Arno Javier Lemus
Lemus Law Group, LLC
1024 NW 102 PL
Miami, Florida 33172
786-816-2795
lemusarno@gmail.com
BAR 0103075
Counsel for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION

MARLON GUSTAVO ZAPATA AROSTEGUI,

Petitioner,

v.

WARDEN, Broward Transitional Center;

TODD BLANCHE, Acting United States Attorney General; and

TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement,

Respondents.

Case No. ---

PETITION FOR WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Marlon Gustavo Zapata Arostegui is a forty-eight-year-old Nicaraguan national who entered the United States lawfully on May 14, 2023, through Miami International Airport under Nicaraguan Humanitarian Parole ("NHP") status. He has resided continuously in the United States since that date, has worked legally, has paid his taxes, and has complied with every obligation imposed by his immigration status. He has no criminal record of any kind — in Nicaragua, in the United States, or anywhere. He was arrested by agents of U.S. Immigration and Customs Enforcement ("ICE") on April 20, 2026, while riding as a passenger in a vehicle on his way to his place of employment. He was not committing any criminal offense. He was not operating any vehicle. He was going to work.

2. This Petition is brought pursuant to 28 U.S.C. § 2241 on three independent, alternative grounds. First, Petitioner's detention is unlawful as a matter of statute and regulation: it is governed by 8 U.S.C. § 1226(a), and Respondents have wholly failed to comply with the mandatory regulatory procedures that statute requires, including issuance of a Form I-286, a bond advisal under 8 C.F.R. § 236.1(c)(8), and an opportunity to post bond under 8 C.F.R. § 236.1(d)(1). Second, Petitioner's detention without any individualized custody hearing violates the procedural guarantees of the Fifth Amendment's Due Process Clause. Third, and in the alternative, Petitioner's continued detention is substantively arbitrary and bears no rational relationship to any legitimate government interest that could not be served through less restrictive means, in violation of the Due Process Clause.

3. On March 5, 2025, Petitioner timely filed a Form I-589, Application for Asylum and for Withholding of Removal, with the Miami Asylum Office of U.S. Citizenship and Immigration Services ("USCIS"). His biometrics appointment was completed on March 28, 2025,

and his case is now before the Immigration Court. His next hearing is scheduled for May 6, 2026, at 8:00 A.M., before Immigration Judge Stuart A. Siegel at the Broward Immigration Court, 3900 North Powerline Road, Pompano Beach, Florida. Petitioner's continued detention without any individualized custody determination directly threatens his ability to prepare for and appear at that imminent hearing — now only days away.

4. Petitioner's mother, María Delia Arostegui, is a naturalized citizen of the United States who obtained her citizenship on July 17, 2015. On April 24, 2026 — four days after Petitioner's arrest — she filed a Form I-130, Petition for Alien Relative, with USCIS on Petitioner's behalf. That petition is currently pending. Petitioner therefore has an immediate qualifying U.S. citizen family member who has formally petitioned for his status — a circumstance reflecting the depth of his community ties and establishing an independent pathway to lawful permanent residence.

5. Petitioner's detention is governed by 8 U.S.C. § 1226(a). He is not subject to mandatory detention under § 1226(c): he has no criminal history of any kind, and Respondents have not invoked § 1226(c). Yet since his arrest on April 20, 2026, Respondents have not served Petitioner with a Form I-286 custody determination, have not set a bond amount, have not provided the bond advisal required by 8 C.F.R. § 236.1(c)(8), and have not presented him before any immigration judge for an individualized custody determination. Each day of confinement without process is an independent constitutional injury.

6. No adequate alternative remedy exists. Monetary damages cannot compensate for Petitioner's ongoing loss of liberty or the irreparable harm to his ability to prepare for and appear at his May 6, 2026 immigration court hearing. Habeas corpus under 28 U.S.C. § 2241 is the sole vehicle available to Petitioner to challenge the lawfulness of his confinement, and this Court is the

only forum with authority to order his immediate release or compel the individualized process to which he is entitled.

7. Petitioner respectfully requests that this Court (a) issue an immediate temporary stay of any transfer outside this District and any removal pending resolution of this Petition; (b) order his immediate release under reasonable conditions of supervision; or in the alternative, (c) order that Petitioner be brought before an immigration judge ("IJ") for an individualized bond redetermination hearing within seven (7) days of this Court's Order, so that the hearing may be held before his scheduled May 6, 2026 Executive Office for Immigration Review ("EOIR") date.

JURISDICTION

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241(a) and (c)(3), which authorize federal courts to grant writs of habeas corpus to persons held in violation of the Constitution or laws of the United States. Jurisdiction also rests on 28 U.S.C. § 1331 (federal question). The Supreme Court has confirmed that § 2241 remains available to challenge the legality of executive immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018). This Court has authority to grant effectual relief directly against the immediate custodian — the Warden of the Broward Transitional Center — by ordering Petitioner's release or compelling an individualized bond hearing, remedies that fully redress the statutory and constitutional violations alleged herein.

9. This is a pre-final-order detention challenge and is not subject to the jurisdiction-stripping provisions of Immigration and Nationality Act ("INA") § 242. Petitioner does not seek review of a final order of removal, does not challenge any discretionary determination under 8 U.S.C. § 1252(a)(2)(B), and does not raise any claim requiring channeling through a petition for review under 8 U.S.C. § 1252(b)(9). Petitioner challenges exclusively the statutory and

constitutional lawfulness of his pre-final-order civil detention — a challenge squarely cognizable under § 2241. *Hamdan v. Rumsfeld*, 548 U.S. 557, 576–77 (2006).

10. Exhaustion of administrative remedies is excused. No operative administrative process exists for Petitioner to exhaust: Respondents never served a Form I-286 custody determination, never provided the bond advisal required by 8 C.F.R. § 236.1(c)(8), and no immigration judge has been made available for any custody review. Because no Form I-286 issued and no IJ review was initiated, there is no administrative mechanism Petitioner could invoke even if he sought to do so. Moreover, Petitioner's immigration court hearing is scheduled for May 6, 2026, making any further attempt at administrative exhaustion not only futile but itself a source of irreparable constitutional injury. *Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982) (exhaustion excused where claims are constitutional in nature, administrative remedies are inadequate, or exhaustion would be futile).

VENUE

11. Venue is proper in the Southern District of Florida. Petitioner is currently confined at the Broward Transitional Center, located at 3900 North Powerline Road, Pompano Beach, Florida, which lies within this District. The writ must be directed to Petitioner's immediate custodian, who is located here. *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Venue is also proper under 28 U.S.C. § 1391(e) because Respondents are officers of the United States and all material events giving rise to Petitioner's claims occurred within this District. The anti-transfer and anti-removal relief requested herein is necessary to preserve this Court's jurisdiction over the immediate custodian and to ensure that any relief granted remains meaningful.

REQUIREMENTS OF 28 U.S.C. § 2243

12. This Court must grant the writ or issue an order to show cause forthwith unless it is plain Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause issues, Respondents must file a return within three (3) days — no later than April 30, 2026 — absent good cause for additional time not to exceed twenty days. *Id.* A three-day return deadline is essential: Petitioner's immigration court hearing is scheduled for May 6, 2026. Any order to show cause issued on April 28 with a three-day return would require Respondents to respond by May 1, allowing this Court sufficient time to act before the May 6 EOIR hearing. Delay beyond that date jeopardizes Petitioner's ability to appear and meaningfully participate in proceedings that may determine whether he is removed to a country whose government has persecuted him.

PARTIES

13. Petitioner Marlon Gustavo Zapata Arostegui is a native and citizen of Nicaragua, born [redacted] in Masaya, Nicaragua. He entered the United States lawfully on May 14, 2023, through Miami International Airport under NHP status. He has resided continuously in the United States since his arrival. He is currently confined at the Broward Transitional Center, Pompano Beach, Florida. Respondent Warden of the Broward Transitional Center is Petitioner's immediate physical custodian and a proper respondent in this habeas action. *Padilla*, 542 U.S. at 435. The Warden has the direct authority and legal obligation to effectuate Petitioner's release pursuant to a federal habeas writ issued by this Court.

14. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement. He exercises supervisory authority over Petitioner's detention and possesses the power to direct his release and to comply with any injunctive relief issued by this Court.

15. Respondent Todd Blanche is sued in his official capacity as Acting Attorney General of the United States. He is the senior officer of the U.S. Department of Justice and exercises supervisory authority over the Executive Office for Immigration Review, which administers the immigration courts and the Board of Immigration Appeals, and is a legal custodian of Petitioner.

STATEMENT OF FACTS

A. Background and Persecution

16. Petitioner Marlon Gustavo Zapata Arostegui is a forty-eight-year-old Nicaraguan veterinarian who fled his country on May 14, 2023, following years of systematic political persecution by the Sandinista government under Daniel Ortega. See Exhibit ("Exh.") A, Petitioner's Birth Certificate; Exh. B, Petitioner's Notice to Appear ("NTA"). As a licensed professional who worked with government institutions, Petitioner was subjected to escalating coercive pressure to publicly endorse the ruling ideology, attend pro-government marches, and affiliate with the Sandinista party as a condition of continued professional employment. See Exh. C, Petitioner's Declaration. When he refused — on grounds of personal conscience — government officials closed professional opportunities available to him and directed community members not to hire him under explicit threat of losing government benefits. *Id.* The harassment reached its apex in 2021, when officials attempted to compel his participation in the presidential elections. He refused again. With no safe professional or personal alternative remaining, he left Nicaragua on May 14, 2023. *Id.*

17. Petitioner entered the United States lawfully through Miami International Airport on May 14, 2023, under NHP status, initially authorized to remain until May 12, 2025. See Exh. C. Since his arrival, Petitioner has worked continuously and legally in the United States. He

obtained employment authorization, worked at [redacted] as a dispatcher, held various other positions, and worked at a car wash in Hollywood, Florida. *Id.* Since February 2025, he has been employed full-time at [redacted] where he has been a dedicated and punctual employee. He has paid his taxes and has complied with every obligation applicable to his immigration status. *Id.*

18. Petitioner's mother, María Delia Arostegui, is a naturalized citizen of the United States. She naturalized on July 17, 2015. She resides in Cutler Bay, Florida. On April 24, 2026 — four days after Petitioner's arrest — she filed a Form I-130, Petition for Alien Relative, with USCIS on Petitioner's behalf. See Exh. D, Form I-130 Application Status. That petition is currently pending. The existence of a U.S. citizen immediate relative who has formally petitioned for Petitioner reflects the depth of his ties to this country, constitutes an independent pathway to lawful permanent residence, and powerfully militates against any suggestion of flight risk.

19. On March 5, 2025, Petitioner filed his Form I-589, Application for Asylum and for Withholding of Removal, with the Miami Asylum Office of USCIS. See Exh. E, Form I-589 Receipt. His application was accepted as complete. His biometrics appointment was completed on March 28, 2025, and his case was subsequently transferred to the Immigration Court. His next scheduled hearing before Immigration Judge Stuart A. Siegel at the Broward Immigration Court is May 6, 2026, at 8:00 A.M. See Exh. F, EOIR Automated Case Information.

B. Circumstances of Arrest

20. On the morning of Monday, April 20, 2026, Petitioner was a passenger in a vehicle being driven by a third party, traveling from the Little Havana neighborhood of Miami — where he has lived since shortly after his arrival in the United States — to his place of employment at [redacted] See Exh. C. Petitioner did not drive. His Florida driver's license

had expired, and out of caution he had elected not to renew it in order to avoid any potential complications arising from his immigration status. He was not operating any vehicle at the time of the encounter with law enforcement. *Id.*

21. Law enforcement established a checkpoint along the vehicle's route. Officers stopped the vehicle and requested documentation from the driver. The driver complied without incident. Officers then approached Petitioner and requested his documents. Petitioner had no valid identification on his person — his license was expired and he did not have his immigration documents with him. On that basis alone, ICE officers detained him. *Id.*

22. Petitioner was not committing any criminal offense at the time of his arrest. He was a passenger in a vehicle, riding to work. He had no outstanding warrants, no prior arrests, and no criminal record of any kind. He had never been arrested in the United States or abroad. He was transported to the Broward Transitional Center, where he has been held in continuous civil immigration custody since April 20, 2026. See Exh. G, Detention Information.

C. Record of Compliance

23. Petitioner's history in the United States is a record of consistent legal compliance across every dimension relevant to a custody and flight-risk determination:

(a) **Continuous Residence:** Petitioner has resided in the United States continuously since his lawful entry on May 14, 2023, residing in the Little Havana neighborhood of Miami. See Exh. C.

(b) **Lawful Employment:** Petitioner has held lawful employment throughout his presence in the United States under valid employment authorization, most recently as a full-time employee at [redacted] since February 2025. *Id.*

(c) **Tax Compliance:** Petitioner has paid his federal and state taxes consistently throughout his time in the United States. *Id.*

(d) **No Criminal Record:** Petitioner has no criminal record of any kind — not in Nicaragua, not in the United States, not anywhere. He has no outstanding warrants, no arrests, and no convictions. Section 1226(c) mandatory detention has not been invoked and does not apply. *Id.*

(e) **Completed Biometrics:** Petitioner appeared at and completed his biometrics appointment on March 28, 2025, without incident. *Id.*

(f) **Scheduled EOIR Hearing:** Petitioner has an active, scheduled hearing before Immigration Judge Siegel on May 6, 2026. He has not missed any immigration appointment. See Exh. F.

(g) **Pending I-130:** Petitioner's U.S. citizen mother has filed a Form I-130 on his behalf — an immediate qualifying family petition that establishes strong ties to the United States and an independent basis for lawful status. See Exh. D.

(h) **Less-Restrictive Alternatives Accepted:** Petitioner is willing and able to comply with any conditions of release this Court deems appropriate, including regular check-ins with ICE, electronic monitoring, reporting obligations, or any other supervisory condition — conditions that would fully satisfy any legitimate government interest in ensuring his appearance.

24. Since his arrest, Petitioner has been held at the Broward Transitional Center without any individualized custody determination. See Exh. G. Respondents have not served Petitioner with a Form I-286 custody determination. No immigration officer has set a bond amount. No advisal of the right to seek a bond redetermination hearing before an immigration judge has been

provided, as required by 8 C.F.R. § 236.1(c)(8). No immigration judge has conducted any individualized custody review. Respondents have not classified Petitioner's detention as mandatory under any provision of the INA.

25. Petitioner's scheduled immigration court hearing before Judge Siegel on May 6, 2026 is in direct jeopardy. See Exh. F. His continued detention compromises his ability to consult with counsel, gather supporting evidence, and adequately prepare his asylum case. Any failure to appear at the May 6 hearing attributable to Respondents' detention would be a due process injury of the gravest kind, in a proceeding where Petitioner faces potential removal to a country whose government has persecuted him.

LEGAL FRAMEWORK

26. Section 2241 of Title 28 authorizes federal courts to grant habeas corpus relief to persons held in custody in violation of the Constitution or laws of the United States. *Zadvydas*, 533 U.S. at 687–88. The Supreme Court has expressly confirmed that § 2241 remains available to challenge both the statutory and constitutional basis of civil immigration detention, including pre-final-order detention under § 1226. *Jennings*, 583 U.S. at 293–96.

27. Section 1226(a) of Title 8 is the default detention authority governing noncitizens subject to removal proceedings who have not been convicted of specified offenses. Under § 1226(a), the Attorney General "may release" a noncitizen on bond or conditional parole pending a final removal determination — language the Supreme Court has interpreted as requiring an individualized, discretionary determination administered through implementing regulations and due process protections. *Jennings*, 583 U.S. at 297–98.

28. Section 1226(c) mandatory detention applies only to noncitizens who have been convicted of specified offenses and are taken into custody "when the alien is released" from

criminal custody. 8 U.S.C. § 1226(c)(1). Petitioner has no criminal history whatsoever. Section 1226(c) does not apply and has not been invoked by Respondents.

29. The Fifth Amendment prohibits the deprivation of liberty without due process of law. Civil immigration detention is subject to both procedural and substantive due process constraints. *Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). The *Mathews v. Eldridge*, 424 U.S. 319 (1976), balancing test governs procedural due process claims, weighing: (1) the private interest at stake; (2) the risk of erroneous deprivation and the probable value of additional safeguards; and (3) the government's interest, including the burden of additional procedural requirements.

30. The *Accardi* doctrine requires that executive agencies follow their own mandatory procedural regulations; failure to do so renders the resulting action unlawful and subject to judicial correction. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265–68 (1954). DHS regulations promulgated under § 1226(a) impose affirmative obligations upon arrest: (a) service of a Form I-286 custody determination pursuant to 8 C.F.R. § 236.1(b); (b) advisal of the right to seek a bond redetermination before an immigration judge pursuant to 8 C.F.R. § 236.1(c)(8); and (c) the opportunity to post bond or be released on conditional parole under 8 C.F.R. § 236.1(d)(1). None of these requirements were satisfied here.

CLAIMS FOR RELIEF

COUNT I
STATUTORY VIOLATION: 8 U.S.C. § 1226(a)
Failure to Provide Individualized Custody Determination; Regulatory Noncompliance Under Accardi

31. Petitioner realleges and incorporates by reference paragraphs 1 through 7 (Introduction, grounds for relief, and no adequate alternative remedy), paragraphs 8 through 10

(jurisdiction and excused exhaustion), paragraph 11 (venue and preservation of jurisdiction), paragraph 13 (Petitioner's identity, lawful entry, and custody), paragraphs 17 through 26 (Statement of Facts, including Sections A through C), and paragraphs 27 through 31 (Legal Framework, including the § 1226(a) statutory scheme, inapplicability of § 1226(c), and the *Accardi* doctrine) as though fully set forth herein.

32. Section 1226(a) is the controlling detention authority. Petitioner is in removal proceedings — his I-589 is pending before Immigration Judge Siegel, with a hearing scheduled for May 6, 2026. See Exh. B, E, F. He has not been convicted of any offense that would trigger mandatory detention under § 1226(c). Accordingly, § 1226(a) provides the sole lawful basis for his civil detention and entitles him to an individualized custody determination administered through DHS regulations and, upon request, a redetermination hearing before an immigration judge.

33. Upon arresting a noncitizen under § 1226(a), DHS is required by its own mandatory regulations to: (a) serve the detainee with a Form I-286 custody determination setting forth the basis for detention and any bond amount, pursuant to 8 C.F.R. § 236.1(b); (b) advise the detainee of his right to request a bond redetermination hearing before an immigration judge, pursuant to 8 C.F.R. § 236.1(c)(8); and (c) afford the detainee an opportunity to post bond or be released on conditional parole under 8 C.F.R. § 236.1(d)(1). Under the *Accardi* doctrine, these regulatory requirements are mandatory, not discretionary. Respondents' failure to comply with any one of them renders Petitioner's detention independently unlawful.

34. Since his arrest on April 20, 2026, Petitioner has not received a Form I-286, has not been advised of his right to seek a bond hearing, has not been offered any bond amount, and has not been presented before an immigration judge. The government has provided no individualized

assessment of whether Petitioner poses a danger to the community or a risk of flight. This complete regulatory noncompliance renders Petitioner's detention void by operation of the *Accardi* doctrine and independently requires this Court to: (i) vacate the custody determination as unlawful; and (ii) order either Petitioner's immediate release under conditions of supervision, or at minimum, an individualized bond hearing before an immigration judge within seven (7) days — before his May 6, 2026 EOIR hearing — at which the full record of regulatory noncompliance shall be presented.

COUNT II
PROCEDURAL DUE PROCESS VIOLATION: U.S. CONST. AMEND. V
Detention Without Individualized Hearing Violates the Fifth Amendment

35. Petitioner realleges and incorporates by reference paragraphs 1 through 7 (Introduction), paragraphs 8 through 10 (jurisdiction, exhaustion), paragraph 13 (identity and custody), paragraphs 17 through 26 (Statement of Facts, including the Record of Compliance at Paragraph 24), paragraphs 27 and 30 (28 U.S.C. § 2241 habeas authority and the *Mathews v. Eldridge* balancing framework), and paragraphs 32 through 35 (Count I statutory violation and complete absence of individualized custody process) as though fully set forth herein.

36. Physical liberty is among the most fundamental interests protected by the Constitution. *Foucha*, 504 U.S. at 80. Civil detention — including immigration detention — is subject to the full force of the Due Process Clause. *Zadvydas*, 533 U.S. at 690. Even where the government has authority to detain a person, it must provide procedurally adequate means for the detainee to contest that detention. *Mathews*, 424 U.S. at 335.

37. Applying the *Mathews* balancing test, each factor weighs decisively in Petitioner's favor:

(1) **Private Interest.** The private interest at stake is the most severe the law recognizes: deprivation of physical liberty. Petitioner has resided continuously and

lawfully in the United States for nearly three years; has worked legally and paid his taxes throughout; has a pending asylum application documenting years of political persecution; has a pending I-130 filed by his U.S. citizen mother; appeared at his March 28, 2025 biometrics appointment without exception; and was arrested as a passenger commuting to work on an ordinary Monday morning, having committed no offense. See Exh. C, D. The Record of Compliance established in paragraph 24 above leaves no legitimate basis for detention.

(2) **Risk of Erroneous Deprivation.** The risk of erroneous deprivation is exceptionally high. The specific procedural deficits — no Form I-286, no advisal under 8 C.F.R. § 236.1(c)(8), no opportunity to set or post bond under 8 C.F.R. § 236.1(d)(1), and no IJ custody review — mean that no neutral decisionmaker has ever weighed Petitioner's substantial ties to the United States against any government interest in confinement. A prompt IJ hearing would provide the additional safeguard that eliminates this risk: on the record before any immigration judge, including the pending I-130, the full employment history, the perfect compliance record, the imminent hearing date, and the absence of any mandatory detention trigger, Petitioner would present a compelling case for release. The absence of any process guarantees that Petitioner's liberty turns on an unreviewable, unilateral executive decision.

(3) **Government's Interest.** The government's legitimate interests — ensuring appearance at proceedings and protecting community safety — are fully served by a bond hearing at which the government may present its evidence. The government bears the burden at such a hearing of demonstrating by a preponderance of the

evidence that Petitioner poses a danger or a serious risk of non-appearance. *See Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). Petitioner's Record of Compliance — continuous residence, lawful employment, tax compliance, completed biometrics, no criminal record, an imminent court hearing he has every incentive to attend, and a U.S. citizen mother's pending I-130 — means those interests can be equally served through less restrictive conditions of supervision. Absent a finding by a neutral decisionmaker to the contrary, there is no constitutionally adequate basis for Petitioner's continued confinement.

38. The constitutional injury is compounded by the proximity of Petitioner's immigration court hearing on May 6, 2026. See Exh. F. His continued detention — imposed without any due process and without consideration of the specific procedural deficits identified above — now threatens to prevent him from meaningfully participating in the very proceeding designed to adjudicate his legal status. See Exh. G. That outcome would constitute an irreparable due process injury that no subsequent remedy could cure.

COUNT III
SUBSTANTIVE DUE PROCESS VIOLATION: U.S. CONST. AMEND. V
Petitioner's Detention Is Arbitrary and Serves No Legitimate Government Interest — Alleged in the Alternative

39. Petitioner realleges and incorporates by reference paragraphs 1 through 7 (Introduction), paragraph 13 (identity and custody), paragraphs 17 through 26 (Statement of Facts, including the Record of Compliance at Paragraph 24), paragraph 30 (Fifth Amendment due process standards), paragraphs 32 through 35 (Count I statutory and regulatory violation), and paragraphs 36 through 39 (Count II procedural due process violation and *Mathews* analysis) as though fully set forth herein. This Count is pleaded in the alternative to Counts I and II.

40. The Due Process Clause forbids the government from depriving a person of liberty through executive action that is arbitrary or bears no rational relationship to a legitimate government interest. *Zadvydas*, 533 U.S. at 690; *Foucha*, 504 U.S. at 80. Civil detention is constitutional only when it serves a legitimate regulatory purpose — such as ensuring appearance or protecting community safety — and only when it is reasonably related to achieving that purpose. *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

41. Based on the Record of Compliance established in paragraph 24 above, this Court should find the following as a matter of fact and law, each of which independently negates any rational relationship between Petitioner's detention and a legitimate government objective:

(a) Petitioner has no criminal record of any kind; § 1226(c) mandatory detention has not been and cannot be invoked;

(b) Petitioner has resided continuously and lawfully in the United States for nearly three years;

(c) Petitioner has maintained lawful employment and paid his taxes throughout his presence in the United States;

(d) Petitioner has appeared at every required immigration appointment without exception, including his biometrics appointment on March 28, 2025;

(e) Petitioner has a pending asylum application before the Immigration Court with a hearing scheduled for May 6, 2026 — a powerful incentive to appear and comply;

(f) Petitioner has a pending I-130 petition filed by a U.S. citizen parent — the most direct qualifying family relationship — giving him an independent pathway to lawful status and further anchoring him to the United States;

(g) Petitioner was arrested as a passenger commuting to work, not fleeing, not evading law enforcement, and not committing any offense; and

(h) Petitioner is willing to comply with any less-restrictive condition of release, including ICE check-ins, electronic monitoring, or reporting obligations.

42. Under these circumstances, detaining Petitioner in a secure facility serves no regulatory function that reasonable conditions of supervision could not equally serve. The government's detention authority must be "reasonably related" to its purpose. *Zadvydas*, 533 U.S. at 699–701. Petitioner's confinement — imposed without any individualized assessment, in the complete absence of any lawful process, and against a detainee whose record of compliance is unimpeachable — falls well outside that constitutional limit. Release under conditions of supervision is not merely adequate; it is constitutionally required.

HABEAS REMEDY

43. This Court has authority under 28 U.S.C. § 2241 to order Petitioner's immediate release from custody upon finding that his detention violates the Constitution or laws of the United States. *Zadvydas*, 533 U.S. at 699–700. The specific violations established above — Respondents' complete failure to serve a Form I-286, advise Petitioner of his right to a bond hearing under 8 C.F.R. § 236.1(c)(8), afford him an opportunity to post bond under 8 C.F.R. § 236.1(d)(1), or present him before an immigration judge — each independently supports the remedy of immediate release or, at minimum, a compelled individualized hearing. The *Accardi* violations alone render the custody determination void; there is no valid administrative act to which deference is owed. The due process violations provide independent grounds for the same relief.

44. In the alternative, this Court may order Respondents to present Petitioner before an immigration judge for an individualized bond redetermination hearing within seven (7) days of

this Court's Order — no later than May 5, 2026 — so that the hearing may occur before Petitioner's scheduled EOIR date of May 6, 2026. At such a hearing, the immigration judge shall conduct an individualized redetermination consistent with the applicable regulations and due process requirements, including full consideration of the Record of Compliance established in paragraph 24 and of less-restrictive alternatives to continued detention. If Respondents fail to present Petitioner for a bond hearing within seven days, this Court should order his immediate release under appropriate conditions as the default remedy.

45. To preserve this Court's jurisdiction over Petitioner's immediate custodian and to ensure that any relief granted remains meaningful, this Court should issue an immediate temporary stay — effective upon filing and without advance notice to Respondents — prohibiting (a) any transfer of Petitioner to a detention facility outside this District, and (b) execution of any order of removal, pending resolution of this Petition. The anti-transfer stay is anchored in the immediate-custodian and district-of-confinement principles established in *Padilla*; transfer outside the District would deprive this Court of jurisdiction. The anti-removal stay prevents mootness and ensures that a favorable ruling in this Petition is not rendered hollow by removal before it can issue.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Marlon Gustavo Zapata Arostegui respectfully requests that this Court:

(1) Assume jurisdiction over this Petition under 28 U.S.C. § 2241 and Article III;

(2) Issue an immediate temporary stay, effective upon filing, prohibiting: (a) any transfer of Petitioner to any detention facility outside the Southern District of Florida without prior notice to counsel and leave of Court; and (b) execution of

any order of removal or removal of Petitioner from the United States pending resolution of this Petition, in order to preserve this Court's jurisdiction over the immediate custodian and to prevent mootness of the relief requested herein;

(3) Issue an Order to Show Cause directing Respondents to show cause within three (3) days — no later than April 30, 2026 — why this Petition should not be granted, consistent with 28 U.S.C. § 2243, to enable this Court to act before Petitioner's scheduled immigration hearing on May 6, 2026;

(4) Declare that Petitioner's detention violates 8 U.S.C. § 1226(a) and the Due Process Clause of the Fifth Amendment, specifically because Respondents failed to: (a) serve a Form I-286 custody determination pursuant to 8 C.F.R. § 236.1(b); (b) advise Petitioner of his right to a bond hearing pursuant to 8 C.F.R. § 236.1(c)(8); (c) afford Petitioner an opportunity to post bond pursuant to 8 C.F.R. § 236.1(d)(1); and (d) present Petitioner before an immigration judge for any individualized custody determination;

(5) Issue a Writ of Habeas Corpus ordering Petitioner's immediate release from custody under reasonable conditions of supervision — including ICE check-ins, electronic monitoring, reporting obligations, or such other conditions as this Court deems appropriate — which are sufficient to satisfy any government interest in ensuring Petitioner's appearance, given his continuous residence, lawful employment, tax compliance, no criminal record, completed biometrics, imminent EOIR hearing, and pending I-130 from a U.S. citizen parent; or

(6) In the alternative to Request (5), order Respondents to present Petitioner before an immigration judge for an individualized bond redetermination hearing

no later than May 5, 2026, at which: (a) the immigration judge shall conduct a full individualized redetermination consistent with 8 C.F.R. § 236.1 and due process requirements; (b) the immigration judge shall consider the Record of Compliance set forth in paragraph 24 and all less-restrictive alternatives to continued detention; and (c) if Respondents fail to present Petitioner for such a hearing by May 5, 2026, this Court shall order his immediate release under appropriate conditions of supervision as the default remedy;

(7) Grant any further relief this Court deems just and proper.

This Petition seeks narrow, time-limited relief: immediate release under conditions of supervision or, in the alternative, an individualized bond redetermination hearing before May 5, 2026 — one day before Petitioner's scheduled EOIR hearing. It further seeks temporary preservation of the status quo to protect this Court's jurisdiction and Petitioner's ability to appear before Immigration Judge Siegel on May 6, 2026. The relief requested is anchored in three concrete, independent legal violations: (1) Respondents' failure to comply with mandatory regulatory procedures (no Form I-286, no bond advisal, no opportunity to post bond); (2) the complete absence of any individualized hearing in violation of the Fifth Amendment's procedural due process guarantee; and (3) the arbitrary nature of Petitioner's continued confinement in the face of an unimpeachable record of compliance that demonstrates no legitimate government interest is served by his detention that cannot be equally served through less-restrictive supervision. Petitioner asks only that the law be applied as written.

Respectfully submitted,

/s/ Arno J. Lemus
Arno Javier Lemus
Lemus Law Group, LLC
1024 NW 102 PL
Miami, Florida 33172
786-816-2795
lemusarno@gmail.com
BAR 0103075
Counsel for Petitioner

Dated: April 29, 2026.

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

I, Arno Javier Lemus, counsel of record for Petitioner Marlon Gustavo Zapata Arostegui, am familiar with the facts of this matter 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, information, and belief.

Dated: April 29, 2026.

/s/ Arno J. Lemus
Arno Javier Lemus
Lemus Law Group, LLC
1024 NW 102 PL
Miami, Florida 33172
786-816-2795
lemusarno@gmail.com
BAR 0103075
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 29, 2026, a true and correct copy of the foregoing Petition for Writ of Habeas Corpus, together with all supporting exhibits, was filed via the Court's CM/ECF system and served upon all counsel of record via electronic notification generated by CM/ECF.

/s/ Arno J. Lemus
Arno Javier Lemus
Lemus Law Group, LLC
1024 NW 102 PL
Miami, Florida 33172
786-816-2795
lemusarno@gmail.com
BAR 0103075
Counsel for Petitioner