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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

YOLEINNIS MARTINEZ OCANA,

Petitioner,

v.

CASE NO.: 3:26-cv-2244

WARDEN, OF THE EL PASO SERVICE PROCESSING CENTER, acting in his official capacity; MARY DE ANDA-YBARRA, Field Office Director of the El Paso Field Office, acting in her official capacity; DAVID J. VENTURELLA, Senior Official Performing the Duties of the Director of the 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, Attorney General of the United States, acting in his official capacity; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; and DEPARTMENT OF HOMELAND SECURITY,

Respondents.
_____/

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

INTRODUCTION

1. YOLEINNIS MARTINEZ OCANA ("Petitioner") has been residing in the United States since at least February 28, 2021, when he entered the United States near Yuma, Arizona, and presented himself to Respondents' agents. He was detained on that date and subsequently

released from custody by Respondents on March 15, 2021, under an Order of Release on Recognizance. (*See* Ex. 1, Order of Release on Recognizance, I-220A). Petitioner filed a timely Form I-589 application for Asylum, Withholding of Removal and Protection under the Convention Against Torture with the Respondents on October 18, 2024, and subsequently timely filed a Form I-485 application for Adjustment of Status pursuant to the Cuban Adjustment Act ("CAA") on June 13, 2025. (*See* Ex. 2, Form I-589 and Form I-485 Receipts). Both applications are pending. He has resided in Florida since his release.

2. Petitioner was never placed in removal proceedings. On August 6, 2026, Petitioner appeared at an examination unit for a credible fear interview. Petitioner passed his credible fear interview. (*See* Ex. 3, Record of Determination) Petitioner was then served with a Notice to Appear ("NTA"). The NTA alleged that he was removable pursuant to § 212(a)(6)(A)(i) of the Immigration & Naturalization Act ("INA"). (*See* Ex. 4, Notice to Appear). Respondents then detained Petitioner. Since his release into the country on March 15, 2021, Petitioner has reported as instructed by Respondents to all appointments. Petitioner has never been accused, charged or convicted of any criminal activity. (*See* Ex. 5, Police Clearance from Albuquerque Police Department).

3. Petitioner, at this moment, is detained at the EL PASO SERVICE PROCESSING CENTER, 8915 Montana Ave., El Paso, Texas. (*See* Ex. 6, ICE Detainee Locator). His detention is the result of the Department of Homeland Security ("DHS") interpretation of their detention authority under 8 U.S.C. §§ 1225 and 1226. *See Buenrostro-Mendez v. Bondi,* 166 F.4th 494 (5th Cir. 2026). Thus, as will be explained *infra,* his ongoing detention is unlawful. Petitioner files this petition for Writ of Habeas Corpus under 28 U.S.C. § 2241.

4. Petitioner is a citizen and national of Cuba (*See* Ex. 7, Cuban passport) who entered

the United States on or about February 28, 2021, to escape repression in Cuba and apply for all relief allowing him to do so. Petitioner presented himself to agents of the Respondents upon arrival and was detained.

5. 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.

JURISDICTION

6. This Court has jurisdiction under 28 U.S.C. § 2241 to review the legality of Petitioner's continued detention. Habeas jurisdiction is available to noncitizens challenging the statutory basis of immigration detention. *See Madu*, 470 F.3d at 1366-68 (11th Cir. 2006). Petitioner is not challenging the initiation of removal proceedings or any discretionary decision regarding custody. Instead, he challenges only the government's legal conclusion that his detention is governed by 8 U.S.C. § 1225(b) rather than 8 U.S.C. § 1226(a). Such a "pure question of statutory interpretation" falls squarely within Habeas jurisdiction. *Id.* at 1367.

7. 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.

8. Finally, Section 1252(a)(2)(B)(ii) does not apply because Petitioner is not seeking review of a discretionary custody determination. 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

9. Venue lies in this District under 28 U.S.C. § 2241(a) and (d), because Petitioner is detained at the EL PASO SERVICE PROCESSING CENTER, 8915 Montana Ave., El Paso, Texas, which is within the Western District of Texas, El Paso Division. *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). WARDEN of the EL PASO SERVICE PROCESSING 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

10. Petitioner, YOLEINNIS MARTINEZ OCANA, is a native and citizen of Cuba, detained by Respondents at the EL PASO SERVICE PROCESSING CENTER, 8915 Montana Ave., El Paso, Texas, within the Western District of Texas. He brings this petition pursuant to 28 U.S.C. § 2241 to challenge the legality of his continued detention.

11. Respondent, WARDEN, in his official capacity as WARDEN of the EL PASO SERVICE PROCESSING CENTER, is the immediate custodian and the official responsible for Petitioner's physical detention.

12. Respondent, MARY DE ANDA-YBARRA, in her official capacity as Field Office

Director of the El Paso 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.

13. Respondent, DAVID J. VENTURELLA, 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.

14. Respondent, MARKWAYNE MULLIN, 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.

15. Respondent, TODD BLANCHE, in his official capacity as Attorney General of the United States, acting in his official capacity, presides over the Executive Office for Immigration Review, which oversees the Immigration Judge.

16. 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.

17. 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.

18. 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

19. Petitioner is a native and citizen of Cuba who entered the United States to escape repression in Cuba on or about February 28, 2021, and presented himself to Respondents' agents. Petitioner was issued a Form I-220A, Order of Release on Recognizance, on March 15, 2021. Petitioner has resided continuously in the United States since that time.

20. Petitioner was detained by Respondents on August 6, 2026, after he passed a credible fear interview.

21. Presently, Petitioner remains detained at the EL PASO SERVICE PROCESSING CENTER, 8915 Montana Ave., El Paso, Texas.

EXHAUSTION OF REMEDIES

22. 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. Exhaustion would be futile.

STATUTORY BACKGROUND

23. The Cuban Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (Nov. 2, 1966) codified at 8 U.S.C. § 1255(a), and entitled "Adjustment of status of nonimmigrant to that of person admitted for permanent residence" ("CAA") provides that a non-citizen who has been

paroled into the United States may be adjusted to that of a non-citizen lawfully admitted for permanent residence if he makes application for such adjustment, is eligible to receive an immigrant visa, and has no grounds of inadmissibility.

24. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, § 606, 110 Stat. 3009-, 3009-(pin) ("IIRIRA") included a section, entitled "SEC. 606. CONDITIONAL REPEAL OF CUBAN ADJUSTMENT ACT" that established that the CAA "is repealed effective only upon a determination by the President under section 203(c)(3) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Public Law 104–114) that a democratically elected government in Cuba is in power."

25. The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785 (Mar. 12, 1996) ("LIBERTAD Act"), which passed through the same Congress in the same year as IIRIRA included the following findings by Congress: "the totalitarian nature of the Castro regime has deprived the Cuban people of any peaceful means to improve their condition and has led thousands of Cuban citizens to risk or lose their lives in dangerous attempts to escape from Cuba to freedom" and "The Congress has historically and consistently manifested its solidarity and the solidarity of the American people with the democratic aspirations of the Cuban people."

26. 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).

27. 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. The only form of release available to these noncitizens is a parole.

28. 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" merely 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.

29. 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."

30. Under 1226(a), individuals detained pending removal proceedings are entitled to custody redeterminations before an Immigration 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. Unless they are issued a parole.

31. The Department of Justice's 1997 regulations implementing the Illegal Immigration

Reform and Immigrant Responsibility Act ("IIRIRA") 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).

32. 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(c) impose mandatory detention, while § 1226(a) allows discretionary release.

33. In *Hernandez Alvarez v. Warden,* the Eleventh Circuit squarely addressed the statutory interpretation issues related to 8 U.S.C. §§ 1225 and 1226. In a thorough and comprehensive review that incorporated analysis of the text and statutory structure of the INA, the long history of detention across our immigration laws and congressional intent in passing the various immigration laws that pre-existed the novel interpretation championed by Respondents, the Court left no room for the indiscriminate detention practices undertaken by Respondents:

> Simply put, the language that Congress has chosen to use does not grant to the Executive unfettered authority to detain, without the possibility of bond, every unadmitted alien present in the country. Nowhere in the text, structure, or history of the INA does that reading find steady footing. We are obliged to read the words found in the statute -- "an alien who is an applicant for admission" and "an alien seeking admission" -- in line with the meaning Congress has given them. When we do so, it appears to us that Congress has instead preserved the longstanding border-interior distinction for purposes of detention, a position it has taken for over a hundred years.

Hernandez Alvarez, p. 56. The Eleventh Circuit's decision directly rejects the statutory interpretation that IIRIRA required the mandatory detention of non-citizens who are apprehended in the interior of the country, as Petitioner was in this case.

34. 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

35. "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).

36. 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.

37. Mandatory detention without a bond hearing pending removal is impermissible once it exceeds a reasonable time limitation. *See Sopo,* 82 F.3d 1199; *Reid v. Donelan,* 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan,* 804 F.3d 601) (2nd Cir. 2015); *Rodriguez v. Robbins,* 804 F.3d 1060 (9th Cir. 2015); *Diop v. ICE/Homeland Sec.,* 656 F.3d 221 (3rd Cir. 2011); *Ly v. Hansen,* 351 F.3d 263 (6th Cir. 2003).

38. The Due Process Clause forbids such arbitrary detention of non-citizens for no purpose, particularly when the detention is likely to be prolonged and/or indefinite. *Zadvydas*, 533 U.S. at 690; *Cirrus Rojas v. Olson et al*, No. 25-3127 (7th Cir., July 30, 2026), p. 37-8.

39. "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). The Supreme Court has held that the general rule is that the opportunity to be heard precedes deprivation. *See, United States v. James Daniel Good Real Property*, 510 U.S. 43, 53 (1993);

Fuentes v. Shevin, 407 U.S. 67 (1972); and *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971).

LEGAL ARGUMENT

1. 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 Third Circuit Court of Appeals, in *Buele Morocho v. Warden*, Nos. 26-1150 and 26-1454 (3rd Cir., Aug. 28, 2026) unequivocally and directly held that Respondents have been violating the Fifth Amendment by denying bond hearings to non-citizens arrested in the interior of the country. "We also conclude that Petitioner's detention without bond hearings violates the Due Process Clause." *Id.* at p. 38. The Court engaged in an analysis of the factors found in *Mathews v. Diaz*, 426 U.S. 67 (1976), and found that (1) mandatory detention implicates a detained non-citizen's constitutionally protected interest in avoiding physical

[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).

restraint; (2) the absence of an opportunity for a neutral decisionmaker to assess whether the detained non-citizen is dangerous, or a flight risk presents a high risk of erroneously depriving a detained non-citizen of this liberty interest; and (3) the Government's legitimate interest in preventing the release of dangerous noncitizens and those who might fail to appear at future hearings, does not outweigh the first two factors if there is no issue that providing a bond hearing would be unduly burdensome. *Id.*, at pp. 40-2.

Additionally, the Seventh Circuit issued its opinion in *Cirrus Rojas v. Olson et al*, No. 25-3127 (7th Cir., July 30, 2026), rejecting the Respondents' mass detention campaign on statutory interpretation, but also apparently feeling 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).

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. Petitioner is entitled to an individualized determination of his custody status under the Fifth Amendment to the United States Constitution.

The legal arguments supporting Petitioner's claims under the Fifth Amendment have been expressly and thoughtfully set out by the Honorable Kathleen Cardone in her Opinion and Order in *Erazo Rojas v. Noem et. al.*, EP-25-CV-443-KC (WD. Tx. Oct. 30, 2025), which will be repeated here with absolute agreement.

To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976)." *Martinez v. Noem ("Martinez II")*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). Those factors are: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. "The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time." *M.S.L. v. Bostock*, No. 25-cv-1204, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025) (citing *Mathews*,

424 U.S. at 348).

a. Private Interest

As to the first element, "'[t]he interest in being free from physical detention' is 'the most elemental of liberty interests'." *Martinez II*, 2025 WL 2598379, at *2 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Once released from immigration custody, noncitizens acquire "a protectable liberty interest in remaining out of custody on bond." *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025, WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025), at *10–11 (quoting *Diaz v. Kaiser*, No. 25-cv-5071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025)); accord *M.S.L.*, 2025 WL 2430267, at *8 ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.") (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).

Because he was released from immigration custody and spent almost five-and-a-half years at liberty in the United States, Petitioner possesses a strong interest in his continued freedom from detention.

b. Risk of Erroneous Deprivation

Under the second *Mathews* factor, the Court considers "whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Martinez II*, 2025 WL 2598379, at *3 (quoting *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. May 21, 2025)). Regardless of whether Petitioner has previously had a custody determination hearing, such a request would be futile because in recent cases, IJs have "declined to exercise jurisdiction, finding that [the petitioner was] subject to mandatory detention under § 1225." *Lopez-Arevelo*, 2025 WL

2691828, at *11 (quoting *Espinoza v. Kaiser*, No. 25-cv-1101, 2025 WL 2581185, at *11 (E.D. Cal. Sept. 5, 2025)). Thus, there is a high risk that Petitioner will continue to be erroneously deprived of his liberty. In fact, Chief Immigration Judge Teresa L. Riley issued nationwide "guidance" effectively instructing Immigration Judgess across the country to stay the course of violating the rights of Bond Eligible Class Members. And the Immigration Judges complied. (*See Maldonado Bautista, et. al. v. Santacruz, et. al.* 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 2026)).

Respondents may argue that the process afforded to Petitioner in his removal proceedings is sufficient due process. Those procedures, however, relate to Petitioner's removal and not his detention, and they do not ameliorate the risk that he will be erroneously deprived of his liberty while his removability is assessed. Any appeal to the humanitarian parole process, which is "sparsely granted in only the most extenuating circumstances," does not provide a constitutionally adequate vehicle to seek his release. *Id.* at 12. Deficiencies in the humanitarian parole process, including the lack of a neutral arbiter, a statement of reasons, or an appeal process, create a high risk that a noncitizen will be erroneously deprived of their liberty. *See Santiago*, 2025 WL 2792588, at *11.

In terms of available alternatives and their probable benefits, agency decisionmakers regularly "conduct[] individualized custody determinations . . . consider[ing] flight risk and dangerousness." *Velesaca v. Decker*, 458 F. Supp. 3d 224, 242 (S.D.N.Y. 2020) (citation omitted); *see also* 8 C.F.R. §§ 236.1(c)(8), 1003.19(h)(3). Indeed, under "decades of DHS's own practices" prior to 2025, noncitizens "who are present without having been admitted or paroled" just like Petitioner, received bond hearings. *Choglio Chafla v. Scott*, Nos. 25-cv-437, -438, -439, 2025 WL 2688541, at *8 (D. Me. Sept. 22, 2025) (citations omitted). This is precisely the

type of proceeding that would give Petitioner an opportunity to be heard and to receive a meaningful assessment of whether he is dangerous or likely to abscond, and it would greatly reduce the risk of an erroneous deprivation of his liberty. Therefore, the second *Mathews* factor weighs in favor of Petitioner.

c. Government's Interest

Respondents do not have an interest in detaining Petitioner without a bond, other than perhaps their general interest in enforcing the INA as they interpret it. But again, assuming Respondents' interpretation of the statute is correct, Petitioner's constitutional interest in his liberty exists above and apart from the INA. *See A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) ("[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.") (citation omitted). Certainly, the Government has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community. But the decision to release Petitioner five-and-a-half years ago before he was even placed in removal proceedings, in and of itself, "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd 905 F.3d 1137 (9th Cir. 2018). While there is no evidence in the record indicating that Petitioner would be a flight risk or a danger to the community, if any such concerns exist, they would be squarely addressed through a bond hearing. *See Martinez II*, 2025 WL 2598379, at *4. Thus, the third *Matthews* factor also weighs in favor of Petitioner.

Since all *Mathews* factors support Petitioner's position, the Court should find that his detention without an individualized assessment of flight risk and dangerousness deprives him of his constitutional right to procedural due process under the Fifth Amendment of the United States Constitution. Thus, he is entitled to a bond hearing. *See, e.g., Lopez-Arevelo*, 2025 WL

2691828, at *13.

In *Hassen v. Noem, et. al.*, No. 3:26-cv-00048-DB (W.D. Texas Feb. 9, 2026), Honorable David Briones explained how the government can create a liberty interest in the immigration context that is not dependent on, and does not arise from, the specific statute that Respondents rely on to justify continued, prolonged detention without an individualized custody determination. Senior Judge Briones was faced with the case in which an Ethiopian national entered the United States in 2024 and presented himself near a port of entry and declared his fear of returning to Ethiopia. He was initially placed in expedited removal proceedings and detained, but following a credible fear interview, his expedited removal order was vacated, and he was placed in full removal proceedings. He was then issued a Notice to Appear charging him as an alien present in the United States who has not been admitted or paroled and paroled into the U.S. for a period of one year. Despite fully complying with all conditions of release imposed by ICE for over a year, he was arrested by ICE officials while appearing for a scheduled appointment on January 9, 2026.

The Order entered by Senior Judge Briones makes clear that the statutory designations are meaningless. The Court dismisses an attempt to distinguish the situation from an earlier decision (*Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025) by arguing Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1), rather than the "catchall provision" contained in 8 U.S.C. § 1225(b)(2). The Court similarly rejected a distinction based on the difference between parole and release on recognizance. Instead, the Court based its decision squarely on due process considerations:

> The Court reiterates its original holding that noncitizens who have "established connections" in the United States by virtue of living in the country for a substantial period acquire a liberty interest in being free from government detention without due process of law. *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020).

> Because the Government released Petitioner and permitted him to live in the United States for over a year, they cannot revoke that liberty without an individualized determination of the need to do so (emphasis added).[2]

Petitioner in the instant case, like Petitioner in *Hassen v. Noem*, has been allowed to live in the United States for more than a year and therefore has also acquired a liberty interest. Unlike the Petitioner in Hassan v. Noem, who was only detained for approximately one month before his Petition for Habeas Corpus was granted, Petitioner in the instant case has now been detained for months, compounding the due process violation.

3. In addition to the appropriateness of a bond hearing when a non-citizen is detained within the country, the Court must also consider whether a post-deprivation bond hearing in this case would not pass constitutional muster and require immediate release instead.

Without being given access to any process at all, Respondents stripped Petitioner of his liberty and then denied him any process by which to challenge this deprivation of his most fundamental right. Respondents have denied and/or blocked the efforts of all non-citizens detained in this Circuit. A bond hearing that occurs after this deprivation of liberty simply cannot satisfy the Fifth Amendment weeks or months after the deprivation occurred.

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

[2] This analysis is also not disturbed in any way by the Fifth Circuit's opinion in *Buenrostro-Mendez v. Bondi*, --- F.4th ----, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). As noted by Senior Judge Briones, "This Court acknowledges the Fifth Circuit's precedential decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. 2026) issued on February 6, 2026, determining Respondents' statutory interpretation of Section 1225(b)'s mandatory detention provision is correct. However, *Buenrosto-Mendez* does not change this case's outcome on procedural due process grounds. In its original due process analysis, this Court accepted without deciding Respondents' interpretation was true. *See, e.g., Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025) ("The parties argue about Respondents' novel interpretation regarding mandatory detention under Section 1225(b) and whether Petitioner falls within it. Even assuming without deciding Respondent's reading is correct, the Court will not address these arguments because the Court finds Petitioner is entitled to procedural due process in his as-applied challenge.").

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, months 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 may 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.[3]

[3] There are references in the case law that has developed concerning post-deprivation cases that speak of exigency as a justification, such as, for example, the need to seize evidence before it is disposed of or otherwise disappears. However, this was not argued by Respondents, and even if were argued and accepted that there was some small risk that if Petitioner knew he were about to detained, he could have somehow slipped away, there remains no

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 (W.D. Tex. May 11, 2026) (ECF # 15 at 4-5)[4], 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

justification for not shortly thereafter giving him the bond hearing that Respondents now recognize as his right.

[4] *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).

> 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).

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, but the court determines the detention was unauthorized, the proper 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).

4. Detaining Petitioner runs afoul of the Constitution because it will serve no purpose due to the speculative relief being sought by Respondents that will result in prolonged detention.

As noted *supra*, in *Cirrus Rojas* the Seventh Circuit re-enforced the longstanding principle that the Constitution will not countenance detention without a purpose, even of non-citizens. This is not the announcement of a novel concept in the law. It is firmly based in Supreme Court precedent, *see Zadyvdas*, at 690 ("detention must bear a reasonable relation to its purpose; when it does not, it violates due process"). *See also Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (The government has legitimate interests in protecting the public and in ensuring that non-citizens in removal proceedings appear for hearings, but any detention

incidental to removal must "bear[] [a] reasonable relation to [its] purpose," citing *Zadyvdas* and quoting *Jackson v. Indiana*, 406 U.S. 715 (1972); *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) (recognizing that the Government's paramount interest is in "minimizing the enormous impact of incarceration in cases where it serves no purpose."

In addition to pointing out that Petitioner fits squarely within the admonition in *Cirrus Rojas* against rounding up persons who have already been found not to be dangers or flight risks, which is exactly what Respondents determined when they released him into the United States in 2021, it must also be emphasized that as a Cuban national, Petitioner's detention is very likely to be both extended and purposeless. Respondent has applied for Asylum, Withholding of Removal and Protection under the Convention Against Torture as well as adjustment of status under the Cuban Adjustment Act.[5]

The simple truth is that the relief sought by the Respondents regarding the Petitioner – his removal from the country – is at best speculative if not highly unlikely and almost guaranteed to take an extended period of time that could easily amount to years. Even if successful at the agency and/or trial level, and in an appeal to the BIA, the chances of the actual removal of a Cuban national to Cuba remains extremely remote. It literally approaches the impossible, based on the inability to accomplish it in similar cases to date. According to data collected by the Center for Engagement and Advocacy in the Americas (CEDA), of the approx. 610,000 Cuban nationals in the United States who are on 1-220A release or parole, approx. 1% have been returned to Cuba since January of 2025. Respondents do not publish the numbers of Cuban

[5] Petitioner's application for adjustment of status is now clearly viable regardless of the form that Respondents chjose to provide him with upon his release in 2021. In the case of *Labrada-Hechavarria v. US Attorney General*, Nos. 23-13664, 24-10645 (11th Cir. 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 that it did not.

nationals that have been removed to third countries, but it is most assuredly much lower. Of course, Petitioner does not have access to the data and records that Respondents do have possession of, and Respondents can provide whatever information they have so that the Court can have the most accurate and up-to-date information. However, if no such information exists, then the relief being sought by the Government would be an outlier that departs from decades of agency practice and has been virtually impossible for it to accomplish to date. The possibility of it occurring barely merits even being categorized as "speculative".

5. Petitioner has been lawfully present in the United States since his initial release as a non-citizen statutorily eligible to adjust his status pursuant to the Cuban Adjustment Act, and it is unfathomable that when Congress passed IIRIRA, it intended to show solidarity with Cuban nationals by requiring those seeking freedom to sit in jail while their return to Cuba was expedited.

Eligibility for the filing of an 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 the ability to apply for adjustment of status - 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 Cuban national 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.[6]

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 they seek adjustment of status under the CAA. 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.

As noted *supra*, when passing IIRIRA, Congress inserted a provision that prohibited repeal of the CAA except in the circumstance where "a determination by the President under section 203(c)(3) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Public Law 104–114) that a democratically elected government in Cuba is in power." The reference to the LIBERTAD Act is important because it included Congressional findings that are quoted in full above and clearly expressed Congressional intent to stand in solidarity with Cuban nationals who fled the island seeking freedom. Respondents' argument that this Congress intended these Cuban nationals to be mandatorily detained pending expedited removal back to Cuba is unsupported anywhere in IIRIRA, the CAA or the LIBERTAD Acts. In fact, it is directly contradicted by the express language quoted *supra*, as well as the practice of Respondents themselves for the overwhelmingly majority of the six decades since the CAA was

[6] In addition to his application for Adjustment of Status, Petitioner timely filed an I-589 application for Asylum, Withholding of Removal and Protection under the Convention Against Torture with USCIS. In the receipt provided to Petitioner by Respondents upon filing, he was explicitly promised that "[y]ou may remain in the U.S. until your asylum application is decided." *See, Cardin Alvarez v. Rivas, et. al.* No. 2:25-cv-02943-GMS (D. Ariz., October 7, 2025) (ECF # 26, report and recommendation; adopted in part ECF # 28) ("Cardin Alvarez and others similarly situated were invited to this country, if in no other fashion than by the passage of the Cuban Adjustment Act. Cardin Alvarez was inspected at the border, expressed a credible fear, and was conditionally paroled into the United States. He was told by the United States government, when it acknowledged receipt of his application for asylum, '*You may remain in the U.S. until your asylum application is decided.*'" (emphasis in original).

passed (excepting January 2025 to the present): Cuban nationals who made it to the border were allowed entry and the opportunity to seek adjustment of status and/or asylum. Though recent changes in Respondents' policy may no longer encourage it, absent a repeal of the CAA, the presence of Cuban nationals seeking refuge in the United Sates has always been and will remain authorized. Additionally, Respondents reliance on 8 U.S.C. § 1225 for detainment purposes and the Fifth Circuit Court of Appeals decision in *Buenrostro-Mendez* provide a clear indication that Petitioner's Form I-220A release on recognizance is the legal equivalent of a parole. Thereby making Petitioner unquestionably eligible for CAA.

Where Congress has granted an individual 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 someone 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), the petitioner, a native and citizen of Cuba like Petitioner in the instant case, 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 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.

The District Court in *Concha-Gonzales* was not persuaded that a noncitizen filing a Form I-485 application under the CAA had not received authorization to remain in the United States. Instead, the Court believed that its review of the INA's structure, including the CAA, available case law or other authorities and Congressional intent supported did in fact receive 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 Cir. 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.

Petitioner asserts that the resolution of these issues will require the same level of statutory interpretation and analysis that has been prompted by the mandatory detention efforts undertaken by Respondents, and that such analysis will result in the recognition that Congress never intended to repeal the CAA with IIRIRA; instead, it intended to prevent it being repealed by the issuance of a different entry form by Respondents.

CLAIMS FOR RELIEF

Count One

Violation of the Fifth Amendment of the United States Constitution

Petitioner realleges and incorporates the preceding allegations. Petitioner was deprived of his liberty during the pendency of removal proceedings in violation of the Fifth Amendment of

the United States Constitution and its guarantee of due process that required a constitutionally sufficient, individualized determination of his custody status prior to, contemporaneously with, or shortly thereafter the deprivation of his liberty, which right was violated by the Respondents.

Where continued detention is based on a violation of constitutional protections, habeas corpus is the appropriate means to address the violation and if the violation is found by the Court, immediate release is the proper remedy.

Count Two

Violation of the Fifth Amendment of the United States Constitution

Petitioner realleges and incorporates the preceding allegations. Petitioner was deprived of his liberty during the pendency of removal proceedings in violation of the Fifth Amendment of the United States Constitution and its guarantee of due process protection from prolonged detention without purpose, which guarantees are being violated by the Respondents.

Where continued detention is based on a violation of constitutional protections, habeas corpus is the appropriate means to address the violation and if the violation is found by the Court, immediate release is the proper remedy.

Count Three

Denial of Custody Redetermination Based on Legal Error

Petitioner realleges and incorporates the preceding allegations. Petitioner is detained during the pendency of applications authorized by the Congress that create lawful presence in the United States and is not subject to any statutory provision authorizing custody while the applications are pending. Notwithstanding this lawful presence, he has been denied bond by the Respondents.

Where continued detention is based solely on misapplication of the governing statutes,

habeas corpus is the appropriate means to correct the classification and requires the agency to conduct a custody redetermination or release Petitioner from custody. A custody redetermination hearing should place the burden on Respondents by clear and convincing evidence that Petitioner is a flight risk or a danger to the community.

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 and;

e. Enjoin Respondents from transferring Petitioner out of this District pending the resolution 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.

YOLEINNIS MARTINEZ OCANA

By his attorney:

/s/ Angela Alvero
Angela Alvero (SBN 864404)

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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/ Angela Alvero
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