosquera, a citizen and native of Colombia, is a resident of New Jersey. He is currently being detained under the direction of Respondents in Chase County, Kansas, in Cottonwood Falls, hours from his host family.

15. Respondent Markwayne Mullin is named in his official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, he is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in Kansas, and Missouri and supervises Respondent Chamberlin; who is legally responsible for pursuing Petitioner's detention and removal; and as such is the legal custodian of Petitioner. Respondent Mullin's address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

16. Respondent Christopher Chamberlin is named in his official capacity as the Acting Assistant Field Office Director for the Kansas City Field Office for ICE within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations within the Kansas City region and is the legal custodian of Petitioner. Respondent Chamberlin's address is Department of Homeland Security, Enforcement and Removal Office, 555 N. Woodlawn Street, Bld. 4, Ste. 160, Wichita, KS 67208.

17. Jacob Welsh is the Chase County, Kansas, Sheriff and is responsible for the Chase County Jail in Cottonwood Falls, Kansas. He has ultimate authority over the facility where Petitioner is detained. He is Petitioner's immediate custodian responsible for his physical custody. Respondent Welsh's address is 300 Pearl St. Cottonwood Falls, KS 66845.

JURISDICTION

18. Jurisdiction is proper under28 U.S.C. §§ 1331, 2241; the Suspension Clause, U.S. Const. art. I, § 2; and 5 U.S.C. § 702.

19. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the United States Constitution. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint[] on [Petitioner's] individual liberty," such that Petitioner is "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3).

20. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The REAL ID Act of 2005, which eliminated habeas corpus jurisdiction over final orders of removal, deportation, and exclusion and consolidated such review in the court of appeals, did not impact the ongoing availability of habeas corpus filed in the district court to challenge the length or conditions of immigration detention. *See* H.R. REP. No. 109-72, at 175 (2005), ("Moreover, section 106 would not preclude habeas review over challenges to detention that are independent of challenges to removal orders. Instead, the bill would eliminate habeas review only over challenges to removal orders.") *reprinted in* 2005 U.S.C.C.A.N. 240, 300; *see Hernandez v. Gonzales*, 424 F.3d 42, 42-43 (1st Cir. 2005); *Sissoko v. Rocha*, 412 F.3d 1021, 1033 (9th Cir. 2005); *Kellici v. Gonzales*, 472 F.3d 416 (6th Cir. 2006). This action challenges Petitioner's *detention,* not his removal or deportation.

21. In the case at bar, 28 U.S.C. §1252(g) is particularly noteworthy. That provision strips district courts of habeas jurisdiction over challenges to a "decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders[.]" 8 U.S.C. §1252(g). Given a broad reading, this provision could conceivably deprive this court of habeas

jurisdiction in this case. *See id.* However, the Supreme Court has already rejected this reading. *See AAADC*, 525 U.S. at 483-84. Instead, the provision is interpreted narrowly to refer to only those three decisions. *Id.*

22. Similarly, 8 U.S.C. §1252(b)(9) does not apply because again, the Supreme Court has rejected an "expansive interpretation" of the provision. Jennings, 583 U.S. at 840. That provision acts as a "zipper clause" that requires all issues of law and fact relating to a removal order be judicially reviewed when reviewing the removal order itself. 8 U.S.C. §1252(b)(9). By its terms, it does not limit judicial review of detention separate from the removal order. See id. (no mention of detention).

23. The only other provision that conceivably applies to Petitioner's challenges is 8 U.S.C. § 1226(e), purporting to strip district courts of jurisdiction over "discretionary" detention decisions. However, that provision does not apply to challenges brought within a petition for Habeas Corpus. As the Supreme Court has explained, because immigration law has historically used "judicial review" and "habeas corpus" to mean different things, a jurisdiction-stripping provision in the INA must explicitly reference "habeas corpus" or "28 U.S.C. § 2241" to deprive district courts of habeas jurisdiction at all. *INS v. St. Cyr*, 533 U.S. 289. 311-13 (2001).

24. Furthermore, even if § 1226(e) *did* apply to petitions for habeas corpus in general, it would not apply to Petitioner's specific claims. § 1226(e) only purports to deprive district courts of jurisdiction to review the agency's "discretionary judgment." Administrative agencies do not have discretion to violate the constitution, binding statutes, or their own regulations; accordingly, decisions that so are not "discretionary judgments" by definition. They are unlawful judgments. It follows that, as a matter of statutory construction, § 1226(e) cannot be said to apply to claims challenging unconstitutional or unlawful detention.

VENUE

25. The District of Kansas is the proper venue to resolve Petitioner's petition for a writ of Habeas Corpus. Petitioner is physically present within the District of Kansas since he is housed at Chase County Jail in Cottonwood Falls, Kansas.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

26. Petitioner has no administrative remedies regarding his custody determination to exhaust. He has been in front of the Immigration Court and had a bond issued by the judge to allow for his release while the appeal is pending. Still, DHS has invoked the automatic stay provisions and refused to allow Petitioner out of custody. There is not any administrative remedy which will allow him to challenge his unlawful detention and habeas relief is the only way for him to redress his unlawful detention.

27. Moreover, even if there were administrative redress that Petitioner could seek, Petitioner need not exhaust his administrative remedies. The detention statute pursuant to which Petitioner is detained, 8 U.S.C. § 1231(a), has no exhaustion requirement. Exhaustion is required only when Congress specifically mandates it. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). In all other instances, "sound judicial discretion governs." *Id.*

28. This Court also should not require Petitioner to exhaust his administrative remedies. First, the Supreme Court has recognized that courts should not require exhaustion where there is an unreasonable or indefinite time-frame for administrative action. Exhaustion is thus not appropriate where plaintiff "may suffer irreparable harm if unable to secure immediate judicial consideration of [his] claim." *Id.* at 147. Petitioner has a constitutionally protected liberty interest in his freedom from government custody. *Zadvydas*, 533 U.S. at 690. Petitioner's unlawful indefinite detention constitutes irreparable harm. *See Seretse-Khama v. Ashcroft*, 215 F. Supp.2d 37, 53 (D.D.C. 2002); *Hardy v. Fischer*, 701 F. Supp. 2d 614, 619 (S.D.N.Y. 2010) (threat of unlawful

detention and reimprisonment would constitute quintessential irreparable harm).

29. Second, exhaustion is not required where the Petitioner challenges the constitutionality of the agency procedure itself, "such that the question of the adequacy of the administrative remedy is for all practical purposes identical with the merits of the plaintiff's lawsuit." *McCarthy*, 503 U.S. at 148. In this case, Petitioner is challenging the constitutionality of any administrative procedures by which Respondents continue to detain him despite there being no lawful basis since he is in status and eligible for F-1 reinstatement. Thus, exhaustion of administrative remedies is not required.

STATEMENT OF FACTS REGARDING CURRENT DETENTION

30. Petitioner is a native and citizen of Colombia who last entered the United States on. August 27, 2023, as an F-1 student. His admission was for the duration of stay.

31. Petitioner is a nationally ranked basketball player who lives in New Jersey with a host family. While he was a minor, Petitioner visited the University of Missouri for a recruiting trip with the Mizzou basketball team. During the trip, he had consensual sex with a young woman. He was later falsely accused of sexual offenses and detained in criminal custody. Eventually, on January 21, 2006, all charges were dropped against him. However, upon his release from criminal custody, he was transferred to ICE the next day.

32. On January 22, 2026, ICE commenced removal proceedings against him. **(See attached Exhibit C; NTA).**

33. After a full hearing on the issue of bond, the immigration Judge made the specific findings that Petitioner is neither a flight risk nor a danger to the community. In so doing, the Immigration Judge granted Petitioner a $7500.00 bond.

34. Subsequently, on February 3, 2025, DHS filed their notice of intent to file a bond appeal using form EOIR-43. A one-page Form that provides no information as to the basis for the

appeal. However, once filed, Petitioner was prevented from paying the bond the immigration court had set since an automatic stay went into effect. Petitioner had no way to challenge the auto stay and has remained in custody unable to pay the bond for nearly 100 days.

35. Petitioner has been detained since the criminal incident which prevented him from attending classes. As a result, his SEVIS record was closed. However, his school is committed to reinstating Petitioner's I-20. They issued a new I-20 on March 16, 2026. It remains valid until June 15, 2027. **(See attached Exhibit D; New I-20)**.

36. Students, like Petitioner, are admitted for "duration of status". A different set of rules apply to such visa holders. *See* 8 C.F.R. §214.2(f)(5). They only become removable when their visas are revoked non-prudentially by the Department of State or when an immigration judge finds them removable. There is no evidence of a non-prudential revocation by the Department of State. Likewise, there is no final order of removal in this matter since removal proceedings are ongoing.

37. The appeal filed by DHS remains pending but the automatic stay has expired on May 13, 2026, by operation of law. 8 C.F.R. 1003.6(c)(4). While DHS filed an Emergency Motion for Discretionary Stay with the Board on May 4, 2026, that Motion has not been granted. Moreover, even if granted, Petitioner's liberty interest can not be overridden by a litigation strategy based solely on the notion that police reports are reliable; an issue fully resolved by the federal circuit courts to find otherwise. This is particularly true since the Boone County Prosecutor's office itself dismissed all charges.

38. The Petitioner's continued detention violates the plain language of the INA and its implementing regulations and the U.S. Constitution.

LEGAL BACKGROUND

39. The INA describes three forms of detention that cover most noncitizens in removal

proceedings.

40. 8 U.S.C. § 1226 authorized the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention is entitled to a bond hearing at the outset of their detention, see 8 C.F.R. § 1003.19(a), 1236.l(d), while citizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention until their removal proceedings are concluded, see 8 U.S.C. § 1226(c).

41. The INA also provides for mandatory detention for classes of noncitizens subject to expedited removal under 8 U.S.C. §1225(b)(l) and for other recent arrivals "seeking admission" pursuant to 8 U.S.C. § 1225(b)(2).

42. § 1226 (a) and§ 1225(b)(2) are the detention sections which began as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226 was amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

43. INA 236(c) only applies to criminal noncitizens, which Petitioner is not. He has no criminal convictions in the United States and none that make him subject to the mandatory detention statutes. The IJ found him eligible for bond under INA§ 236. There does not appear to be any new interpretation under INA§ 236 by the Court or the Respondents so it is unclear how that could be the Respondent's basis to seek an automatic stay.

44. Even in the face of a statutory compliant bond redetermination by the immigration judge, the regulations allow for continued detention so that DHS may appeal the immigration Judge's order. By filing, within a day of the Immigration Judge's Order, a Form EOIR-43, Notice of ICE Intent to Appeal Custody DHS "automatically stays the Immigration Judge's custody redetermination decision." *See* 8 C.F.R. § 1003.19(i)(2).

45. In addition, if DHS files a notice of appeal with Board within ten days along with a

certification that a senior legal official has approved the notice of appeal according to review procedures and the official is satisfied that the contentions justifying the continued detention of the noncitizen have evidentiary support, and they are warranted by a non-frivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent. 8 C.F.R. § 1003.6(c)(1).

46. The automatic stay lapses after 90 days, absent a Board decision. 8 C.F.R. § 1003.6(c)(4).

47. However, the government can extend the detention by seeking a discretionary stay from the Board at the expiration of the stay which automatically extends the stay for an additional 30 days while the BIA decides the request for discretionary stay. 8 C.F.R. § 1003.6(c)(5).

48. If the Board authorizes the noncitizen's release, denies a motion for discretionary stay, or fails to act on such a motion before the automatic stay period expires, the noncitizen's release shall be automatically stayed for five business days. 8 C.F.R. § 1003.6(d). During that period, DHS can choose to refer the bond decision to the Attorney General, which extends the automatic stay for another 15 business days. *Id.* The Attorney General can then extend the stay for the pendency of the custody proceedings. *Id.*

49. Once the automatic stay provisions have been triggered, they work as a mechanism for mandatory detention without any recourse for the non-citizen to challenge their detention. Such detention is not authorized under the plain language of § 1226(a).

49. In the current matter, the certification filed by DHS with their Notice of Appeal is boilerplate and offers no details specific to the Petitioner's case. It provides no information on what, if any, information or evidence the senior legal official reviewed. This is insufficient to satisfy the regulations, especially when such a filing denies an individual their liberty. The certification is invalid. **(See attached Exhibit E; Notice of Appeal and Certification)**

50. Respondent's entire litigation strategy in challenging the bond determination by the Immigration Judge, thus triggering the regulatory automatic stay provisions, is that the police reports should be given greater weight. This position is contrary to widespread Circuit holdings. As the Court in *United States v. Padilla*, 793 F. App'x 749, 756-57 (10th Cir. 2019) extensively explained, and worth including here comprehensively:

> Not every police report satisfies the reliability floor. *See Ruby*, 706 F.3d at 1230 (describing potential "concerns" with the police report at issue, including the police officer's accuracy in recording information provided to him); *United States v. Dougan*, 684 F.3d 1030, 1033 n.3 (10th Cir. 2012) ("[N]ot every [police] complaint [i.e., report] has sufficient indicia of reliability for use in sentencing."); *see also United States v. Jordan*, 742 F.3d 276, 280 (7th Cir. 2014) ("Police reports are not presumed to be categorically reliable."); *United States v. Johnson*, 710 F.3d 784, 789 (8th Cir. 2013) ("[P]olice reports may be demonstrably reliable evidence of the fact that an arrest was made [but] they are significantly less reliable evidence of whether the allegations . . . they contain are true." (quoting *United States v. Bell*, 785 F.2d 640, 644 (8th Cir. 1986))); ("[P]olice reports . . . do not bear the same indicia of reliability as . . . laboratory reports. . . . The relationship between police officers and those whom they arrest is much more personal and adversarial in nature than that between chemists and those whose urine they test."). Relatedly, police reports "can also be advocacy pieces, written for prosecutors to use in deciding whether or how to charge a suspect." (noting that "police reports . . . . are designed only to permit a determination of probable cause"). And, typically, police reports "are generated early in an investigation . . . [and thus] do not account for later events, such as . . . amendments[] or corrections." Indeed, for these very reasons, the Federal Rules of Evidence—"[d]espite their liberality toward public and business records"—explicitly omit police reports from the hearsay exception for public records. *Olivas-Motta*, 746 F.3d at 918; *see* Fed. R. Evid. 803(8)(A)(ii) (excluding, in criminal cases, "a matter observed by law-enforcement personnel" from the hearsay exception for public records); *see also* Fed. R. Evid. 803 advisory committee's note to 1974 enactment ("Ostensibly, the reason for this exclusion is that observations by police officers . . . are not as reliable as observations by public officials in other cases because of the adversarial nature of the confrontation between the police and the defendant in criminal cases.")(internal cites abbreviated and cleaned up).

51. Courts have overwhelmingly found that the automatic stay provisions are unlawful

and ultravires and violate procedural due process as applied under *Mathews v. Eldridge,* 424 U.S. 319 (1976). *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025), *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025); *Genchi Palma v. Trump*, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Lorenzo Perez v. Kramer*, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Ozuna Carlon v. Kramer*, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Duenas Arce v. Trump*, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Maldonado Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Carlos v. Noem*, 2025 WL 2896156 (D. Nev. Oct. 10, 2025) (TRO); 2025 WL 2998184 (D. Nev. Oct. 24, 2025) (PI); *Dominguez-Lara v. Noem*, 2025 WL 2998094 (D. Nev. Oct. 24, 2025); *Castillo v. Andra-Ybarra*, 2025 WL 3251223 (D.N.M. Nov. 21, 2025); *Aguilar Merino v. Ripa*, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025).

52. Application of the automatic stay provisions for someone granted a bond after a full hearing is in violation of the INA, and the Constitution.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:
Violation of 8 U.S.C. § 1226(a)

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

54. The mandatory detention provisions do not apply to all noncitizens, like Petitioner, who has no criminal convictions and any charges were dismissed by the prosecution after reviewing the evidence in the first instance. Despite the immigration judge finding that Petitioner is not a flight risk or a danger to the community, DHS has used the automatic stay provisions in a manner that has subjected Petitioner mandatory detention under §

1226(c), a provision that does not apply to him. Petitioner is covered under§ 1226(a) and eligible for release on bond-a bond that has been determined by the immigration court after a full hearing.

55. Petitioner is being held in detention impermissibily and in violation of the plain language of the law.

SECOND CLAIM FOR RELIEF
Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and Capricious Agency Policy

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

57. The APA states a "reviewing court shall... hold unlawful and set aside agency action, findings, and conclusion found to be... arbitrary and capricious, an abuse of discretion or otherwise not in accordance with the law". 5 U.S.C. § 706(2)(A).

58. The mandatory detention provision under 8 U.S.C. § 1226(c) does not and could not apply to all non-citizens residing in the United States who are subject to any grounds of removability. If applied to all non-citizens it would make the rest of the mandatory detention provisions, and bond provisions unnecessary. It specifically does not apply to an individual who was admitted to the United States as a student, was falsely accused, had his criminal charges dismissed, has never had his visa prudentially revoked, and currently has a valid I-20, which allows him to regain his visa status. That detention falls solely and squarely under§ 1226(a) and as such they are eligible for release on bond, which in this case the immigration court has already granted, unless they are subject to § 1225(b), § 1226(c) or § 1231.

59. The Respondents have issued an emergency stay of the bond and refused to release the Petitioner without a valid explanation for their decision and based only on their claim that the police reports should be given greater weight-something circuit courts have rejected.

60. The application of the automatic stay provisions as a mechanism for mandatory detention is ultra vires to §1226(a) and therefore is arbitrary, capricious, and contrary to the law,

and as such is violates the APA. *See* 5 U.S.C. § 706(2).

THIRD CLAIM FOR RELIEF
Violation of the Fifth Amendment Due Process Clause

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

62. The Fifth Amendment provides that "[n]o person" shall be "deprived of life, liberty, or property, without due process of law."

63. "Freedom from imprisonment- from governments custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis,* 533 U.S. 678, 690(2001).

64. "The Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

65. The Respondents' use of the regulations in violation of the plain language of the statute and as a mechanism for impermissible mandatory detention, especially without any meaningful opportunity to challenge his detention, violates Petitioner's right to substantive and procedural due process.

PRAYER For RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Issue a Writ of Habeas Corpus; requiring that Respondents release Petitioner from custody immediately or in the alternative upon the payment of the bond set by the Immigration Court.

3) Declare that DHS' practice of using form EOIR-43 to subject detainees to detention after an IJ sets a bond violates the INA, its implementing regulations, and the APA.

4) Award reasonable attorneys' fees and costs for this action; and

5) Grant any other and further relief that this Court deems just and appropriate, including individual injunctions if necessary.

Respectfully submitted this 14th day of May 2026.

Sharma-Crawford Attorneys at Law

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

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

Dated this 14th day of May 2026.

s/Rekha Sharma-Crawford
Rekha Sharma-Crawford #KS 16531