UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-cv-22428-ALTONAGA

RAUL ALIAGA QUINTERO,

Petitioner,

v.

PAMELA BONDI, in her official capacity as Acting Attorney General of the United States;

GARRETT RIPA, in his official capacity as Field Office Director of U.S. Immigration and Customs Enforcement Miami Field Office;

JUAN AGUDELO, in his official capacity as Acting Assistant Field Office Director of U.S. Immigration and Customs Enforcement Miami Field Office and Officer-in- Charge, Broward Transitional Center, Pompano Beach, Florida;

TODD M. LYONS, in his official capacity as Senior Official Performing the Duties of Director of U.S. Immigration and Customs Enforcement;

KRISTIE NOEM, in her official capacity as the Secretary of the U.S. Department of Homeland Security;

Respondents.
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AMENDED PETITION FOR WRIT OF HABEAS CORPUS WITH INCORPORATED MEMORANDUM OF LAW

The petitioner, Raul Aliaga Quintero, submits this amended[1] petition for writ of habeas corpus, with incorporated memorandum of law, and alleges as follows:

[1] On May 28, 2024, undersigned counsel submitted a form habeas corpus petition to preserve jurisdiction and venue. ECF No. 1.

INTRODUCTION

1. Petitioner is a Cuban asylum seeker who entered the United States without inspection on March 2022 near San Luis, Arizona.

2. Immigration officials apprehended him the same day and issued a Notice to Appear (NTA) in immigration court. He was released on an I-220A Order of Release on Recognizance in April 2022.

3. Petitioner had been in the United States for nearly three years pending the resolution of his immigration court proceedings.

4. However, on May 27, 2025, Petitioner's immigration court proceedings had just been dismissed upon the motion of Department of Homeland Security (DHS) counsel, when—moments after his hearing—masked DHS agents arrested him in the halls of the Miami Immigration Court.[2]

5. After his arrest, agents of DHS then belatedly and illegally attempted to initiate expedited removal proceedings against him. Expedited removal is a fast-track deportation process typically employed against noncitizens encountered at or near the border, at sea, or at ports-of-entry.

6. Petitioner has been detained by respondents in civil immigration custody since May 27, 2025.[3] As explained *infra*, Respondents lacked the authority to arrest and detain him under the expedited removal statute, its implementing regulations, and the Constitution. He

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[2] The Miami Herald has reported several incidents of courthouse arrests under similar circumstances. "ICE Agents in Miami find New Spot to Carry out Arrests: Immigration Court.." May 26, 2025. Available at: https://www.msn.com/en-us/news/crime/ice-agents-in-miami-find-new-spot-to-carry-out-arrests-immigration-court/ar-AA1Feava?ocid=BingNewsSerp

[3] At the time of filing his habeas corpus petition on May 28, 2025, Petitioner was upon information, knowledge, and belief still detained at Krome North Service Processing Center in Miami, FL. As of May 29, 2025, he is now detained at the Broward Transitional Center in Pompano Beach, Florida.

seeks a writ of habeas corpus from this Honorable Court.

JURISDICTION

7. This action arises under the Constitution for the United States of America, the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, title 8 of the Code of Federal Regulations, and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701, *et seq*.

8. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question) and U.S. Const., art. I, § 9, cl. 2 (Suspension Clause). *See Boumediene v. Bush*, 553 U.S. 723, 783 (2008); *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 166-79 (CA3 2018); *see also Ibrahim v. Acosta*, No. 17-cv-24574-GAYLES, 2018 WL 582520, at *5–*6 (S.D. Fla. Jan. 26, 2018). This Court may grant relief pursuant to the Suspension Clause, as well as 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. §§ 2201-02 (declaratory relief); 28 U.S.C. § 2241 (habeas corpus); and 5 U.S.C. §§ 702, 706.

VENUE

9. Venue is proper in this district under 28 U. S. C. § 2241 because this is the district where the "the custodian can be reached by service of process." *Rasul* v. *Bush*, 542 U. S. 466, 478–79 (2004)..

10. At the time of this case's filing, the petition was detained by the respondents at the Krome Service Processing Center in Miami, FL.

11. The petitioner Raul Aliaga Quintero is currently detained by the respondents at a DHS contract facility, BTC, in Pompano Beach, Florida.

PARTIES

12. Pamela Bondi is sued in her official capacity as the Acting Attorney General of the United States, which encompasses the Board of Immigration Appeals (BIA) and the

Immigration Judges as sub-agencies of the Executive Office of Immigration Review (EOIR).

13. Garrett J. Ripa is sued in his official capacity as the Field Office Director for the U.S. Immigration and Customs Enforcement (ICE) Miami Field Office. In this capacity, he has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner.

14. Juan Agudelo is sued in his official capacity as an Acting Assistant Field Office Director for the ICE Miami Field Office, and as the Officer-in-Charge of the Broward Transitional Center. In such capacity, he is a legal custodian of the petitioner.

15. Todd M. Lyons is sued in his official capacity as the Acting Director of ICE. In this capacity, he has responsibility for the enforcement of the immigration laws. As such, he is a legal custodian of the petitioner.

16. Kristi Noem is sued in her official capacity as the Acting Secretary of the U.S. Department of Homeland Security (DHS), the arm of the U.S. government responsible for the enforcement of the immigration laws. Because ICE is a sub-agency of the DHS, Secretary Nielsen is a legal custodian of the petitioner.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. No exhaustion is statutorily required for the petitioner's habeas claims because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo v. Warden*, 785 F. 3d 467, 474 (CA11 2015).

18. Regardless, "[w]here Congress does not say there is a jurisdictional bar, there is none." *Santiago-Lugo v. Warden*, 785 F.3d 467, 473 (11th Cir. 2015). The fact that it did not limit courts' subject matter jurisdiction to decide unexhausted § 2241 claims compels the conclusion that any failure of [the respondent] to exhaust administrative remedies is not a

jurisdictional defect." *Id.* at 474.

19. In the absence of a statutorily mandated exhaustion requirement, whether to apply a common law exhaustion requirement is a decision that rests soundly within the broad discretion. of district courts. *See J.N.C.G. v. Warden, Stewart Detention Ctr.*, No. 4:20-CV-62-MSH, 2020 WL 5046870, at *3 (M.D. Ga. Aug. 26, 2020) (citing *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)); *see also Richardson v. Reno*, 162 F.3d 1338, 1374 (11th Cir. 1998); *Yahweh v. U.S.Parole Comm'n*, 158 F. Supp. 2d 1332, 1341 (S.D. Fla. 2001).

20. Here, there is no reason to require exhaustion of administrative remedies, as Petitioner has no meaningful alternative to habeas relief. *Boz v. United States*, 248 F.3d 1299, 1300 (11th Cir. 2001) ("[A] petitioner need not exhaust their administrative remedies where the administrative remedy will not provide relief commensurate with the claim.").

21. Accordingly, Petitioner urgently seeks and is entitled to habeas relief because he has no meaningful opportunity to challenge the constitutionality of his detention through any available administrative process. *See Boumediene*, 553 U.S. 723, 783 (2008).

STATEMENT OF FACTS

22. Petitioner is a Cuban asylum seeker who entered the United States without inspection on March 30, 2022 near San Luis, Arizona. Immigration officials apprehended him and placed him in civil detention.

23. DHS issued a Notice to Appear[4] (NTA) on April 5, 2025. See Exh. A Petitioner's Notice to Appear.

24. He was then released on an I-220A Order of Release on Recognizance. See

[4] On his NTA, Petitioner was charged with inadmissibility under 8 USC §1182(a)(6)(A)(i), clearly denoting that he entered as an applicant for admission. *See* 8 U.S.C. §1225(a)(1).

Exh. B Petitioner's I-220A Order of Release on Recognizance.

25. For nearly three years, Respondents made no attempts to place Petitioner in expedited removal proceedings during or after his apprehension by immigration authorities at the border.

26. Petitioner has faithfully appeared for all of his immigration court hearings and timely filed an application for asylum with the immigration court.

27. Petitioner appeared for an immigration court hearing on May 27, 2025. During the hearing, counsel for DHS moved to dismiss his pending removal proceedings under 8 USCS §1229(a). The presiding Immigration Judge (IJ) then granted the motion for dismissal. See Exh. C EOIR Case Notes showing dismissal on May 27, 2025.

28. After leaving the courtroom, Petitioner encountered masked ICE agents who arrested him and notified him that he was subject to expedited removal from the United States.

29. Petitioner has since been in the custody of the respondents, first at an ICE field office in Miramar, Florida, then at Krome North Service Processing Center, and ultimately at the BTC detention facility in Pompano Beach, Florida. Petitioner is at risk of both indefinite detention and summary deportation.

MEMORANDUM OF LAW

I. Legal Framework

A. Scope of Expedited Removal Process

30. The enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996 established a fast-track procedure for immigration officials to issue administrative orders of removal without providing a hearing in immigration court. *See* 8 U.S.C.

§1225.

31. Congress placed sharp limitations on the scope of expedited removal.

32. First, expedited removal only applies to an "applicant for admission" encountered by immigration officials, defined as:

> "…(a)n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)..."

8 USC §1225(a)(1).

33. Second, Congress imposed a bright-line temporal limitation, restricting the applicability of expedited removal to those who have been physically present in the United States for less than two years. 8 USC §1225(b)(1)(A)(iii)(II).[5]

34. Relatedly, Congress required that "a determination of inadmissibility under this subparagraph [1225(1)(A)]" issue within the two year period after a noncitizen's entry into the United States before immigration officials could invoke the expedited removal statute. *See id.*

35. The expedited removal statute also limits determinations of inadmissibility for to two specific grounds of inadmissibility, to wit: 8 U.S.C. §1182(a)(6)(C) (fraud or false claim to citizenship) and 1182(a)(7) (lacking proper immigration documentation). *See* 8 U.S.C. §1225(1)(A)(i).

36. Third, noncitizens who have been admitted or paroled into the United States are not subject to expedited removal. 8 U.S.C. §1225(b)(1)(A)(iii)(II).

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[5] DHS has in practice mostly narrowed expedited removal even further. Executive practice has typically confined expedited removal procedure to persons apprehended within 100 miles of the border and within 14 days of entry. Only twice since the enactment of IIRIRA has expedited removal been permitted to the maximum extent allowed by statute, in 2019 and in 2025. *See* Federal Register Notice "Designating Aliens for Expedited Removal." January 24, 2025. Available at: https://www.federalregister.gov/documents/2025/01/24/2025-01720/designating-aliens-for-expedited-removal

i. Determinations of Inadmissibility Are Governed by Federal Regulations

37. Federal regulations strictly govern the issuance of a determination of inadmissibility for purposes of 8 USC §1225(b)(1). 8 CFR § 235.3(b)(2).

38. Federal agencies are bound to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 347 U.S. 260 (1954).

39. As part of the inadmissibility determination process, "in every case" immigration officials are required to take a sworn statement from the noncitizen regarding his identity, alienage, and inadmissibility and create a factual record using form I-867A. 8 CFR § 235.3(b)(2)(i).

40. Only after the sworn statement and record of proceeding are created on form I-867-A are immigration officials authorized to issue a determination of inadmissibility on form I-860. *Id.*

41. The immigration officer must provide notice to the noncitizen of the charges against him on Form I-860 and provide an opportunity to respond. *Id.*

42. The determination of inadmissibility and order of expedited removal are served contemporaneously on form I-860 as prescribed by federal regulation. *Id.*

43. ICE has published a form I-860[6] in keeping with this regulatory framework and to ensure compliance with the requirements set forth in 8 CFR §235.3(b)(2)(i).

These procedural regulation are binding upon the agency, even if they restrict the scope of authority under the statute. *Kurapati v. U.S. Bureau of Citizenship & Immigr. Servs.*, 775 F.3d 1255, 1262 (11th Cir. 2014) ("Even when a decision is committed to agency discretion, a court may consider allegations that an agency failed to follow its own binding regulations.") (citation omitted); *Bedoya-Melendez v. U.S. Atty. Gen.*, 680 F.3d 1321, 1326 (11th Cir. 2012), *overruled*

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[6] "Sample I-860." Available at: https://www.ice.gov/doclib/detention/checkin/ER_I_860.pdf

on other ground by Patel v. United States Att'y Gen., 971 F.3d 1258 (11th Cir. 2020) ("regulations could limit the Attorney General's discretion").

ii. Parole As a Matter of Law

44. Whether a noncitizen has been admitted or paroled may not be immediately clear on a preliminary inspection of a noncitizen's immigration documents. *Vitale v. INS*, 463 F. 2d 579, 580–82 (CA7 1972) (placing entrant in custody of airline for further inspection was parole, not an entry, though done without parole paperwork.)

45. Federal regulations governing expedited removal generally allow a noncitizen an opportunity to establish their admission or parole into the United States before immigration officials initiate expedited removal. 8 CFR §235.3(a)(6) ("…such alien will be given reasonable opportunity to establish to the satisfaction of the examining immigration officer that he or she was admitted or paroled into the United States following inspection at a port-of-entry.").

46. Courts have long understood that the existence or non-existence of a parole document does not resolve the question of whether a noncitizen was paroled as a matter of law. *Medina Fernandez v. Hartman*, 260 F. 2d 569, 570–73 (CA9 1958) (holding parole paperwork was a sham where Spanish sailors were involuntarily brought from Mexico into the United States on allegations of desertion).

47. The Board has long understood this as well. *Matter of O-,* 16 I. & N. Dec. 344 (BIA 1977) (holding that 126 persons evacuated from Vietnam were paroled as a matter of law).

48. Parole is nothing more than the act of releasing an inadmissible person, not entitled to be in or enter the United States, from physical custody. *Leng May Ma* v. *Barber*, 357 U. S. 185, 190 (1958) ("The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted."). For

example, a person detained "at Ellis Island" whose "prison bounds were enlarged by committing her to the custody of" a sponsor "was still in theory of law at the boundary line and had gained no foothold in the United States." *Id.*, at 189 (citing *Kaplan* v. *Tod*, 267 U. S. 228, 230 (1925)).

49. Per the Supreme Court, "[r]ead most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded." *Jennings* v. *Rodriguez*, 138 S. Ct. 830, 842 (2018). However, "there is a specific provision authorizing release from § 1225(b) detention … ." *Id.*, at 844. The Attorney General may 'for urgent humanitarian reasons or significant public benefit' temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2)." *Id.* (citing § 1182(d)(5)(A)).

50. "That express exception to detention implies that there are no *other* circumstances under which aliens detained under § 1225(b) may be released." *Id.* (emphasis in original) (citation omitted). Thus, neither § 1226(a), § 1231(a), nor amorphous concepts of prosecutorial discretion can apply. See *Texas* v. *Biden*, 20 F. 4th 928, 995–96 & 996 n. 17 (CA5 2021), rev'd on other grounds, 142 S. Ct. 2528 (2022) (noting how this distinction determines adjustment eligibility).

51. Significantly, the Board of Immigration Appeals recently issued a precedential decision expressly stating that all applicants for admission are subject to mandatory detention, which means, *a fortiorari*, all applicants for admission released from DHS custody have been paroled as a matter of law. *See Matter of Q. Li*, 29 I I&N Dec. 66 (BIA 2025) ("The only exception permitting the release of aliens [applicants for admission]…is the parole authority provided by section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A).")

B. Judicial Review of Orders of Expedited Removal

i. Judicial Review of Expedited Removal Decisions In the INA

52. The INA bars courts of appeals from reviewing expedited removal orders on petitions for review to the Circuit Courts of Appeal. See 8 U.S.C. §§ 1252(a)(2)(A), (e); *see also Shunaula v. Holder*, 732 F.3d 143 (2d Cir. 2013); *Khan v. Holder*, 608 F.3d 325 (7th Cir. 2010); *Brumme v. INS*, 275 F.3d 443 (5th Cir. 2001).

53. The INA expressly provides for judicial review of expedited removal orders in the federal district courts, but limits the scope of review to the following factual determinations: (1) whether the petitioner is a U.S. citizen (2) whether the petitioner was in fact ordered removed under § 1225(b)(1); and (3) whether the petitioner can prove that he is a lawful permanent resident, admitted as a refugee, or has been granted asylum. 8 U.S.C. §§ 1252(e)(2)(A)-(C). 8 U.S.C. §1252(e)(5).

54. What is more, the only available remedy under an 8 U.S.C. §1252(e) habeas is issuance of an NTA in immigration court, not release from detention. 8 U.S.C. §1252(e)(2)(C).

55. Outside of this limited procedure, 8 U.S.C. §1252 bars judicial review of the Attorney General's invocation of the expedited removal statute as applied to individual aliens and matters "arising from" expedited removal proceedings. 8 U.S.C. §1252(a)(2)(A).

56. The INA therefore solely addresses federal judicial review for the purposes of either a) extremely narrow factually-based "habeas corpus" challenges to expedited removal orders, 8 U.S.C. §1252(e)(2), and b) challenges to written directives or the entire expedited removal statutory scheme in the district court for the District of Columbia. 8 U.S.C. §1252(e)(3). The INA does not set forth any other independent statutory basis to seek judicial recourse when an individual does not meet the legal requirements for expedited removal in the first place.

ii. Habeas Corpus Jurisdiction

57. While a challenge to an expedited removal order under 8 USC §1252(e)(2) is labeled a "habeas corpus" action, it does not provide jurisdiction for traditional habeas review (as codified under 28 U.S.C. 2241) and the scope of review is limited to narrow factual questions about alienage, identity, and whether a noncitizen has obtained a select few immigration statuses. *See id.* (noting that "habeas corpus proceedings…shall be limited to determinations" explicitly stated in that subparagraph.)

58. Traditional habeas review by contrast entitles a petitioner to seek redress regarding questions of law implicating detention, to adduce evidence if a fuller factual record is required and—perhaps most critically—to request release from unlawful arrest and detention. *See Immigr. & Nat'y Serv. v. St. Cyr*, 533 U.S. 289, 301 (2001) (habeas review entails review of pure questions of law); *Boumediene v. Bush*, 553 U.S. 723, 732 (2008). (holding that "[f]ederal habeas petitioners long have had the means to supplement the record on review."); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 103-104 ("Habeas has traditionally provided a means to seek release from unlawful detention.")

59. A finding that traditional habeas review is unavailable to decide questions of law would almost certainly run afoul of the Suspension Clause. U.S. Const. art. I, § 9, cl. 2; *INS v. St. Cyr*, 533 U.S. 289, 292 (holding that habeas review under 28 U.S.C. § 2241 was necessarily available in part because to entirely preclude review raised substantial constitutional questions under the Suspension Clause.)

60. The Suspension Clause provides a legal basis to challenge detention, even if a statute is construed to deprive jurisdiction. *See Osorio*, 893 F.3d 153, 166-79 (CA3 2018) (holding that even if the Immigration and Nationality Act does not grant jurisdiction, the Suspension

Clause allows judicial review of detention for those with sufficient ties to the United States.); *see also Ibrahim v. Acosta*, No. 17-cv-24574-GAYLES, 2018 WL 582520, at *5–*6 (S.D. Fla. Jan. 26, 2018).

61. The Suspension Clause is a constitutional basis for jurisdiction when existing administrative procedures are an inadequate substitute for habeas. Courts must determine whether a statute stripping jurisdiction has provided adequate substitute procedures for habeas corpus. *See Boumediene*, 553 U.S. 723, 732 (holding that the administrative process for challenging enemy combatant status was inadequate to replace traditional habeas review.)

62. After a year of physical presence in the United States, a noncitizen has sufficient ties to avail himself of a habeas court's jurisdiction to vindicate his due process rights. *See Yamataya v. Fisher*, 189 86, 94 (1903); *A.A.R.P. v. Trump*, 605 U.S. ___ (2025) (same).

63. "The habeas court **must** have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive's power to detain." *Boumediene v. Bush*, 553 U.S. 723, 783, 128 S. Ct. 2229, 2269, 171 L. Ed. 2d 41 (2008) (emphasis added).

64. Habeas courts have jurisdiction to award habeas relief on account of the erroneous application of relevant law. *Immigr. & Nat'y Serv. v. St. Cyr,* 533 U.S., at 302, 121 S.Ct. 2271. *Boumediene v. Bush*, 553 U.S. 723, 779, 128 S. Ct. 2229, 2266, 171 L. Ed. 2d 41 (2008. Indeed, common-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed depending upon the circumstances. *See Schlup v. Delo,* 513 U.S. 298, 319, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995) (Habeas "is, at its core, an equitable remedy"); *Jones v. Cunningham,* 371 U.S. 236, 243, 83 S.Ct. 373, 9 L.Ed.2d 285 (1963) (Habeas is not "a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose.")

65. Common-law habeas court's role was most extensive in cases of pretrial and

noncriminal detention, where there had been little or no previous judicial review of the cause for detention. *Boumediene v. Bush*, 553 U.S. 723, 779–80, 128 S. Ct. 2229, 2267, 171 L. Ed. 2d 41 (2008).

66. The Suspension Clause's protections are strongest in the context of executive detention. *St. Cyr*, 533 U.S. 289, 301 (2001); *see also Munaf v. Geren*, 553 U.S. 674, 679 (2008) ("Habeas is at its core a remedy for unlawful executive detention."); *Boumediene*, 553 U.S. at 783 ("Where a person is detained by executive order, rather than, say, after being tried and convicted in a court, the need for collateral review is most pressing.").

67. In *Thuraissigiam* the Supreme Court reaffirmed that the Suspension Clause "at a minimum, protects the writ as it existed in 1789," whereby it "could be invoked by aliens already in the country who were held in custody pending deportation" to "challenge [their] detention." *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 104, 116, 137 (internal quotation marks omitted).

ARGUMENT

68. Respondents lacked the authority to arrest and detain Petitioner pursuant to the expedited removal provisions of 8 USC §1225 because he has been present in the United States for three years, and the expedited removal statute only applies to persons present for less than two years before issuance of a statutorily valid determination of inadmissibility. Petitioner is also statutorily exempt from expedited removal as a parolee. Traditional habeas review is available here not to address the adequacy of the expedited removal process but whether he is legally subject to the expedited removal process in the first place.

I. Petitioner is Not Subject to Expedited Removal more than Two Years after His Entry

69. Petitioner was released from DHS custody on April 5, 2022 and has been

continuously present in the United States since his release. *See* Exh. "B."

70. Congress restricted the applicability of expedited removal to those who have been physically present in the United States for less than two years. 8 USC §1225(b)(1)(iii)(II).

71. A noncitizen is allowed to make an affirmative showing that he has been present for two years continuously "prior to the date of the determination of inadmissibility under this subparagraph." *See id.*

72. Federal regulations prescribe a detailed procedure to perform a determination of inadmissibility for purposes of subparagraph 1225(b)(1)(A). In order for the determination to issue, the noncitizen is placed under oath and the examining immigration officer takes a sworn statement. The examining officer then serves the noncitizen with a determination of inadmissibility which serves to also notify him that he is subject to expedited removal.

73. As part of the inadmissibility determination process, "in every case" immigration officials are required to take a sworn statement and create a factual record on prescribed forms. 8 CFR § 235.3(b)(2)(i)

74. Only after the sworn statement and record are created on form I-867-A are immigration officials authorized to issue a determination of inadmissibility on form I-860 for purposes of expedited removal. *Id.*

75. Federal regulations require that the noncitizen be provided notice of the determination of inadmissibility. *Id.*

76. In the instant case, Petitioner was not issued a determination of inadmissibility on form I-860 any time within his first two years in the United States, as required by statute and federal regulation. His placement in expedited removal proceedings is therefore *ultra vires* due to the passage of three years and the absence of a timely issued notice of inadmissibility

determination. 8 U.S.C. §1225(b)(1)(A)(iii) (the definition of an "alien described" in the expedited removal statute excludes those who affirmatively show that they have been present for more than two years after entering the United States.)

77. Additionally, the expedited removal statute limits the substantive determinations of inadmissibility to just two grounds under 8 U.S.C. §1182(a)(6)(C) (fraud or false claim to citizenship) and 1182(a)(7) (lacking proper immigration documentation). *See* 8 U.S.C. §1225(1)(A)(i).

78. Petitioner was never determined or charged as subject to the grounds of inadmissibility referenced in the expedited removal statute, and his NTA indicates an entirely separate ground of inadmissibility, 8 USC §1182(a)(6)(A)(i). *See* Exh. B.

II. Petitioner Is Exempt from Expedited Removal Because He Has Been Paroled As a Matter of Law

79. Federal regulations generally allow a noncitizen an opportunity to establish his admission or parole into the United States before immigration officials, but, upon information, knowledge, and belief, Petitioner has not been afforded this opportunity. 8 CFR §235.3(a)(6),

80. Petitioner entered the United States as an applicant for admission who was, at the time, present in the United States without being admitted or paroled. *See* 8 USC §§1182(a)(6)(A)(i) (setting forth inadmissibility of aliens present without admission), §1225(a)(1) (defining said noncitizens as applicants for admission.)

81. The Supreme Court has clearly identified parole as *the* legal mechanism available for applicants for admission to gain release from ICE custody. *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) ("Regardless of which of those two sections authorizes their [otherwise mandatory] detention, applicants for admission may be temporarily released on parole..")

82. What is more, according to the government's own binding precedent, Petitioner

was undoubtedly subject to mandatory detention, and thus paroled into the United States on April 5, 2022, when he was released from custody. *see Matter of Q. Li*, 29 I I&N Dec. 66 (BIA 2025) ("The only exception permitting the release of aliens [applicants for admission] …is the parole authority provided by … 8 U.S.C. § 1182(d)(5)(A).")

83. Because Supreme Court precedent and a binding precedential Board decision inexorably leads to the conclusion that Petitioner is a parolee as a matter of law, expedited removal proceedings cannot be applied. 8 USC § 1225(b)(1)(iii)(II) (defining an alien subject to expedited removal as a person "who has not been admitted or paroled into the United States."); accord *Doe v. Noem*, No. 1:25-CV-10495-IT, 2025 WL 1099602, at *16–*17 (D. Mass. Apr. 14, 2025); and *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019).

84. The Board's decisions are "binding on all officers and employees of the Department of Homeland Security" in "the administration of the immigration laws." 8 CFR § 1003.1(g). DHS' agents' failure to recognize Petitioner as a parolee (per *Matter of Q. Li*) who is not subject to expedited removal violates the federal government's responsibility to abide by its own directives and regulations and is *ultra vires*. Further, the imposition of expedited removal violates the long-standing principle that federal agencies are bound to follow their own regulations. *Accardi*, 347 U.S. 260, 347(1954).

85. Petitioner cannot be legally subjected to expedited removal as a parolee as corollary of the Supreme Court's holding in *Jennings*: namely, absent the availability of parole, applicants for admission are otherwise subject to mandatory detention. *Jennings*, 138 S. Ct. 830, 842 (2018).

86. Therefore, it follows that Petitioner was paroled and does not fall within the ambit of the expedited removal statute.

III. At a Minimum, Traditional Habeas Review is Available Under the Suspension Clause

87. Although 8 U.S.C. 1252(A)(2) limits judicial review to fact-laden questions about alienage and identity, the Suspension Clause provides a legal basis to challenge detention, even if a statute is construed to deprive jurisdiction. *See Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 166-79 (CA3 2018); accord *Boumediene v. Bush*, 553 U.S. 723, 783, 128 S. Ct. 2229, 2269, 171 L. Ed. 2d 41 (2008) ("The habeas court **must** have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive's power to detain.") (emphasis added); *see also Ibrahim v. Acosta*, No. 17-cv-24574-GAYLES, 2018 WL 582520, at *5–*6 (S.D. Fla. Jan. 26, 2018).

88. After a year of physical presence in the United States, a noncitizen has sufficient ties to avail himself of a habeas court's jurisdiction to vindicate his due process rights. *See Yamataya v. Fisher*, 189 U.S. 86, 94 (1903).

89. Petitioner's three years of physical presence in the United States entitle him to seek judicial recourse before a habeas court. *See id.*

90. In *Thuraissigiam* the Supreme Court reaffirmed that the Suspension Clause "at a minimum, protects the writ as it existed in 1789," whereby it "could be invoked by aliens already in the country who were held in custody pending deportation" to "challenge [their] detention." *Thuraissigiam*, 591 U.S. 104, 116, 137 (internal quotation marks omitted).

CONCLUSION

91. Respondents lacked the authority to arrest and detain Petitioner pursuant to the expedited removal provisions of 8 USC §1225 because he has been present in the United States for more than two years. He is also exempt from expedited removal as a parolee as a matter of law. Traditional habeas review is available here to resolve not the adequacy of the expedited

removal process but whether he is legally subject to the expedited removal process in the first instance. The belated institution of expedited removal proceedings also violates the Due Process Clause of the Fifth Amendment. *Yamataya v. Fisher*, 189 86, 94 (1903) (Basic due process protections of the Fifth Amendment apply to excludable aliens physically present in the United States for over a year.)

92. Respondents' attempt to subject Petitioner to expedited removal is *ultra vires*. Noncitizens who show that they have been physically present for two years "immediately prior to the date of the determination of inadmissibility" are exempt from expedited removal. 8 USC § 1225(b)(1)(A)(iii)(II).

93. Petitioner is entitled to a writ of habeas corpus ordering his immediate release from custody due to his clearly improper designation as an "alien described" under 8 USC § 1225(b)(1)(A)(iii)(II) as he has been present in the United States continuously for over 2 years prior to an inadmissibility determination under 1225(b)(1). This court has habeas corpus jurisdiction to resolve the question of law presented by the definition of an "alien described" by 8 USC § 1225(b)(1)(iii)(II). *See INS v. St. Cyr*, 522 U.S. 289, 298. The Suspension Clause permits traditional habeas review. *See id*; U.S. Const. Art. 1, s. 9, cl. 2; *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 166-79 (CA3 2018).

COUNT I:

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT AND ITS IMPLEMENTING REGULATIONS

94. The allegations in paragraphs 1-93 are realleged and incorporated herein.

95. The petitioner is not detained pursuant to lawful agency action or for any lawful purpose.

96. The Immigration and Nationality defines noncitizens "described" by the expedited

removal statute so as to exclude those with more than two years of physical presence in the United States prior to issuance of an I-860 determination of inadmissibility, and who have been charged with inadmissibility under § § 1182(a)(6)(C) or (a)(7). 8 U.S.C. §§ 1225(b)(1)(A)(i) & (iii)(II). Further, Petitioner has been paroled as a matter of law and is exempt from expedited removal. *See id.*

COUNT II:

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

97. Petitioner re-alleges and incorporates by reference paragraphs 1-93.

98. Petitioner's *ultra vires* arrest under the expedited removal statute has deprived him of liberty without due process of law.

99. The Due Process Clause entitles noncitizens to due process in the course of removal proceedings. *See* U.S. Const. amend. V; *accord A.A.R.P. v. Trump*, No. 24-1177, 2025 WL 1417281, at *2 (U.S. May 16, 2025) (" '[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.' ") (*quoting Trump v. J. G. G.*, 145 S.Ct. 1003, 1006 (2025) (*in turn quoting Reno v. Flores*, 507 U.S. 292, 306 (1993)).

100. Therefore, Petitioner is unlawfully detained and entitled to a writ of habeas corpus ordering his immediate release from custody and cessation of expedited removal proceedings. *See Trump v. J. G. G.*, 145 S. Ct. 1003, 1005 (2025) ("Regardless of whether the detainees formally request release from confinement, because their claims for relief ' " 'necessarily imply the invalidity' " 'of their confinement and removal under the AEA, their claims fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas.") (citations omitted).

PRAYER FOR RELIEF

WHEREFORE, the petitioner prays that the Court grant the following relief:

(a) Assume jurisdiction over this matter;

(b) Set this matter for expedited consideration pursuant to 28 U.S.C. § 1657;

(c) Enter an Order to Show Cause against the respondents;

(d) Order the respondents to refrain from transferring the petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while the petitioner remains in the respondents' custody;

(e) Grant the petitioner a writ of habeas corpus that orders his immediate release from the custody of the respondents;

(f) Award the petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 2412, and on any other basis justified under law; and

(g) Grant any other and further relief that the Court deems just and proper.

Dated: May 30, 2025

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VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I, Felix A. Montanez, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney. I have discussed the events described in this petition with the petitioner, Raul Aliaga Quintero. On the basis of these discussions, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: May 30, 2025

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