UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

FILIBERTO JOSE GREGORIO REYES-OJEDA, Petitioner, v. WARDEN, IRWIN COUNTY DETENTION CENTER; FIELD OFFICE DIRECTOR, ATLANTA FIELD OFFICE, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; DAVID J. VENTURELLA, Senior Official Performing the Duties of the Director, U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; TODD BLANCHE, Acting Attorney General of the United States; and SIRCE E. OWEN, Acting Director, Executive Office for Immigration Review, Respondents.	Case No _____ Agency No. A[redacted] **PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR ORDER TO SHOW CAUSE**

PETITION FOR WRIT OF HABEAS CORPUS
AND REQUEST FOR ORDER TO SHOW CAUSE

INTRODUCTION

1. Petitioner Filiberto Jose Gregorio Reyes-Ojeda is a native and citizen of Venezuela who has lived in South Carolina for four years with his wife, his adult children, and his

grandchildren. He is the applicant in a pending asylum case, he holds an employment authorization document issued by United States Citizenship and Immigration Services, and he has appeared for every hearing and every reporting date the Government has ever set for him.

2. In June 2022, the Department of Homeland Security apprehended Petitioner near Eagle Pass, Texas, charged him under section 212(a)(6)(A)(i) of the Immigration and Nationality Act, and placed him in removal proceedings under section 240 of the Act. The Department then exercised its authority under section 236 of the Act and released him on his own recognizance. Every contemporaneous custody document produced to Petitioner and attached to this Petition invokes section 236. The Form I-200 warrant invokes section 236. The Form I-286 custody determination invokes section 236. The Form I-220A order of release invokes section 236.

3. Petitioner complied with the terms of that release for nearly four years. On March 31, 2026, he was arrested by a municipal police department in Greenville County, South Carolina, on two traffic charges: leaving the scene of an accident involving property damage, and driving without a license. He was released the next day on a personal recognizance bond. On April 2, 2026, U.S. Immigration and Customs Enforcement took him into custody and transported him to the Irwin County Detention Center in Ocilla, Georgia, where he remains. On July 14, 2026, the leaving-the-scene charge was dismissed.

4. On July 16, 2026, an Immigration Judge refused to consider bond, holding that he lacked jurisdiction under *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), because "the evidence indicates that the Notice to Appear was issued after an asylum officer found that respondent has demonstrated a credible fear of persecution or torture." That premise finds no support in the Government records available to Petitioner. The credible fear box on Petitioner's Notice to Appear

is not checked. The section 235(b)(1) vacatur box is not checked. No record available to Petitioner reflects that he was placed in expedited removal or received a credible fear interview.

5. The result is that Petitioner has now been jailed for approximately four months without a single individualized custody hearing before any neutral decisionmaker, on a legal premise that finds no support in the available record. The only changed circumstance disclosed by the present record is Petitioner's March 2026 traffic arrest; the leaving-the-scene charge was later dismissed, and no resulting conviction appears in the record

6. Petitioner seeks a writ of habeas corpus ordering his immediate release. In the alternative, he seeks a custody hearing under section 236(a) within seven days. He separately contends that the Due Process Clause of the Fifth Amendment requires the Government to justify continued detention at that hearing by clear and convincing evidence.

JURISDICTION

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, Section 9, Clause 2 of the United States Constitution.

8. Petitioner is in the custody of the United States within the meaning of 28 U.S.C. § 2241(c)(1) and (c)(3), and his detention violates the Constitution and laws of the United States.

9 The Supreme Court has repeatedly confirmed that the federal district courts retain habeas jurisdiction to review the lawfulness of immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003). Nothing in 8 U.S.C. § 1226(e)

withdraws jurisdiction over a challenge to the statutory and constitutional framework governing detention, as distinct from a discretionary custody judgment.

10. This Court may grant declaratory relief under 28 U.S.C. § 2201 and may issue all writs necessary or appropriate in aid of its jurisdiction under 28 U.S.C. § 1651.

VENUE

11. Venue lies in this District. Petitioner is confined at the Irwin County Detention Center, 132 Cotton Drive, Ocilla, Georgia 31774, which is within the Middle District of Georgia *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 493-95 (1973); *Rumsfeld v. Padilla*, 542 U.S. 426, 442-43 (2004); 28 U.S.C. § 1391(e).

12. Ocilla is the county seat of Irwin County. Irwin County lies within the Valdosta Division. 28 U.S.C. § 90(b)(6). Petitioner's claim arose in this Division, and venue is therefore proper here under Local Rule 3.4.

REQUIREMENTS OF 28 U.S.C. § 2243

13. Section 2243 provides that a court entertaining an application for a writ of habeas corpus "shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." It further provides that the writ or order to show cause "shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed."

14. Section 2243 also directs that the court "shall summarily hear and determine the facts, and dispose of the matter as law and justice require." Petitioner respectfully requests that this Court act with the promptness the statute contemplates. He is detained, his liberty is at stake every day that passes, and his next immigration hearing is set for August 26, 2026.

PARTIES

15. Petitioner Filiberto Jose Gregorio Reyes-Ojeda is a native and citizen of Venezuela, Alien Registration Number A [redacted] He is detained at the Irwin County Detention Center in Ocilla, Georgia.

16. Respondent Warden of the Irwin County Detention Center is Petitioner's immediate custodian and exercises day to day control over his confinement. Because the incumbent's name has not been confirmed from a primary source as of the filing of this Petition, Petitioner names the office of Warden in its custodial capacity.

17. Respondent Field Office Director, Atlanta Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, exercises authority over Petitioner's detention and over the facility in which Petitioner is held. This Respondent is sued in an official capacity and is named by office.

18. Respondent David J. Venturella is the Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement. He is sued in his official capacity.

19. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security. He is sued in his official capacity.

20. Respondent U.S. Department of Homeland Security is the federal agency responsible for Petitioner's detention.

21. Respondent Todd Blanche is the Acting Attorney General of the United States. He is sued in his official capacity.

22. Respondent Sirce E. Owen is the Acting Director of the Executive Office for Immigration Review. She is sued in her official capacity.

LEGAL FRAMEWORK

23. Three provisions of the Immigration and Nationality Act authorize civil immigration detention, and they are not interchangeable.

24. Section 235(b) of the Act, 8 U.S.C. § 1225(b), governs the inspection and detention of noncitizens who arrive at the border or at a port of entry and seek admission. Section 235(b)(1) governs expedited removal. Section 235(b)(2)(A) provides for the detention of a noncitizen who "is seeking admission" and is "not clearly and beyond a doubt entitled to be admitted." There is no bond mechanism under section 235(b).

25. Section 236(a) of the Act, 8 U.S.C. § 1226(a), governs the detention of noncitizens arrested and held pending a decision on removal. It provides that the Attorney General "may continue to detain the arrested alien" or "may release the alien on bond … or conditional parole." An immigration judge has authority to redetermine custody. 8 C.F.R. §§ 236.1(d)(1), 1003.19(a), 1236.1(d)(1).

26. Section 241(a) of the Act, 8 U.S.C. § 1231(a), governs detention after a removal order becomes administratively final. It has no application here. Petitioner's removal proceedings remain pending.

27. When the agency promulgated the current bond regulations, it stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). That was the uniform administrative practice for nearly three decades.

28. In 2025, the agency reversed course. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), held that noncitizens who entered without inspection are "applicants for admission" subject to detention under section 235(b)(2)(A). *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), extended similar reasoning to parolees.

29. The Eleventh Circuit has rejected that position, and its decision binds this Court. *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, 175 F.4th 1258 (11th Cir. 2026).

30. *Hernandez Alvarez* holds that "applicant for admission" under 8 U.S.C. § 1225(a)(1) and "alien seeking admission" under 8 U.S.C. § 1225(b)(2)(A) are distinct conditions, and that "seeking" indicates an affirmative step of search or pursuit, which an alien takes at the border or a port of entry. *Id.* at 1267-68, 1271. Section 1226(a), by contrast, "applies to both admitted and unadmitted aliens, since either may be subject to removal proceedings." *Id.* at 1278. Long resident noncitizens who entered without inspection and were arrested in the interior are therefore detained under section 236(a), where they are eligible for bond. *Id.* at 1262.

31. *Hernandez Alvarez* is a published decision. The Government has filed a petition for rehearing en banc in the consolidated appeal. Unless and until the panel opinion is vacated, it remains binding precedent. *Martin v. Singletary*, 965 F.2d 944, 945 n.1 (11th Cir. 1992) (a stay of the mandate "in no way affects the duty of . . . the courts in this circuit to apply now the precedent established by" a published opinion), 11th Cir. R. 36, I.O.P. 2 ("Under the law of this circuit, published opinions are binding precedent. The issuance or non-issuance of the mandate does not affect this result.").

32. Judges of this District have repeatedly applied the same statutory rule to detainees at the Irwin County Detention Center and ordered custody hearings under section 236(a) within seven days, in several instances directing that the Department of Homeland Security bear the burden of establishing danger or flight risk by clear and convincing evidence. *See N.L.M. v. Warden, Irwin County Detention Center*, No. 7:26-cv-00014-LAG-ALS, ECF No. 7, at 1-2 (M.D. Ga. Jan. 23, 2026); *J.V.A. v. Warden, Irwin County Detention Center*, No. 7:26-cv-00051-WLS-CHW, ECF No. 7, at 1-2 (M.D. Ga. Mar. 19, 2026); *B.A.M.A. v. Warden, Irwin County Detention Center*, No. 7:26-cv-00095-WLS-ALS, ECF No. 9, at 3 (M.D. Ga. May 13, 2026); *I.A.A.M. v. Warden, Irwin County Detention Center*, No. 7:26-cv-00068-WLS-CHW, ECF No. 9, at 3 (M.D. Ga. May 13, 2026); *W.C. v. Warden, Irwin County Detention Center*, No. 7:26 cv 00157 LAG CHW, ECF No. 10, at 2-3 (M.D. Ga. June 4, 2026).

33. The petitioners in *B.A.M.A.*, *I.A.A.M.*, and *W.C.* had each been inspected and paroled at entry. The Court held that they were nonetheless not "seeking admission" when arrested in the interior and ordered custody hearings under section 1226(a). Petitioner, whom the Department processed and released under section 236 from the outset and never paroled, stands on stronger footing still.

34. The Court has separately adopted a standing screening procedure for section 2241 bond-hearing petitions arising from the Stewart Detention Center. *See* M.D. Ga. Standing Order No. 2026-01 (Jan. 29, 2026) (Land, J.) (noting that "[t]he Court has previously ruled that most of these Petitioners are entitled to the relief they seek"); *J.A.M. v. Streeval*, No. 4:25 cv 342 CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025).

35. The Second, Sixth, Ninth, and Tenth Circuits have reached the same conclusion. *Barbosa da Cunha v. Freden*, 175 F.4th 61, 71 (2d Cir. 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713, 732 (6th Cir. 2026); *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir. July 30, 2026); *Santillan Quiroz v. Mullin*, 2026 WL 1876709, at *5 (10th Cir. June 30, 2026). The Seventh Circuit affirmed relief for the petitioners in a splintered decision that produced no majority rationale on the statutory question. *Castanon-Nava v. U.S. Department of Homeland Security*, 175 F.4th 828, 857-58 (7th Cir. 2026).

36. Two circuits have held otherwise. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026). Neither is binding in this Circuit, and the Eleventh Circuit expressly considered and rejected their statutory analysis.

37. Section 235(b)(1) and *Matter of M-S-* occupy a separate lane. *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), addresses a noncitizen who is placed in expedited removal under section 235(b)(1), is referred for a credible fear interview, receives a positive credible fear determination, and is then placed in section 240 proceedings. The Attorney General held that such a person remains detained under section 235(b) and may not seek bond from an immigration judge.

38. *Matter of M-S-* has no application to a person who was not placed in expedited removal. Where the Notice to Appear does not check the box stating that the notice is being issued after an asylum officer found a credible fear, and does not check the box stating that a section 235(b)(1) order was vacated, the face of the charging document does not reflect that the expedited-removal pathway was used.

39. Independent of the statutory framework, the Due Process Clause of the Fifth Amendment limits civil detention. Freedom from imprisonment "lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. Freedom from physical restraint is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Where the Government detains a person civilly, it must do so through constitutionally adequate procedures. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

STATEMENT OF FACTS

A. Entry, Charging, and Release Under Section 236

40. Petitioner was born in El Tigre, Venezuela, in 1968. He worked for many years as a truck driver. He is married to Reyna Medina Martinez, and they have adult children.

41. On or about June 20, 2022, Petitioner entered the United States without inspection near Eagle Pass, Texas, and was apprehended by the United States Border Patrol. Ex. E.

42. On June 23, 2022, the Department of Homeland Security served Petitioner with a Notice to Appear, Form I-862. Ex. A. The Notice to Appear charges Petitioner as removable under

section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), as a noncitizen present in the United States without being admitted or paroled. Ex. A.

43. The Notice to Appear placed Petitioner in removal proceedings under section 240 of the Act before the Immigration Court in Charlotte, North Carolina. Ex. A.

44. Two boxes on the Notice to Appear are significant, and neither is checked. The first states: "This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture." The second states that a "Section 235(b)(1) order was vacated pursuant to" 8 C.F.R. § 208.30 or 8 C.F.R. § 235.3(b)(5)(iv). Ex. A.

45. Also on June 23, 2022, the Department issued a Warrant for Arrest of Alien, Form I-200, stating that Petitioner "is within the country in violation of the immigration laws and is therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act." Ex. B.

46. The same day, the Department issued a Notice of Custody Determination, Form I-286, which recites that it is issued "Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations," and which determined that Petitioner would be released on his own recognizance. Ex. C.

47. On June 24, 2022, the Department served Petitioner with an Order of Release on Recognizance, Form I-220A, stating: "You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance." Ex. D. The order directed Petitioner to report to the Charleston, South Carolina

Sub Office and conditioned his release on enrollment in an Alternatives to Detention program with electronic monitoring. Ex. D.

48. The Department's own Record of Deportable/Inadmissible Alien, Form I-213, records the disposition of Petitioner's June 2022 processing as "Notice to Appear Released (I-862)." Ex. E.

49. No expedited removal order, credible fear referral, credible fear interview record, or positive credible fear determination appears in the Department of Homeland Security records produced to Petitioner or attached to this Petition.

B. Four Years of Compliant Release in the Community

50. Following his release, Petitioner traveled to South Carolina and settled there with his family, first in Gray Court and later in Simpsonville, Greenville County.

51. Petitioner has a pending asylum application. The immigration court's June 11, 2026 hearing notice reflects an EAD Clock of 1,007 days elapsed. Ex. F.

52. On the strength of his pending asylum application, United States Citizenship and Immigration Services issued Petitioner an Employment Authorization Document in category C08, valid from July 15, 2024 through July 14, 2029. Ex. G. Petitioner worked and supported his household.

53. Petitioner and his family have been members of Iglesia Palabra de Vida Ministerio Internacional in Simpsonville, South Carolina, since July 2022. Ex. N.

54. Over nearly four years, venue in Petitioner's removal case moved from Charlotte to Miami and eventually to the Immigration Court in Lumpkin, Georgia. He complied with his reporting conditions throughout, and he was never ordered removed in absentia.

C. The March 2026 Traffic Charge and Its Dismissal

55. On March 31, 2026, the Mauldin Police Department arrested Petitioner following a traffic collision in Mauldin, South Carolina, and booked him on two charges: leaving the scene of an accident involving property damage, and driving without a license. Ex. J. The charged offense was the property damage variant of the leaving the scene statute; Petitioner was not charged with any offense involving injury to any person. Exs. J, K.

56. On April 1, 2026, Petitioner was released on a $5,000 personal recognizance bond. Exs. J, K.

57. On July 14, 2026, the Solicitor dismissed the leaving-the-scene charge in the exercise of prosecutorial discretion. Ex. K.

58. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c). Neither offense for which he was arrested or charged is among the offenses enumerated in 8 U.S.C. § 1226(c)(1)(E), the provision added by the Laken Riley Act, and no conviction triggering 8 U.S.C. § 1226(c)(1)(A) through (D) appears in the record before this Court.

D. Re-Detention and the Denial of a Bond Hearing

59. On April 2, 2026, the day after his release from state custody, U.S. Immigration and Customs Enforcement took Petitioner into custody. The Department's Form I-830 Notice to

EOIR: Alien Address confirms the date and states that Petitioner is detained at the Irwin County Detention Center, 132 Cotton Drive, Ocilla, Georgia 31774. Ex. H.

60. No new Notice to Appear, no additional immigration charge, and no determination by a neutral decisionmaker that Petitioner violated the conditions of his release or that changed circumstances warranted his re-detention appears in the records available to Petitioner.

61. Petitioner's release had permitted him to live and work in the United States for nearly four years while his application for asylum awaited adjudication, and that application remains unadjudicated. He received no advance notice that his release on recognizance would be revoked, and no interview or other process from the Department, either before or after his re-arrest.

62. On July 16, 2026, Immigration Judge Chad Bayse of the Stewart Immigration Court denied Petitioner's request for a custody redetermination. Ex. I. The order states: "No action: Court lacks jurisdiction to consider this matter pursuant to *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019)." Ex. I.

63. The order explains the basis for that ruling: "Here, the evidence indicates that the Notice to Appear was issued after an asylum officer found that respondent has demonstrated a credible fear of persecution or torture." Ex. I.

64. That premise finds no support in the records available to Petitioner. The Notice to Appear in this case contains no such finding, and neither the credible fear box nor the section 235(b)(1) vacatur box is checked. Ex. A. The remainder of the Department's own custody file reflects processing under section 236, not under section 235(b)(1). Exs. B, C, D, E. Petitioner asks

that Respondents be directed to identify and produce the specific record on which the Immigration Judge relied.

65. The Immigration Judge made no findings concerning flight risk, danger, family ties, employment, or compliance history. He reached none of it. He concluded that he had no authority to consider bond at all. Ex. I.

66. Petitioner reserved appeal of the custody order. Ex. I.

67. Petitioner remains detained at the Irwin County Detention Center. Ex. M. His removal proceedings are pending, and his next individual hearing before Immigration Judge Bianca H. Brown is scheduled for August 26, 2026. Ex. L.

68. As of the filing of this Petition, Petitioner has been detained continuously for approximately four months without any individualized custody determination by a neutral decisionmaker.

EXHAUSTION

69. Section 2241 contains no statutory exhaustion requirement, and any prudential exhaustion requirement is excused here.

70. Exhaustion in a section 2241 proceeding is a judicially imposed, nonjurisdictional requirement. *Santiago-Lugo v. Warden*, 785 F.3d 467, 474-75 (11th Cir. 2015).

71. Petitioner reserved appeal of the custody order. Ex. I. He has not pursued an administrative appeal to the Board of Immigration Appeals, and prudential exhaustion should be excused.

72. An administrative appeal would be futile as to the governing precedent. The Immigration Judge's ruling rests on *Matter of M-S-*, a decision of the Attorney General that binds the Board. The Board cannot overrule it, and the Board's own decisions reflect its committed position that noncitizens it deems detained under section 235(b) may not receive bond from an immigration judge. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Petitioner acknowledges that the Board must apply controlling Eleventh Circuit law in this proceeding, *Matter of Garcia*, 28 I&N Dec. 693, 695 (BIA 2023), and that the Board could in theory correct the Immigration Judge's factual application of *Matter of M-S-*.

73. Even a successful administrative appeal, however, could not supply prompt or effective relief. The remedy would be a remand for a custody hearing after months of additional confinement, and Petitioner would remain detained throughout. Board adjudication cannot provide the prompt relief that Petitioner's ongoing physical detention requires. Detention itself is the injury, and each additional week of confinement is irreparable.

74. The Board also cannot adjudicate Petitioner's independent claims under the Fifth Amendment. Those claims are for an Article III court.

CLAIMS FOR RELIEF

COUNT I

Violation of the Immigration and Nationality Act, 8 U.S.C. § 1226(a)

75. Petitioner incorporates by reference the allegations set forth in the preceding paragraphs.

76. Petitioner was apprehended near Eagle Pass, Texas, shortly after entering the United States in June 2022. The Department released him under section 236(a) of the Act, and he thereafter lived in the interior of the United States for nearly four years. The detention challenged in this Petition began when Immigration and Customs Enforcement arrested him in South Carolina on April 2, 2026, far from any border or port of entry and nearly four years after his entry.

77. At the time of the arrest challenged here, Petitioner was not a noncitizen "seeking admission" within the meaning of 8 U.S.C. § 1225(b)(2)(A). *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, 175 F.4th 1258, 1267-68 (11th Cir. 2026).

78. Petitioner is therefore detained under 8 U.S.C. § 1226(a), and he is eligible for release on bond or conditional parole. *Id.* at 1262, 1278; 8 C.F.R. §§ 236.1(c)(8), (d), 1003.19(a), 1236.1(d)(1), (3).

79. The Department's contemporaneous custody records independently confirm that it arrested, processed, and released Petitioner under section 236. The Form I-200 warrant, the Form I-286 custody determination, and the Form I-220A order of release each invoke section 236 by name. Exs. B, C, D. Those consistent records are powerful evidence that Petitioner's custody was, and remains, governed by section 236 rather than section 235(b).

80. The Board of Immigration Appeals' own precedent confirms the classification. A noncitizen who entered without inspection, was charged under section 212(a)(6)(A)(i), was placed in section 240 removal proceedings, and was released on a Form I-220A order of release on recognizance has been released on conditional parole under section 236(a)(2)(B) of the Act, 8 U.S.C. § 1226(a)(2)(B), and not on humanitarian parole under section 212(d)(5)(A). *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747-50 (BIA 2023); *Matter of Castillo-Padilla*, 25 I&N

Dec. 257, 258-63 (BIA 2010). The respondents in *Cabrera-Fernandez* stood in the same posture as Petitioner: apprehended near the border after entering without inspection, charged under section 212(a)(6)(A)(i), placed in section 240 proceedings, and released on a Form I-220A. Under the Board's own precedent, Petitioner's June 2022 release was an exercise of release authority under section 236(a), and section 236 has governed his custody throughout.

81. Respondents' refusal to afford Petitioner a bond hearing under section 236(a) is contrary to the statute and to binding circuit precedent, and his continued detention without that process is unlawful.

COUNT II

Violation of the Act and Governing Regulations: Denial of the Custody Hearing the Regulations Guarantee

82. Petitioner incorporates by reference the allegations set forth in the preceding paragraphs.

83. An immigration judge has jurisdiction to redetermine the custody of a noncitizen detained under section 236(a) of the Act. 8 C.F.R. §§ 1003.19(a), 1236.1(d)(1).

84. The Immigration Judge declined to exercise that jurisdiction on the ground that *Matter of M-S-* applied. Ex. I.

85. *Matter of M-S-* applies to a noncitizen who was placed in expedited removal under section 235(b)(1), was referred for and received a positive credible fear determination, and was then placed in section 240 proceedings.

86. The records available to Petitioner reflect that he was charged directly under section 212(a)(6)(A)(i) and placed directly in section 240 proceedings, not in expedited removal. Ex. A.

87. The credible fear box on the Notice to Appear is unchecked. The section 235(b)(1) vacatur box is unchecked. Ex. A. No credible fear determination appears in the records produced to Petitioner or attached to this Petition

88. The factual predicate for the Immigration Judge's ruling is therefore absent from this record, and the ruling deprived Petitioner of the only custody hearing available to him.

89. An agency must follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-68 (1954).

90. Because the sole ground given for the denial of jurisdiction does not exist on this record, Petitioner's continued detention without a custody hearing violates the Act and the governing regulations.

COUNT III

Fifth Amendment: Procedural Due Process (Unlawful Re-Detention)

91. Petitioner incorporates by reference the allegations set forth in the preceding paragraphs.

92. Petitioner was released from the Department's custody in June 2022 under section 236(a) of the Act and remained at liberty in the community for nearly four years.

93. A person released from civil detention acquires a liberty interest in remaining free that the Government may not extinguish without due process. *Zadvydas*, 533 U.S. at 690; *Foucha*, 504 U.S. at 80; *Hamdi*, 542 U.S. at 529.

94. The conditional character of Petitioner's release does not diminish that interest. The liberty of a person released into the community under conditions of supervision "includes many of the core values of unqualified liberty," and its termination calls for orderly process. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Nor does the label attached to the conditional release matter; what matters is the substance of the freedom enjoyed. *Young v. Harper*, 520 U.S. 143, 147-48, 152-53 (1997) (summary reincarceration of a prisoner on conditional supervised release, who kept his own residence, held a job, and lived generally free of the incidents of imprisonment, required the process described in *Morrissey*). Petitioner lived in precisely that condition for nearly four years: his own home, lawful employment under a Department-issued work permit, family and church life, and reporting obligations with which he complied.

95. The framework of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), governs the process due.

96. Petitioner does not contend that the Department lacks statutory or regulatory authority to revoke a release. Section 236(b) of the Act permits revocation of a bond or conditional parole and rearrest on the original warrant, and the implementing regulations further provide that when a person who has been arrested and taken into custody has been released, "such release may be revoked at any time." 8 U.S.C. § 1226(b); 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9). The constitutional question is not whether that authority exists, but whether it may be exercised against a person who has lived at liberty for nearly four years without notice, without a timely

determination by a neutral decisionmaker, and without any disclosed finding of changed circumstances.

97. The private interest is at its zenith. Petitioner's physical liberty, his employment, his ability to support his household, and his ability to prepare for a merits hearing on his asylum application are all at stake.

98. The risk of erroneous deprivation is severe. Petitioner received no notice of any alleged violation of his release conditions, no hearing, and no determination by any neutral decisionmaker that circumstances had changed. The only changed circumstance disclosed by the present record is Petitioner's March 2026 traffic arrest; the leaving-the-scene charge was later dismissed, and no resulting conviction appears in the record before this Court. Exs. J, K.

99. The Government has legitimate interests in ensuring appearance and protecting the community, but its interest in continuing Petitioner's physical detention without prompt neutral review is slight. The Department placed Petitioner on supervised release in 2022 and permitted him to remain at liberty under reporting conditions for nearly four years. The present record contains no reasoned determination that changed circumstances required terminating that liberty. A custody hearing imposes no meaningful burden on the Government; it is the ordinary course in section 236(a) cases.

100. Respondents re-detained Petitioner and have held him for approximately four months without any of the process the Fifth Amendment requires. He is entitled to release.

COUNT IV

Fifth Amendment: Procedural Due Process (Detention Without a Custody Hearing)

101. Petitioner incorporates by reference the allegations set forth in the preceding paragraphs

102. Petitioner has been detained since April 7, 2026, without an individualized custody hearing before a neutral decisionmaker.

103. Civil detention of this length and character, with no hearing at all, cannot be reconciled with the Due Process Clause. *Zadvydas*, 533 U.S. at 690-92; *Demore*, 538 U.S. at 532 (Kennedy, J., concurring).

104. Where the Government detains a person civilly, it bears the burden of justifying that detention, and the clear and convincing standard is the appropriate measure of that burden. *Addington v. Texas*, 441 U.S. 418, 425-27 (1979).

105. That is the standard this Court has repeatedly ordered for custody hearings arising from the Irwin County Detention Center. *J.G. v. Warden, Irwin County Detention Center*, 501 F. Supp. 3d 1331, 1335 (M.D. Ga. 2020); *B.A.M.A.*, ECF No. 9, at 3; *I.A.A.M.*, ECF No. 9, at 3; *W.C.*, ECF No. 10, at 2 (each requiring the Department of Homeland Security to establish danger or flight risk by clear and convincing evidence).

106. Petitioner's detention is neither brief nor bounded. His individual hearing is set for August 26, 2026, and any adverse decision could be followed by an appeal to the Board, extending his detention by many additional months.

107. Petitioner's equities are substantial. He has resided in South Carolina for approximately four years. His wife, his adult children, and his grandchildren live there. He has belonged to the same congregation since 2022. He held employment authorization and worked.

He complied with his reporting obligations for four years without incident. The senior pastor of his church has offered in a notarized letter to serve as his guarantor and to ensure his appearance at all future proceedings. Ex. N.

108 Continued detention without a custody hearing violates the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Issue an order directing Respondents to show cause, within three days, why the writ should not be granted, 28 U.S.C. § 2243;

(3) Grant a writ of habeas corpus and order Respondents to release Petitioner from physical custody immediately, restoring him to the conditions of his prior order of release on recognizance or to such other reasonable conditions of supervision as the Court may set,

(4) In the alternative, and as the minimum relief required by the Immigration and Nationality Act, order Respondents to provide Petitioner a custody hearing under 8 U.S.C. § 1226(a) and its implementing regulations within seven days of this Court's order, before a neutral immigration judge, at which Respondents shall not oppose bond on the ground that 8 U.S.C. § 1225(b) requires or authorizes mandatory detention, or on the ground that agency precedent deprives the immigration judge of jurisdiction to decide bond;

(5) Order that, at any such hearing, the immigration judge shall consider Petitioner's financial circumstances and alternatives to bond in setting any conditions of release;

(6) Further order, as required by the Due Process Clause of the Fifth Amendment, that at any such hearing the Government bear the burden of establishing by clear and convincing evidence that Petitioner is a danger to the community or a flight risk that cannot reasonably be mitigated by bond or conditions of release;

(7) Order that, if no hearing occurs within seven days, or if the immigration judge declines to consider Petitioner's eligibility for bond on the merits under 8 U.S.C. § 1226(a), Respondents shall release Petitioner from custody by 5:00 p.m. on the following business day;

(8) Order Respondents to file a declaration stating the outcome of any custody hearing conducted pursuant to this Court's order or confirming Petitioner's release;

(9) Order Respondents to identify and produce the record on which the Immigration Judge relied in finding that the Notice to Appear was issued after an asylum officer found a credible fear of persecution or torture;

(10) Order Respondents to provide forty-eight hours advance notice to counsel before any transfer of Petitioner outside the Middle District of Georgia, except in a bona fide medical emergency;

(11) Should the Court order release, enjoin Respondents from re-detaining Petitioner during the pendency of his removal proceedings without first providing written notice, a determination by a neutral decisionmaker of changed circumstances, and an individualized hearing, absent exigent circumstances; and order that if exigent circumstances require immediate re-arrest, Respondents shall provide a prompt post-deprivation hearing;

(12) Declare that Petitioner is detained under 8 U.S.C. § 1226(a) and is eligible for release on bond;

(13) Declare that Respondents' refusal to provide a custody hearing violates the Immigration and Nationality Act, the governing regulations, and the Due Process Clause of the Fifth Amendment,

(14) Award Petitioner costs and reasonable attorney's fees on any basis justified under law; and

(15) Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Rachel Effron Sharma
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Counsel for Petitioner
(Application for Admission Pro Hac Vice Forthcoming)

Dated: August 3, 2026

VERIFICATION

I, Deron Edward Smallcomb, declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. §§ 1746 and 2242, as follows:

1. I am an attorney for Petitioner Filiberto Jose Gregorio Reyes-Ojeda in this matter, and I prepared the foregoing Petition for Writ of Habeas Corpus.

2. The factual allegations set forth in the Petition are true and correct to the best of my knowledge, information, and belief, formed after diligent inquiry. They are based on my review of the Department of Homeland Security custody and charging records attached as exhibits, the record of proceedings of the Executive Office for Immigration Review, the public records of the Thirteenth Judicial Circuit of South Carolina, and information provided by Petitioner and his family.

3. Petitioner is detained at the Irwin County Detention Center in Ocilla, Georgia, and it was not practicable to obtain his signature on this verification before filing. This verification is signed by counsel as permitted by 28 U.S.C. § 2242.

Executed on August 3, 2026.

/s/ Deron Edward Smallcomb
Deron Edward Smallcomb

CERTIFICATE OF SERVICE

I certify that on the date set forth below I electronically filed the foregoing Petition for Writ of Habeas Corpus and Request for Order to Show Cause, with exhibits, using the Court's CM/ECF system.

In accordance with the Court's procedures for alien-detainee cases, service on the United States will be accomplished through the Court's CM/ECF system. Petitioner will promptly serve the remaining federal Respondents in accordance with Federal Rule of Civil Procedure 4(i), will serve the Warden, a nonfederal custodian, by a method authorized for original process or as otherwise directed by the Court, and will file proof of service.

Courtesy copies of the foregoing have been transmitted by United States mail to the United States Attorney's Office for the Middle District of Georgia, 300 Mulberry Street, 4th Floor, Macon, Georgia 31201; to the Office of Immigration Litigation, U.S. Department of Justice, P.O. Box 878, Ben Franklin Station, Washington, D.C. 20044; and to the Warden, Irwin County Detention Center, 132 Cotton Drive, Ocilla, Georgia 31774.

Respectfully submitted,

/s/ Rachel Effron Sharma

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Lead and Local Counsel for Petitioner

Dated: August 3, 2026