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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

JOSUE HERNANDEZ RODRIGUEZ,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Warden of the Otay Mesa Detention Center, acting in his official capacity; PATRICK DIVVER, Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement, acting in his official capacity; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement, acting in his official capacity; MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security, acting in his official capacity; TODD BLANCHE, Acting Attorney General of the United States, acting in his official capacity; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; EXECUTIVE OFFICE OF IMMIGRATION REVIEW; and DEPARTMENT OF HOMELAND SECURITY,

Respondents.
_____/

CASE NO.: '26CV4590 BTM VET

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

INTRODUCTION

1. JOSUE HERNANDEZ RODRIGUEZ ("Petitioner") has been residing in the United States since at least November 14, 2023, when he was brought into the United States by his grandmother as a juvenile. He was taken into custody by Respondents on that day and then allowed lawful entry when he was released to his mother by Respondents into the United States

by humanitarian parole pursuant to "CBP One." (*See* Ex. 1, Form I-213 and Form I-385).

2. Petitioner filed a timely Form I-485 application for Adjustment of Status under the Cuban Adjustment Act ("CAA") Pub. L. No. 89 – 732, 80 Stat. 1161 (1966) with the United States Citizenship and Immigration Services ("USCIS") on January 8, 2025. (*See* Ex. 2, Form I-485 receipt). He also filed a timely I-589 on April 11, 2024, with USCIS. (See Ex. 3, Form I-589 Receipt). His applications are currently pending. He has resided in Florida since his humanitarian parole.

3. On November 14, 2023, Petitioner was served with a Notice To Appear charging him under § 212(a)(7)(A)(i)(I) of the INA. (*See* Ex. 4, Notice to Appear dated 12/28/25). Petitioner, however, is not in removal proceedings.

4. While at liberty in the interior of the United States, with the abovementioned pending application for adjustment of status pursuant to the CAA, Petitioner encountered a traffic checkpoint set up by Respondents to inspect vehicle registrations on July 7, 2026. Even though no arrest warrant had been issued for Petitioner, Respondents, without cause, took him into custody and he has languished in detention since then.

5. He was detained by Respondents even though he had been granted lawful entry on humanitarian parole to seek adjustment of his status to that of lawful permanent resident, as statutorily authorized by the CAA.

6. Petitioner, at this moment, is detained at the Otay Mesa Detention Center, 7488 Calzada De La Fuente, San Diego, California. (*See* Ex. 5, ICE Detainee Locator). Petitioner has never been arrested or charged with any crime or convicted of any crime. Therefore, he was detained due to the Respondents' interpretation of their detention authority under 8 U.S.C. §§ 1225 and 1226. Recently, the Ninth Circuit Court of Appeals, in *Rodriguez Vazquez v. Bostock et al,* No. 25-6842 (9th Cir. July 30, 2026), held that the statutory interpretation that Respondents have relied on to pursue their mass detention agenda is an unlawful and incorrect interpretation of the statutes. This renders his ongoing detention unlawful. Petitioner files this petition for Writ of Habeas Corpus under 28 U.S.C. § 2241.

7. Petitioner is a citizen and national of Cuba (*See* Ex. 6, Cuban passport) who was given lawful entry under humanitarian parole into the United States and is eligible to apply for, and has a pending application for, adjustment of status pursuant to the CAA.

8. Petitioner did not have a custody redetermination (bond) hearing because Respondents

would have asserted that he is subject to mandatory detention and that any Immigration Judge would have found that he had no jurisdiction to determine custody.

9. This case presents a purely legal question appropriate for Habeas review: whether a noncitizen who presents himself at the border for admission can be indefinitely detained, if he had been granted lawful entry by humanitarian parole, without violating his statutory and constitutional rights, including but not limited to his due process rights under the Fifth Amendment of the United States Constitution. Petitioner does not challenge the initiation of removal proceedings, nor any discretionary custody determination. *See, e.g., Madu v. US. Att'y Gen.*, 470 F.3d 1362, 1367-8 (11th Cir. 2006).

10. Multiple decisions in this District have held that non-citizens residing at liberty and in compliance with DHS, who present no danger to the community or risk of flight, but are nonetheless re-detained and facing indefinite detention, are being detained in violation of the Fifth Amendment of the United States Constitution. *See, e.g., Baltazar Raymundo v. Blanche et al,* No. 3:26-cv-03984-JO-SBC (S.D. Cal., July 27, 2026); *Cadamo v. Mullin et al,* No. 3:26-cv-4055-JES-MSB (S.D. Cal., July 21, 2026); *Totskii v. LaRose*, No. 26-CV-1053-JES-JLB (S.D. Cal. Apr. 2, 2026); *Isoev v. Larose*, No. 26-CV-1361-JES-DDL (S.D. Cal. Mar. 19, 2026).

11. Petitioner respectfully requests an order directing Respondents to release Petitioner from custody; or in the alternative, to release Petitioner from custody subject to appropriate supervision.

12. Section 1225(b)(2)(A) states that an applicant for admission shall be detained for removal proceedings. Respondents have taken the position that 8 U.S.C. §1225(b)(2)(A) applies to all individuals who arrived in the United States without documents, regardless of how long they have lived in the United States and regardless of how far they were from the border when they were apprehended.

13. Use of these provisions to indefinitely detain non-citizens who were previously released without any opportunity to seek review of the lawfulness of detention is a violation of due process. As such, Petitioner seeks an order releasing him from custody.

JURISDICTION

14. This Court has jurisdiction under 28 U.S.C. § 2241 to review the legality of Petitioner's continued detention. Habeas jurisdiction is available to noncitizens challenging the

statutory basis of immigration detention. *See Madu*, 470 F.3d at 1366-68 (11th Cir. 2006). Petitioner is not challenging the initiation of removal proceedings or any discretionary decision regarding custody. Instead, he challenges only the government's continued detention of him in violation of the US Constitution and the CAA. Such a question of constitutional and statutory interpretation falls squarely within habeas jurisdiction. *Id.* at 1367.

15. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar review. Section 1252(a)(5) and § 1252(b)(9) apply only to challenges to removal orders and claims arising from removal proceedings. Petitioner raises neither. *See Id.* at 1367—68 ("Section 1252 does not preclude habeas review of claims that are independent of challenges to removal orders"). Section 1252(g) does not apply because Petitioner does not challenge the Attorney General's decision to commence proceedings, adjudicate proceedings, or execute any removal order. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Section 1252(e) is inapplicable because Petitioner does not challenge the validity of any expedited removal order, nor could he - he was never subject to expedited removal.

16. Finally, Section 1252(a)(2)(B)(ii) does not apply because Petitioner is not seeking review of a discretionary custody determination; there was none. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (Habeas Corpus), 28 U.S.C. § 1331 (Federal Question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

VENUE

17. Venue lies in this District under 28 U.S.C. § 2241(a) and (d), because Petitioner is detained at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, California, which is within the Southern District of California. *See Rumsfeld v. Padilla*, 542 US. 426, 434-35 (2004) (proper respondent in a habeas petition is the immediate custodian in the district of confinement). JUAN BALTAZAR, acting in his official capacity as Warden of the Otay Mesa Detention Center, is a proper respondent, as the official with immediate physical custody over Petitioner. *See Id.* at 435. The additional federal officials are included in their official capacities because they possess legal authority over Petitioner's detention under the Immigration and Nationality Act ("INA").

PARTIES

18. Petitioner, JOSUE HERNANDEZ RODRIGUEZ, is a native and citizen of Cuba, detained by ICE at the Otay Mesa Detention Center within the Southern District of California. He brings this petition pursuant to 28 U.S.C. § 2241 to challenge the legality of his continued detention.

19. Respondent, CHRISTOPHER J. LAROSE, in his official capacity as Warden of the Otay Mesa Detention Center, is the immediate custodian and the official responsible for Petitioner's physical detention.

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

21. Respondent, TODD LYONS, in his official capacity as Senior Official Performing the Duties of the Director of ICE, directs the agency that exercises authority over the detention, custody, and supervision of noncitizens pursuant to the INA.

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

23. Respondent, TODD BLANCHE, in his official capacity as Acting Attorney General of the United States, presides over the Executive Office for Immigration Review, which oversees the Immigration Judge that heard Petitioner's immigration proceedings.

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

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

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

UNDISPUTED FACTS

27. Petitioner is a native and citizen of Cuba who was given humanitarian parole through the CPB One program. Petitioner was allowed entry into the United States at the San Ysidro Port of Entry. Petitioner has resided continuously in the United States since his lawful entry on November 26, 2026.

28. On July 7, 2026, Petitioner was stopped at a vehicle registration check point, at which time Respondents, without cause, took him into custody and he has been in detention since then.

29. Prior to July 7, 2026, Petitioner had been lawfully present under humanitarian parole in the interior of the United States while he sought adjustment of his status as authorized by the CAA.

30. Removal proceedings have not been initiated.

31. Petitioner has never committed a crime, been convicted of a crime, or been arrested for any other crime while lawfully present in the United States. (*See* Ex. 7, Lee County Records Search).

32. Presently, Petitioner remains detained at the Otay Mesa Detention Center.

EXHAUSTION OF REMEDIES

33. There is no statutory exhaustion requirement for habeas challenges to the legal basis of immigration detention under 28 U.S.C. § 2241. *See Madu* at 1366—68 (11th Cir. 2006). Even if exhaustion applied, it would be futile. As the Supreme Court has held, exhaustion is excused where "the administrative body is shown to be biased or has otherwise predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); *see also Shalala v. 111. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). This District has already held in identical circumstances that an administrative appeal would be futile because the result is predetermined by binding agency precedent. *See Patel*, 2025 WL 3442706, at 3.; *Vasquez Carcamo*, 2025 WL 3041895, at 3. Because the agency lacks authority to provide a custody redetermination under 8 U.S.C. § 1226(a), exhaustion would be futile.

STATUTORY BACKGROUND

34. Section 1 of the Cuban Adjustment Act of 1966 (Pub. L. 89 732) provides that the status of any non-citizen who is a native or citizen of Cuba and who has been inspected and

admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of a non-citizen lawfully admitted for permanent residence if the non-citizen makes an application for such adjustment, and the non-citizen is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

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

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

37. The INA defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). With limited exceptions not relevant here, a noncitizen who has entered the United States without inspection is not considered an "applicant for admission" later solely by virtue of being encountered inside the country. Rather, the term applies to individuals who present themselves for inspection at a port of entry or who are treated as seeking admission under specific statutory provisions.

38. Section 1182(a)(6)(A)(i) renders an individual inadmissible if they are "present in the United States without being admitted or paroled." Section 1182(a)(7)(A)(i)(I) applies to "an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa" or other entry documents. The two grounds serve distinct statutory functions: § 1182(a)(6)(A)(i) describes unlawful presence after entry without inspection, while § 1182(a)(7)(A)(i)(I) presumes an ongoing or contemporaneous "application for admission." Petitioner was charged under an NTA that alleged he was an applicant for admission under § 1182(a)(7)(A)(i)(I).

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

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

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

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

CONSTITUTIONAL VIOLATION

43. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S, 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

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

45. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976),

In this case, to determine the due process to be afforded to Petitioner, the Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

LEGAL ARGUMENT

1. Petitioner has been lawfully present in the United States since his initial humanitarian parole as a non-citizen statutorily eligible to adjust his status pursuant to the Cuban Adjustment Act.

The filing of a bona fide adjustment-of-status application places the applicant in a period of authorized stay. Because an "application for adjustment of status cannot be filed by someone who is not physically present in the United States," *see, Alfaro Herrera v. Baltazar, et. al,* No. 1:25-cv-04014-CNS, 2026 WL 91470, at *7 (D. Colo. Jan. 13, 2026 (citing 8 U.S.C. § 1255(i); 8 C.F.R. § 245.1(a)); and "any submitted application is deemed abandoned and terminated if the applicant leaves the country, including, as is relevant here, if the applicant is removed via immigration proceedings," *id.* (citing 8 C.F.R. § 245.2(a)(4)(ii)(A)-(B)), the inescapable conclusion is that a non-citizen eligible for adjustment of status under the Cuban Adjustment Act ("CAA") is lawfully present in the United States.

Alfaro Herrera was an analysis of the Special Immigrant Juvenile designation in the INA that found that both the design of the CAA and its interplay with other provisions of immigration law support the conclusion that because "Congress intended that Petitioner have an opportunity to pursue lawful permanent residence in the United States" as a Cuban national, pursuing Petitioner's removal before his I-485 application is adjudicated "summarily strip[s]" Petitioner of the benefits Congress intended that individuals like him receive. *Id.* (citing *Osorio-Martinez v. Att'y Gen. United States of Am.*, 893 F.3d 153, 163 (3d Cir. 2018)). Indeed, the First Circuit has acknowledged the same, stating that "where Congress has wanted to benefit [noncitizens] from certain countries," as it has with Cuban citizens and natives, "it has enacted special legislation which allows these individuals to enter the United States and apply for permanent resident status within one year, **without being subjected to removal proceedings**." *See Succar v. Ashcroft,*

394 F.3d 8, 27 n.25 (1st Cir. 2005) (citing CAA, Pub. L. No. 89–732, 80 Stat. 1161) (emphasis added).

DHS has long interpreted this regulatory framework to mean that a pending Form I-485—particularly under the Cuban Adjustment Act (CAA)—constitutes a period of authorized stay for the duration of the adjudication. USCIS has repeatedly reaffirmed that adjustment applicants are lawfully present for purposes of accrual of unlawful presence and removal. Because Respondents have determined that such applicants are authorized to stay in the United States, detaining a Form I-485 applicant contradicts their own regulatory structure and longstanding practice. Moreover, under the doctrine announced in *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), an administrative agency is prohibited from disregarding its own regulations or established procedures. When Respondents promulgate regulations and administer immigration benefits in a manner recognizing that Form I-485 applicants are in authorized stay, they may not simultaneously treat such applicants as unlawfully present for detention purposes; this inconsistency violates *Accardi* and renders detention unlawful.

Consistent with this framework, 8 C.F.R. § 1226 does not authorize Respondents to detain a noncitizen who they have authorized to stay in the United States while that non-citizen is pending adjudication of a Form I-485 application. Section 1226(a) governs pre-final-order detention of individuals pending a decision on removal, but it presupposes that detention is legally permissible in the first instance. It nowhere grants Respondents discretion to detain applicants whom they have already placed in an authorized-stay category, because authorized stay is fundamentally inconsistent with the premise of § 1226(a) detention authority. Where the INA and USCIS regulations classify an individual as being in authorized presence, Respondents lack a statutory basis to deem the person detainable as though they were unlawfully present or removable for custodial purposes. Because there is no statutory or regulatory authority to detain an applicant for adjustment of status who is in authorized stay, continued detention is unlawful, and any requirement that Petitioner post a bond is equally unlawful. Bond is a mechanism designed to mitigate risk only in cases where the Government has lawful detention authority under § 1226(a) or § 1226(c). Where detention itself is unlawful, as it is here, Petitioner cannot be required to secure release by posting a monetary bond; the Government must release the individual without requiring financial security.

In *Concha-Gonzales v. Noem, et al*, No. 1:26-cv-00001-CNS (Dist. Colo., Jan. 26, 2026),

District Court Judge Sweeney addressed the situation of a non-citizen native of Cuba (like Petitioner in the instant case) who presented himself at a port of entry. After claiming fear of persecution or torture if removed to Cuba, he was released on an order of recognizance, and subsequently filed a Form I-485, Application to Register Permanent Residence or Adjust Status with the United States Citizenship and Immigration Services, alleging eligibility under the Cuban Adjustment Act of 1966, Pub. L. No. 89-732, 80 Stat. 1161 (CAA). He was re-detained by Respondents two years after his release, and thereafter filed a petition for habeas corpus that alleged, *inter alia*, that the filing of his application for adjustment of status placed him in a period of authorized stay in the United States, and thereby barred Respondents from treating him as unlawfully present for detention purposes.

In *Concha-Gonzales*, Judge Sweeney recognized that a noncitizen filing a Form I-485 application under the CAA may have received authorization to remain in the United States. Based on a review of the INA's structure, including the CAA, available case law or other authorities and Congressional intent, she concluded that they did in fact support a conclusion that the petitioner in that case received such authorization, citing *United States v. Dominguez*, 661 F.3d 1051 (11th Cir. 2011) and *Alonso v. U.S. Att'y Gen.*, 810 F. App'x 813, 814 (11th Cir. 2020) for the propositions that Cuban nationals who come to the United States are afforded special treatment allowing them to apply to adjust status to that of a lawful permanent resident; specifically, that "[b]y taking advantage of the CAA, Cuban nationals, who have no documents authorizing their presence in the United States, *can remain in the United States* without demonstrating that they suffered persecution or proving refugee status", quoting *Dominguez* (emphasis in *Concha Gonzalez*).

The Court further noted that an application for adjustment of status cannot be filed by someone who is not physically present in the United States, and that leaving the United States, including by removal, deems any application for adjustment to be abandoned or terminated. The Court noted that it appeared that Congress had intended to benefit Cuban citizens and natives with "special legislation which allows these individuals to enter the United States and apply for permanent resident status . . . *without being subjected to removal proceedings*", quoting *Succar v. Ashcroft*, 394 F.3d 8, 27 n.25 (1st Cir. 2005) (emphasis in *Concha Gonzalez*).
In *Concha Gonzalez*, the Court declined to finally resolve the issue regarding authorized presence while seeking adjustment of status under the CAA, relying instead on prior

determinations that mandatory detention under § 1225(b)(2)(A) did not apply to Petitioner. The Court was also not convinced that based on the facts before the Court in that case that initial release on recognizance, as opposed to release on parole, from immigration detention qualified a non-citizen to pursue adjustment of status under the CAA. The Court noted that in certain circumstances, a noncitizen's release from detention on their own recognizance can constitute being paroled into the United States, with a citation to *Molina-Cantero v. Department of Homeland Security, et. al.*, No. 2:25-cv-549-KCD-NPM, 2026 WL 83954, at *1 (M.D. Fla. Jan. 12, 2026). However, in the case of *Labrada-Hechavarria v. US Attorney General*, Nos. 23-13664, 24-10645 (11th Circ., Feb. 23, 2026) the Eleventh Circuit vacated two BIA orders that found that release on recognizance did not constitute a grant of parole, remanding for further consideration in light of an "about-face on the legal issue" by the government which could substantially undermine the BIA's interpretation.

Judge Sweeney has also addressed the special status of non-citizens fleeing Cuba in *Lapinell Alonso v. Baltasar et al*, No. 1:26-cv-01365-CNS (D. Colo., May 1, 2026) (ECF # 11). In that case, the petitioner was a citizen of Cuba, who on the same day he arrived in the United States was granted humanitarian parole, and subsequently filed a timely Form I-485 application for Adjustment of Status with the United States Citizenship and Immigration Services (USCIS). Under these circumstances, the Court found a separate and "most significant" basis for ordering the immediate release of Petitioner:

> "[M]ost significantly, as a Cuban citizen, Petitioner is entitled to pursue an adjustment of status and seek lawful permanent residence in the United States under the CAA. As this Court has previously found, the CAA provides Cuban citizens in the United States with certain opportunities. *See Concha-Gonzales*, 2026 WL 194178, at *4–5. Specifically, "[b]y taking advantage of the CAA, Cuban nationals, who have no documents authorizing their presence in the United States, *can remain in the United States* without demonstrating that they suffered persecution or proving refugee status." Id. at *4 (citing *United States v. Dominguez*, 661 F.3d 1051, 1067 (11th Cir. 2011) (emphasis added)).

Lapinell Alonso, ECF #11 at p. 4-5). The Court found Respondents' attempts to remove him to be, in effect, their effort to prevent him from applying for an adjustment of status under the CAA. The Court concluded that "[b]ecause Respondents fail to provide a legitimate explanation for Petitioner's detention or the renewal of his removal proceedings, Petitioner's immediate release from immigration detention is warranted", *Lapinell Alonso*, ECF #11 at p. 7.

In *Lopez Ricardo v. Baltazar*, No. 1:26-cv-01099-SKC (D. Colo., April 17, 2026), the

Court considered the case of a Cuban national Petitioner who presented evidence that he was paroled into the United States and applied for adjustment of status under the CAA. The Court held that "[a]s such, Respondents are not permitted to initiate removal proceedings against him, and he cannot be detained under § 1226" and found that the proper remedy is immediate release". Similarly, in *Torres Gonalez v. Baltazar*, No. 1:26-cv-01972-NYW, D. Colo., July 16, 2026), the Petitioner was a Cuban national who was paroled into the United States and had a pending application for adjustment of status under the CAA. After the Respondents did not "explain how either § 1225 or § 1226 provide Respondents with the authority to detain" the Petitioner, the Court held that "Because Respondents fail to provide a legitimate explanation for Mr. Torres Gonzalez's detention or the initiation of his removal proceedings, the proper remedy is immediate release."

In this district, *Cadamo v. Mullin et al*, No. 3:26-cv-4055-JES-MSB (S.D. Cal., July 21, 2026) involved a Petitioner who was a native of Venezuela who obtained humanitarian parole through the CBP One appointment process, and while on parole "lived and worked in the community and complied with all the terms of his parole." That petitioner was detained by Respondents "at a traffic checkpoint on his commute home from work and taken to Otay Mesa Detention Center", where Respondents asserted he was to be mandatorily detained and therefore not entitled to any process that would review this assertion. The Court found a due process violation requiring his immediate release. The parallels to the instant case are so striking and obvious that they barely require mention. Petitioner in the instant case is in the exact same situation. Having been granted humanitarian parole by Respondents, and the right to apply for Cuban adjustment by Congress, his parole into the country constitutes lawful presence which cannot be consistent with the mandatory detention sought by Respondents. It has been 60 years since the enactment of the Cuban Adjustment Act; for 59 of those years, it has been unquestioned that Cuban nationals seeking an escape from the authoritarian oppression in that country were not required to surrender the liberty they had risked their lives for in order to remain here.

2. Every Circuit Court that has considered the issue has found that mass detention poses serious constitutional concerns.

The Supreme Court has made clear that the Due Process Clause is implicated by civil

confinements. "[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection" *Addington v. Texas*, 441 U. S. 418, 425 (1979). As the Circuit Courts across the country address the issues raised by Respondents' unprecedented mass incarceration of non-citizens, a consensus is becoming clear: the mass detention program undertaken by Respondents under the guise of its discredited interpretation of its statutory detention authority poses serious constitutional concerns. Every appellate court that has considered the question has raised an alarm concerning the due process implications of the policy; no appellate court has given it a constitutional blessing.[1]

Most recently, the Seventh Circuit issued its opinion in *Cirrus Rojas v. Olson et al*, No. 25-3127 (7th Cir. July 30, 2026). While basing its rejection of the Respondents' mass detention campaign on statutory interpretation, the Court felt it necessary to conclude with a discussion of "Constitutional Concerns", *Id.* at p.36. The concerns expressed were stark: "But even if we thought the law ambiguous, we would still confront a strong argument for reversal. The government's interpretation poses grave due-process concerns", *Id.* Specifically, the court described the danger of the Respondents' goal as follows:

> The government's interpretation of Section 1225(b)(2)(A) could thus permit it to detain aliens with no apparent purpose. And at minimum, there is a very real risk that the government's reading will sweep in others like Cirrus Rojas who have already been found not to be dangers or flight risks. The Due Process Clause forbids such arbitrary detention. This alone makes us doubt the government's interpretation as a matter of constitutional avoidance.

Id. at p. 37.

In *Lopez-Campos v. Raycraft*, No. 25 1965, 2026 WL 1283891 (6th Cir. May 11, 2026), the Court left no room for any argument that this practice did not violate due process: "Petitioners rightfully state that they have a liberty interest to be free from detention. As discussed, this is the most fundamental interest protected by the Due Process Clause and is shared by citizens and noncitizens alike . . . It is from this liberty interest that detention without an individualized bond hearing can become constitutionally impermissible, even if the detention has a theoretical end point." *Id.*, at pp. 23-4 (citation omitted).

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[1] There are opinions that have not addressed the constitutional issues, see, *Hernandez Leyva*, the Fifth Circuit's opinion in *Buenrostro-Mendez v. Bondi*, No. 25-20496 (5th Cir. 2026), the Eighth Circuit's opinion in *Avila v. Bondi*, No. 25-3248, 8th Cir. (Mar. 25, 2026), the Seventh Circuit's opinion in *Castanon Nava v. Department of Homeland Security*, No. 25-3050 (7th Cir. May 5, 2026), and the Ninth Circuit's opinion in Rodriguez Vazquez v. Bostock, No. 25-6842 (9th Cir. July 30, 2026).

The Tenth Circuit also expressed its concerns in its decision in *Santillan Quiroz v. Mullin, et al.*, No. 26 6019, 2026 WL 3026882 (10th Cir. June 30, 2026). Though ultimately also basing its decision on statutory interpretation grounds, the Court felt it important to also address the question of whether the mandatory mass detention that the Respondents have engaged in presented a Fifth Amendment Due Process problem. The court first noted that "[a]dopting the Government's interpretation of § 1225(b)(2)(A) would pose grave constitutional problems because there is little justification, let alone a strong one, for detaining every one of the millions of unadmitted noncitizens in our country", *Id.* at p.44. The Court invoked the doctrine of constitutional avoidance because it clearly believed that such a "grave constitutional problem" did result from the actions of the Respondents: "The doctrine of constitutional avoidance instructs us to avoid the Government's interpretation so long as it raises serious constitutional questions, and that it does." *Id.*, at p. 47.

In *Cunha v. Freden et al*, 25 3141 pr (2d Cir. Apr. 28, 2026), the Second Circuit also invoked the constitutional avoidance doctrine when addressing the due process issues presented by the Respondents' mandatory detention drive. After noting that "Petitioner is protected by the Fifth Amendment's Due Process Clause, requiring any civil detention to be 'nonpunitive in purpose and effect,'" *id.* at p. 57 (quoting *Zadvydas*, 533 U.S. at 690), the Court stated that "although this case can be resolved based on the text of Sections 1225(b)(2)(A) and 1226(a) alone, the serious constitutional concerns raised by the government's interpretation would alternatively warrant its rejection based on the constitutional avoidance canon". *Id.*, at p. 60-61.

Finally, in *Sosnava Rodriguez v. Ortega*, No. 26-50183 (5th Cir. 2026) the Fifth Circuit expressly and without reservation held that the mass incarceration of non-citizens without any chance to seek release was a violation of the most fundamental due process precepts. While the opinion has been vacated pending *en banc* review, it is nonetheless instructive, especially considering its agreement with the concerns raised in its sister Circuits. "[T]he freedom from physical restraint, in whatever form, is at the 'core of the liberty protected by the Due Process Clause from arbitrary governmental action . . . That right cannot be abridged by Congress or this court. It may be limited, but only with justification," *Id.*, at p. 22 (citation omitted).

2. A post-deprivation bond hearing in this case does not pass constitutional muster.

Without any process at all, Respondents stripped Petitioner of his liberty, and then

repeatedly denied him any process by which to challenge this deprivation of his most fundamental right. Respondents denied and/or blocked the efforts of all non-citizens they incarcerated under the very theories rejected by the Circuit Courts in the cases cited above[2]. A bond hearing that occurs months after the deprivation of liberty simply cannot satisfy the Fifth Amendment.

In *Zinermon v. Burch*, 494 U.S. 113 (1990), addressing a civil commitment at Florida State Hospital for five months without a hearing or any other procedure to determine either that the committed person had validly consented to admission or that he met the statutory standard for involuntary placement, the Court held that such involuntary placement "clearly infringes on this liberty interest", *Zinerman*, 494 U.S. at 131. The Court has also left no doubt that the preferred procedure is that a hearing on a deprivation be prior to the deprivation. As stated in *United States v. James Daniel Good Real Property*, 510 U.S. 43, 53 (1993): "We tolerate some exceptions to the general rule requiring predeprivation notice and hearing, but only in 'extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event,'" citing *Fuentes v. Shevin*, 407 U.S. 67 (1972), quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971). When the government detains a person first and provides process later, a hearing that comes only after detention has become unjustified is constitutionally insufficient. Another bond hearing for Petitioner, one (1) month after his unlawful detention would be constitutionally insufficient.

Zinerman described the situations in which a post deprivation hearing might be permissible: "in situations where a predeprivation hearing is unduly burdensome in proportion to the liberty interest at stake, or where the State is truly unable to anticipate and prevent a random deprivation of a liberty interest, post deprivation remedies might satisfy due process", *Id* at 132. Neither situation is presented by the detention of Petitioner. It would be truly ludicrous to argue that the very bond hearing Respondents wish to require now was somehow "unduly burdensome" prior to (or shortly after) detaining Petitioner. Equally unavailing is the argument that Respondents could not anticipate or prevent their detention of Respondent. In no way was their incarceration of Respondent a random deprivation of liberty that could not be foreseen.

District Courts are recognizing this problem and granting the appropriate relief: immediate release from custody. In *Ricardo Tejada v. Thompson, et al*, No. 5:26-cv-00265-OLG

[2] As well as the overwhelming majority of District Courts.

(W.D. Tex. May 11, 2026) (ECF # 15 at 4-5)[3], District Court Judge Orlando Garcia has explained the problems with a post deprivation bond hearing as follows:

> Based on the foregoing, Petitioner's due process rights have been violated, and that violation "cannot be mitigated through a post-deprivation hearing." *Bonilla Chicas*, 2026 WL 539475, at * 11. Rather, "the need for an individualized determination of whether detention is warranted *at the time of arrest* is required to protect Petitioner's liberty interest." *Id.* In short, "the Due Process Clause of the Fifth Amendment guarantees [Petitioner] adequate notice of the intent to revoke his prior release, an individualized assessment of his flight risk and dangerousness, and an opportunity to respond at a hearing before his re-detention by ICE." *Bonilla Chicas*, 2026 WL 539475, at *11.

In *Yin v. Maldonado et al.*, No. 26-CV-0103-PKC (E.D. N.Y., Feb.4, 2026), District Judge Pamela Chen expounded on the issue as follows:

> Where, as here, the government's violation of Petitioner's constitutional rights "originated with [his] detention in the first instance [,] . . . a hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *See Tumba*, 2025 WL 3079014, at *7–8 (citations omitted); *E.A. T. -B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025) ("[A] post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the [wrongful detention] and cannot prevent an erroneous deprivation of liberty." (citation omitted)). Indeed, the bond hearing cannot rectify Petitioner's wrongful detention because custody hearings pursuant to 8 C.F.R. § 236.1(d) are "provided for the purpose of custody re-determination—a hearing held by an immigration judge after ICE makes its initial decision to detain." *Chipantiza-Sisalema v. Francis*, No. 25-CV-5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (emphasis added) (citing 8 C.F.R. § 236.1(d)).
>
> The implications of the Respondents' argument are startling. Were the Court to accept this contention, a petitioner could be wrongfully detained due to a lack of due process for weeks, months, even years, without any recourse for release. "The suggestion that government agents may sweep up any person they wish, for any reason, and hold that person . . . without consideration of dangerousness or flight risk" until, at some point, they are provided a hearing, "offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Chipantiza-Sisalema*, 2025 WL 1927931 at *3. Respondents may not shield their unlawful arrest of Petitioner by hiding behind an IJ's conclusory, two-line determination of flight risk—much less one that is at odds with DHS's decision to release Petitioner on his own recognizance on September 2, 2023, and Petitioner's documented attendance at immigration check-ins. *See Valdez v. Joyce*, No. 25-CV-4627 (GBD), 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025).

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[3] *See also, Fuenmayor Machado v. Bondi et al,* No. 5:26-cv-00264-OLG (W.D. Tex. May 11, 2026) (ECF # 14); *Vega Lores v. Warden, et al,* No. 5:26-cv-00019-OLG (W.D. Tex. Apr. 22, 2026) (ECF # 18); *Garcia-Cartaya v. Thompson et al,* No. 5:26-cv-00332-OLG (W.D. Tex. Apr. 15, 2026) (ECF # 14); *Mena Ramirez v. Blanche et al,* No. 5:26-cv-00318-OLG (W.D. Tex. Apr.15, 2026).

Id. at 5-6.

Petitioner respectfully argues that any bond hearing held at this point is constitutionally insufficient and an order for his immediate release from custody is the only remedy that law and justice requires in this case. The Supreme Court has long made clear that when a habeas corpus proceeding is successful, release from custody is an appropriate remedy. In *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973), the Court explained that "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." Where DHS detains a non-citizen and denies him process that is constitutionally and statutorily required, employing a statute that does not apply to that non-citizen - such as misclassifying an individual under § 1225(b) when the correct statute is § 1226(a) - the custody is unlawful *ab initio*. Under *Preiser*, courts are not required to substitute a new or alternative procedure, such as a bond hearing, for the constitutionally and statutorily appropriate remedy of release. Unlawful detention is a practice that should not be "cured" by providing a hearing at the whim of the jailer, particularly one that has demonstrated eager willingness to exceed detention authority.

Early on in the era of mass detention and the onslaught of habeas petitions, District Judge Orelia Merchant succinctly summarized the propriety of immediate release for non-citizens who have been denied process due to an erroneous assertion of expanded detention authority: "Given the deprivation of Petitioner's liberty, formerly granted and approved by Respondent, the absence of any deliberative process prior to or contemporaneous with the deprivation, and the statutory and constitutional rights implicated, a writ of habeas corpus is the only form of relief and the most appropriate remedy" and ordered Respondents to "immediately release Petitioner from custody". *J.U. v. Maldonado et al*, No. 25-cv-4836 (E.D.N.Y. Sept. 29, 2025) (ECF # 24). As noted by District Judge Nusrat J. Choudhury in *Rodriguez-Acurio v. Almodovar et al*, No. 2:25-cv-06065-NJC (E.D. N.Y. Nov. 28, 2025), "a post deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out," "ICE caused Rodriguez-Acurio to be placed in custody in violation of her rights to procedural due process. The proper remedy for that unlawful detention is release" and "Rodriguez-Acurio's detention was unlawful from its inception due to the failure to provide the required notice and opportunity to be heard". District Judge David Nuffere explained the problem as follows:

> At this time, "a bond hearing would not remedy the core constitutional violation at issue here." Mr. Diaz's detention was unlawful from its inception because Respondents detained him under the wrong statute and without any notice or opportunity to be heard. "In this situation a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity [for] relief because the detention without adequate pre-deprivation procedures has already been carried out.

Diaz Flores v. Leyva, et al, No. 4:26-cv-00060-DN (D. Utah, June 25, 2026) (ECF # 15) (citations omitted).

District courts across the country have found that when Respondents detain a noncitizen under § 1225(b) but the court determines the detention was statutorily unauthorized - because the individual should have been detained under § 1226(a) - the proper Habeas remedy is immediate release, not a bond hearing. *See, Martinez Pacheco v. Blanche, et al,* No. 3:26-cv-01981-RDM (M.D. Penn. July 23, 2026) (ECF # 7); *Torres Gonzalez v. Baltazar et al,* No. 26-cv-01972-NYW (D. Colo. July 16, 2026) (ECF # 12); *Velasquez v. Andrews et al,* No. 1:26-cv-04999-KES (E.D. Cal. July 2, 2026) (ECF # 10); *Mauricio Vasquez v. Blanche, et al,* No. 1:26-cv-01530-RP (W.D. Tex. Jul. 1, 2026) (ECF # 9); *Berdila v. Arnott, et al*, No. 0:26-cv-01030-KMM (W.D. Mo. June 30, 2026) (ECF # 8); *Renalson v. Warden*, No. 1:26-cv-00805-JPW (M.D. Penn. May 19, 2026) (ECF # 11); *Viloria Campos v. Bullock*, No. 2:26-cv-02318-TLP No. 2:26-cv-02318-TLP (W.D. Tenn. May 1, 2026); *Mendoza v. Noem et al*, No. 5:26-CV-728-JKP (W.D. Tex. Feb. 26, 2026) (ECF # 9); *Buitrago Murzi v. Noem et al*, No. 1:26-cv-00359-CNS (D. Colo. Feb. 12, 2026) (ECF # 14); *O.D. v. Bondi et al*, No. 0:26-cv-01030-KMM (D. Minn. Feb. 6, 2026) (ECF # 8); *Cruz-Reyes v. Bondi et al*, No. 5:26-cv-60-DS (S.D. Tex. Feb. 3, 2026) (ECF # 20); *Aparicio Quintero v. Olson et al*, No. 4:26-cv-00034-DJH (W.D. Kent. Mar. 3, 2026) (ECF # 10); *Moctezuma Macias v. Henkey, et al*, No. 1:25-cv-00741-BLW (D. Id. Jan. 2, 2026) (ECF # 4); *Salinas v. Woosley*, No. 25-CV-121 (W.D. Ky. Nov. 20, 2025); *Santiago v. Noem, et al*, No. 3:25-cv-00361-KC (W.D. Tex. Oct. 1, 2025) (ECF # 25). *See, also Rosado v. Figueroa et al*, No. 25-cv-2157 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem et al*, No. 25-cv-05632 (N.D. Cal. July 4, 2025); *Zumba v. Bondi et al*, No. 25-cv-14626 (D.N.J. Sept. 26, 2025); *Sampiao v. Hyde*, No. 25-cv-11981 (D. Mass. Sept. 9, 2025).

In this District, Courts have also been at the forefront of recognizing that immediate release is the only cure for an unconstitutional deprivation of liberty, and that a bond hearing is simply inadequate. Honorable Jinsook Ohta succinctly addresses the problem as follows:

> While § 1226 ordinarily provides for a bond hearing after detention, a pre-deprivation hearing is the more appropriate remedy for individuals like Petitioner who have already been subjected to unconstitutional detention. To prevent any further erroneous deprivation of his liberty interest and satisfy due process requirements, this hearing must take place prior to any detention.

Baltazar Raymundo v. Blanche et al, No. 3:26-cv-03984-JO-SBC (S.D. Cal. July 27, 2026) (Minute Order, ECF # 6).

CLAIMS FOR RELIEF

Count One

Mandatory Detention Based on Legal Error

Petitioner realleges and incorporates the preceding allegations. Petitioner is detained during the pendency of removal proceedings under 8 U.S.C. § 1226 despite being lawfully present in the country while his application for adjustment of status pursuant to the Cuban Adjustment Act, 8 U.S.C. § 1255(a) and 8 C.F.R. § 245.2(a)(4)(ii).

Notwithstanding these findings, the Respondents are requiring the mandatory detention of Petitioner based solely on an erroneous legal conclusion that Petitioner is subject to mandatory detention as an applicant for admission under 8 U.S.C. § 1225(b).

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

Count Two

Violation of the Fifth Amendment of the United States Constitution

Petitioner realleges and incorporates the preceding allegations. Petitioner is detained during the pendency of removal proceedings. Petitioner has a right under the Fifth Amendment of the United States Constitution and its guarantee of due process to an individualized determination of his custody while his status in the United States is determined by the immigration courts.

Failure to release Petitioner, or to release Petitioner on some other form of supervised release, or on bond is depriving Petitioner of his freedom and subjecting him to custody in

violation of the Fifth Amendment of the United States Constitution.

Where continued detention is based on a violation of constitutional protections, Habeas Corpus is the appropriate means to address the violation and requires the agency to provide an individualized custody determination or release Petitioner from custody altogether.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

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

c. Issue a Writ of Habeas Corpus directing Respondents to release Petitioner from custody; or in the alternative, to release Petitioner from custody subject to appropriate supervision;

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

e. Enjoin Respondents from transferring Petitioner out of this jurisdiction during the pendency of this Habeas petition and;

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

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

Respectfully submitted on this ____ day of August, 2026.

JOSUE HERNANDEZ RODRIGUEZ

By his attorney:

/s/ Roger H. Ponce
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Attorney for Petitioner

VERIFICATION

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

Executed this ____ day of August, 2026.

/s/ Roger H. Ponce
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