

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

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FREDERICO ABREU,

A [REDACTED]

Civil Action No. 25-20821-CIV-MD

*Petitioner.*

v.

ZOELLE RIVERA, in her official capacity as  
ASSISTANT FIELD OFFICER DIRECTOR  
KROME PROCESSING CENTER  
PAM BONDI, in her official capacity as  
ATTORNEY GENERAL;  
KRISTI NOEM, in her official capacity as  
SECRETARY OF THE DEPARTMENT OF  
HOMELAND SECURITY;  
CALEB VITELLO, in his official capacity as  
DIRECTOR OF UNITED STATES  
IMMIGRATION AND  
CUSTOMS ENFORCEMENT

*Respondents.*

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**PETITIONER FREDERICO ABREU'S REPLY TO RESPONDENTS' RESPONSE TO  
PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

Petitioner Frederico Abreu replies to Respondents' response to his Petition for Writ of Habeas Corpus and in support states:

**ADDITIONAL FACTS RELEVANT TO REPLY**

Petitioner is a citizen of the Federated Republic of Brazil. On or about March of 2006, he obtained his Legal Permanent Residency Status. Mr. Abreu is also HIV Positive, and suffers from a heart condition, respiratory complications, and consistent seizures.

Mr. Abreu permitted to see a practicing nurse on February 14, 2025, six days after being released from the hospital due to severe chest pains [REDACTED]

[REDACTED]. See Respondent's Exhibit "V" of Response to Habeas Petition. However,

he did not receive a full medical evaluation by a practicing physician until February 26, 2025, nineteen days after being released from the hospital due to severe chest pains [REDACTED]

[REDACTED]. See Respondent's Exhibit "V" of Response to Habeas Petition.

Upon being fully evaluated by an actual medical doctor nineteen days after being released from the hospital, Mr. Abreu was diagnosed [REDACTED]

[REDACTED]. See Respondent's Exhibit "V" of Response to Habeas Petition. He currently is only receiving medical treatment for his [REDACTED]. Nevertheless, Mr. Abreu has been denied mental health treatment [REDACTED]

During the same evaluation, it was discovered that Mr. Abreu fractured his arm when falling during a seizure on February 8, 2025. As such, he was denied medical care for his fractured arm for a total of nineteen days after being released from the hospital. *See* Respondent's Exhibit "V" of Response to Habeas Petition.

On or about September of 2013, Mr. Abreu received a Notice to Appear (2013 NTA) before the Immigration Judge pursuant to his criminal convictions in California. *See* 2013 NTA attached as Exhibit "A".<sup>1</sup> The 2013 NTA charged Mr. Abreu with removability pursuant to Section 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i), of the INA as an alien convicted of a controlled

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<sup>1</sup> Petitioner seeks to have the Court take Judicial Notice of certain official government documents and communication pursuant to Fed. R. Evid. 201(b)(1)&(2). Judicial Notice is appropriate because (1) they are not subject to reasonable dispute; (2) they can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

substance violation and Section 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), of the INA as an alien convicted of an aggravated felony.

Respondent's Response to Petitioner's Habeas attaches a different and incomplete NTA as its Exhibit "A" and an incomplete affidavit by Deportation Officer Eric Porrata as its Exhibit "B" which asserts that Mr. Abreu was originally charged with removability solely pursuant to Section 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i), of the INA as an alien convicted of a controlled substance violation.

During the pendency of Mr. Abreu's immigration proceedings, he received an immigration bond in the amount of \$20,000 granted by the Immigration Court in Los Angeles, California on March 31, 2014 while considering the charges in the 2013 NTA which included Section 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), of the INA as an alien convicted of an aggravated felony. As such, the Immigration Judge considered and rejected Mr. Abreu's mandatory detention under Section 236(c)(1)(B), 8 U.S.C. § 1226(c)(1)(B), of the INA as an alien convicted of an aggravated felony.

On or about December of 2020, Mr. Abreu was released from federal custody and placed on Order of Release on Recognizance (OREC) by ICE. He has continued to appear at yearly check-ins with ICE under the Alternative to Detention (ATD) program. Per DHS ICE:

[This] program exists to ensure compliance with release conditions and provides important case management services for non-detained aliens. ATD consists of the Intensive Supervision Appearance Program (ISAP). The ATD-ISAP program utilizes case management and technology tools to support aliens' compliance with release conditions while on ICE's non-detained docket. ATD-ISAP also increases court appearance rates.<sup>2</sup>

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<sup>2</sup> <https://www.ice.dhs.gov/features/atd> (last visited on 03/27/25).

Stating it plainly, the ICE ATD program is to ensure that aliens not detained are monitored through GPS and regularly check-in with ICE to ensure they do not abscond and/or become a danger to society.

After his placement on OREC by ICE, Mr. Abreu began to work with Poverello, a non-profit located in Wilton Manors, where he assists with organizing food banks for the community; organizes and participates in support groups for HIV Positive participants; and provides those without the proper financial capabilities to purchase HIV medications with access to affordable medications. *See Email from Senior United States Probation Officer Jennifer Darden dated February 11, 2025 and Letter from Poverello attached as Exhibit “B”.*

In addition to his work with Poverello, Mr. Abreu is also an active participant in two Narcotics Anonymous (NA) groups. He is an active sponsor for two participants within one of the groups whereas they would have direct access to Mr. Abreu, prior to his ICE Detention. Mr. Abreu is an active speaker for the second NA group, which is an online group where Respondent actively tells his story of becoming sober for the past nine and half years.

On April 12, 2022, over two years after COVID-19, Officer Juan F. Gonzalez, as the Supervisory Detention and Deportation Officer for ICE Non Detained Unit, terminated Mr. Abreu from ATD and transferred to his case fully to non-detained, whereas he would no longer be monitored through GPS by ICE. *See Email Correspondence with undersigned as counsel for Mr. Abreu attached as Exhibit “C”.*

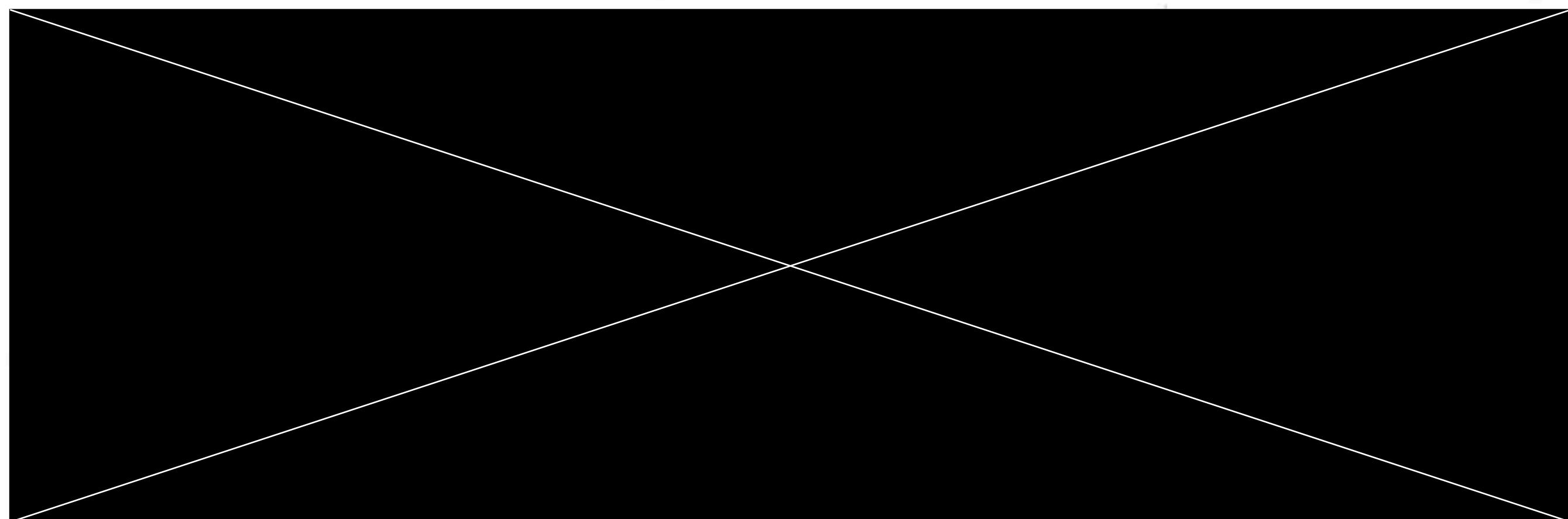
The method of determining whether an alien may be removed from ATD and placed solely onto Non Detained Unit is whether the alien poses a risk of becoming an absconder; a risk of not appearing for his immigration proceedings; and/or a risk of becoming a danger to the community.

In 2022, Officer Juan F. Gonzalez, as the Supervisory Detention and Deportation Officer for ICE Non Detained Unit, found that Mr. Abreu did not pose any of these risks.

As Respondent correctly states in its Response to Petitioner's Brief, Mr. Abreu's Individual Immigration Hearing at the Miami Immigration Court was rescheduled for February 4, 2026 by undersigned's request. This request was made via undersigned's Motion to Continue Individual Hearing, which stated in part:

[U]ndersigned is a solo practitioner whereas Aequibelli Law only has undersigned as its sole licensed attorney. Undersigned's son has recently been accepted to join the U.S. Coast Guard and is currently completing his eight (8) week bootcamp in Cape May, New Jersey. Undersigned's son is scheduled to graduate from bootcamp and receive his active-duty post, where he may be required to move from Florida to anywhere within the United States, between August 2<sup>nd</sup> to August 18<sup>th</sup> of 2024. Undersigned will not have the exact information as it relates to her son's U.S. Coast Guard Bootcamp graduation and where he will be stationed along with when he must report to his station until July 19<sup>th</sup> as the earliest date for said information. The lack of current knowledge as to the exact graduation date along with the date(s)/placement of undersigned's son's active-duty post ensures that undersigned may not be in the State of Florida on August 14, 2024 for Respondent's Individual Hearing.

*See Motion to Continue Individual Hearing filed by undersigned as counsel for Mr. Abreu attached as Exhibit "D".*



*See Motion to Continue Individual Hearing filed by undersigned as counsel for Mr. Abreu attached as Exhibit "D".*

[REDACTED] On February 8, 2025, ICE

Officials arrested Mr. Abreu at his home without a warrant. ICE Officials knocked on the door of Mr. Abreu's home without identifying themselves but stated [REDACTED]

[REDACTED]. Upon a family friend opening the door, ICE Officials rushed into the home and entered the kitchen where Mr. Abreu was sitting with his mother-in-law [REDACTED]  
[REDACTED].

Upon seeing Mr. Abreu, ICE Officials arrested him in his kitchen without presenting an arrest warrant. Mr. Abreu's family friend immediately contacted undersigned and undersigned requested to be placed on speaker phone. Undersigned asked where Mr. Abreu would be processed while on speaker phone and an ICE Official stated Mr. Abreu would be processed at the ICE Miramar Field Office.

Respondent's Response to Petitioner's Habeas attaches an Arrest Warrant as its Exhibit "P" and Notice of Custody Determination as its Exhibit "R" which appear to have been completed after the actual arrest of Mr. Abreu and misstate that the arrest took place "while conducting surveillance near her domicile ... [a] vehicle stop was executed [sic] ERO/HIS officers identified themselves." Respondent's Response to Petitioner's Habeas also attaches an affidavit by Deportation Officer Eric Porrata as its Exhibit "B" attesting to the arrest of Mr. Abreu. However, Deportation Officer Eric Porrata was not present at the time of this arrest.

Respondent's Response to Petitioner's Habeas attaches a superseding NTA dated March 13, 2025 (2025 NTA) as its Exhibit "U" which charges Mr. Abreu with removability pursuant to Section 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i), of the INA as an alien convicted of a controlled substance violation and Section 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), of the INA as an alien convicted of an aggravated felony. These charges derived from his state criminal

conviction in California where he received three (3) years of probation and two hundred and twenty-six (226) days in Los Angeles County Jail. The charges described in the 2025 NTA are the exact same charges in the 2013 NTA.

On March 30, 2025, the Immigration Judge held a bond hearing and denied bond, finding the Mr. Abreu was subject to mandatory detention and only DHS could facilitate his release.

## **MEMORANDUM**

### **I. THE PRE-ORDER DETENTION IS UNLAWFUL**

#### **A. Mr. Abreu's Detention is Unlawful and Does Violate Due Process Because it is Contrary to Established Legal Precedent.**

Respondent argues that Abreu is lawfully detained pursuant to 8 U.S.C. § 1226(c). Section 1226(c) authorizes the detention of aliens charged with removability on certain grounds. *See Demore v. Kim*, 538 U.S. 510, 523 (2003):

Congress enacted section 1226(c) as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Div. C, Pub. L. No. 104-208, § 303(b), 110 Stat. 3009-586 (Sept. 30, 1996), in response to evidence that the immigration authorities were unable to remove many criminal aliens because they failed to appear for removal hearings, and also that criminal aliens released on bond often committed additional crimes before they could be removed.

*Demore*, 538 U.S. at 518-20. The record does not support Congress’ fear of flight or re-offense here.

Mr. Abreu has repeatedly appeared before the government in form of his ICE Check-ins and at every hearing for his immigration proceedings from the date he was released from custody on December of 2020 to his recent and illegal detention by DHS on February 8, 2025. Notably, on April 12, 2022, Officer Juan F. Gonzalez, as the Supervisory Detention and Deportation Officer for ICE Non-Detained Unit, terminated Mr. Abreu from ATD and transferred his case to non-detained status. As a result, Mr. Abreu would no longer be monitored through GPS by ICE. *See*

Email Correspondence with undersigned as counsel for Mr. Abreu attached as Exhibit “B”. DHS made this decision based on a finding that Mr. Abreu did not pose a flight risk or a danger to the community. There is no evidence in the intervening period to suggest otherwise.

Contrary to Respondent’s argument, DE-27 at 6, *Sopo v. U.S. Attorney General*, 890 F.3d 952 (11th Cir. 2018), does not support detention. In *Sopo*, the Eleventh Circuit explained that:

as a matter of constitutional avoidance, we readily join other circuits in holding that § 1226(c) “implicitly authorizes detention for a reasonable amount of time, after which ***the authorities must make an individualized inquiry into whether detention is still necessary to fulfill the statute’s purposes of ensuring that an alien attends removal proceedings and that his release will not pose a danger to the community.***”

*Sopo*, 825 F.3d at 1213-14. (internal citation omitted)(emphasis added). A proper individualized inquiry would support Mr. Abreu’s release. The government reviewed Mr. Abreu’s risk of failing to attend his removal proceedings and whether he posed a danger to society three times by two different agencies. In all three instances, Mr. Abreu was found to not be at risk of absconding and to not pose a danger to the community.

Mr. Abreu received an immigration bond in the amount of \$20,000 on March 31, 2014 while the Immigration Court considered the charges in the 2013 NTA which cited to section 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), of the INA as an alien convicted of an aggravated felony. The Immigration Judge considered and rejected Mr. Abreu’s mandatory detention under Section 236(c)(1)(B), 8 U.S.C. § 1226(c)(1)(B), of the INA as an alien convicted of an aggravated felony.

On December of 2020, Mr. Abreu was released from federal custody and placed on Order of Release on Recognizance (OREC) by ICE. And on April 12, 2022, ICE terminated Mr. Abreu from ATD and transferred his case to non-detained status where he would no longer be monitored through GPS by ICE.

Mr. Abreu is not a flight risk and/or at risk of not appearing for his immigration proceedings as he has consistently appeared at every immigration hearing and/or his ICE OREC Appointments since his release on or about December of 2020. Further, Mr. Abreu's release is necessary so that

[REDACTED] . Mr. Abreu has continued be compliant with his federal probation and continues to support his community through his work with Poverello, a non-profit located in Wilton Manors. Finally, Mr. Abreu has been sober for the past nine and half years and is also an active participant in two Narcotics Anonymous (NA) groups.

On March 30, 2025, the Immigration Judge held a bond hearing. During this hearing, the Immigration Judge recognized that Mr. Abreu would be eligible upon an individualized inquiry but stated that only DHS could make that determination. As of this filing, no determination of release has been presented to Abreu by DHS and/or ICE despite his pending ATD requested being submitted on February 10, 2025.

For these reasons, Mr. Abreu's continued detention by Respondents is unlawful and in violation of due process of the law.

**B. Mr. Abreu's Detention is Unlawful and Does Violate the Immigration and Nationality Act.**

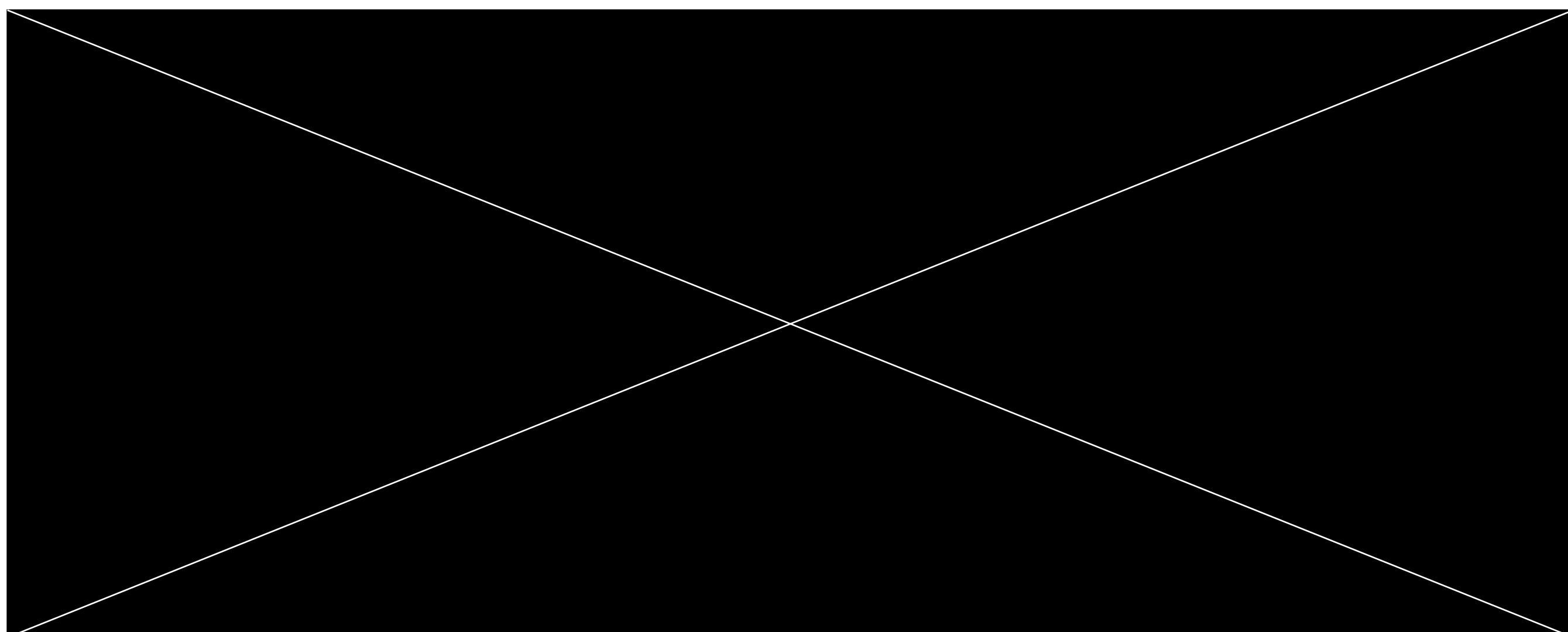
The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion." 5 U.S.C. § 706(2)(A). In *Motor Vehicle Mfrs. Ass'n v. State Farm*, the Supreme Court emphasized that an agency acts arbitrarily and capriciously when it entirely fails to consider an important aspect of the problem or offers an explanation that runs counter to the evidence before the agency. 463 U.S. 29, 43 (1983). Respondent's actions are arbitrary and capricious.

Mr. Abreu's apprehension and continued detention is arbitrary and capricious because it departs from the agency's existing policies without providing a reasoned explanation for departing from these policies. Abreu is neither a flight risk, nor a danger to the community. Notably, Respondent's Response attaches a redacted document as its Exhibit "D" where Mr. Abreu is repeatedly labeled as historically holding "No Priority" to government officials from 2013 until his detention in 2025. *See* Respondent's Exhibit "D" of Response to Habeas Petition. Despite these findings, the government has departed from its existing policies without providing a reasoned explanation for departing from these policies when detaining Mr. Abreu.

Respondent recognizes that under 8 U.S.C. § 1226(c)(4):

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.

DE-27 at 5-6.



As such, Mr. Abreu [REDACTED]

[REDACTED] who does not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. 8 U.S.C. § 1226(c)(4).

Mr. Abreu's current physical and mental health, [REDACTED]

[REDACTED] has continued to deteriorate while he has been detained. He still has not received mental health treatment [REDACTED]

[REDACTED].

As noted above, no determination of release has been presented to Mr. Abreu by DHS and/or ICE despite his pending ATD request being submitted on February 10, 2025. For these reasons, Mr. Abreu's continued detention by Respondents is unlawful and in violation of the Immigration and Nationality Act.

### **CONCLUSION**

Based on the foregoing points and authorities, Petitioner Frederico Abreu requests that this Court grant the petition and issue its writ of habeas corpus.

Date: March 27, 2025

Respectfully submitted:

/s/ Louize Fiore

Louize Fiore

Florida Bar No. 1011304

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