

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
DETROIT, MICHIGAN**

Yanier Hernandez Capote,
Dagoberto Matilla Gutierrez,
Alain Suarez-Arbona,
Amauri Orozco Blanco,
Arianna Fernandez-Velazquez,
Roylan Hodelin Fabars,
Eridanys Amaury Grinan-Venzant,

Case No.

Petitioners,

v.

KRISTI NOEM, Secretary, U.S. Department
of Homeland Security; TODD LYONS,
Acting Director, U.S. Immigration and Customs
Enforcement; KEVIN RAYCRAFT, Acting
Field Office Director, Detroit Immigration
and Customs Enforcement; JOSEPH B.
EDLOW, Director, U.S. Citizenship and Immigration
Services, MICHAEL KLINGER Field Office Director
Detroit U.S. Citizenship and Immigration
Services; PAM BONDI, U.S. Attorney General,
U.S. Department of Justice,
SIRCE E. OWEN, Acting Director of the
Executive Office of Immigration Review, and
ANNA C. LITTLE, Acting EOIR Chief
Immigration Judge,

Respondents.

**PETITION FOR
WRIT OF HABEAS CORPUS
AND WRIT OF MANDAMUS**

Petitioners, through counsel respectfully request that this Court issue a Writ of Habeas Corpus and a Writ of Mandamus. In support the Petitioners state:

I. INTRODUCTION

1. The Petitioners, by and through their undersigned counsel, hereby file this Petition for a Writ of Habeas Corpus, Petition for Writ of Mandamus and Motion for a Temporary Restraining order to enjoin Respondents from removing them from the United States, detaining them unlawfully and preventing them from pursuing their permanent residency applications to which they are entitled by statute.

2. The Respondents have flipped flopped on the statutory basis for detention and release of the Petitioners. In an arbitrary and capricious manner, the Respondents have prevented the Petitioners from applying for statutory available relief under the Cuban Adjustment Act and have redetained or put them under threat of redetention.

3. Based on interim guidance issued by Respondent DHS in conjunction with Respondent DOJ, which is not public,¹ the Respondents now claim that persons who crossed the border are detained under INA §235. (Ex. 1 – July 8, 2025 ICE

¹ The interim guidance was leaked by the Washington Post on July 14, 2025 and was not made public until the Post leaked portions of it. <https://apnews.com/article/immigration-detention-ice-trump-e1c2322c3f88c1f7d7e83c8c42109cb6> ; <https://reason.com/2025/07/16/leaked-memo-ice-to-block-bond-hearings-for-millions-of-undocumented-immigrants-detentions-to-skyrocket/>

Interim Guidance) Prior to the release of this interim guidance, ICE attorneys argued that Cubans who entered at the border, were detained and then released were released under INA §236, thereby making them ineligible for benefits under the Cuban Adjustment Act.

4. Now, ICE attorneys, in order to detain persons who were previously released argue that the same Cubans who entered at the border, were detained and then released are being redetained under INA §235 under which ICE may detain these same persons under mandatory detention, and they are ineligible for a bond hearing.

5. Furthermore, in an attempt to deprive Cubans of being able to obtain permanent residency pursuant to the Cuban Adjustment Act, the ICE July 8, 2025 Interim Guidance states in the last para. that “ DHS does not take the position that prior releases of applicants for admission pursuant to INA §236(a) were releases on parole under INA §212(d)(5) based on this change in position.” (See, Ex. 1 p.2)

6. Under this “new policy change”, would require the Petitioners to be redetained and then rereleased in order to avail themselves of the benefits of the Cuban Adjustment Act.

7. The Respondents have redetained one Petitioner without prior notice or cause as he was attending an interview with Respondent U.S. Citizenship and Immigration Services. The other Petitioners are in imminent danger of being redetained without prior notice as they are following proper procedures by

attending their immigration court hearings or immigration benefits interviews.

8. “The main goal of ICE detention is to make sure immigrants show up for their court dates. But the conditions revealed in the inspection reports often appear indistinguishable from prison,” and “[a] majority of people in ICE detention have no criminal record.” Tom Dreisbach, Government’s Own Experts Found “Barbaric” and “Negligent” Conditions in ICE Detention, NPR News (Aug. 16, 2023), <https://www.npr.org/2023/08/16/1190767610/ice-detention-immigration-government-inspectors-barbaric-negligent-conditions#:~:text=In%20examining%20more%20than%20two,problems%20that%2C%20in%20some%20cases>.

9. All of the Petitioners in this matter have appeared at their scheduled immigration court dates and immigration interviews.

10. All of these Petitioners are nationals of Cuba who fled the brutal dictatorship with a history of decades of human rights abuses.

11. For detained asylum seekers, these prison-like conditions compound the trauma from which they fled and poses serious barriers to the tools necessary for presenting an effective asylum claim or obtaining other forms or relief such as adjustment of status to permanent resident.

12. The Respondents’ actions are not only contrary to law and unconstitutional but have also inflicted extreme emotional distress on the Petitioners and their families.

13. All of the Petitioners were released on an Order of Release on Recognizance (ROR) after being detained at the southern border of the United States.

14. Respondent ICE has consistently argued in all Petitioners' cases that ROR is a release under 8 U.S.C. §236 and therefore, the Petitioners are not eligible to adjust status pursuant to the Cuban Adjustment Act.

15. Now in an about face, ICE is now stating that the Petitioners were released pursuant to 8 U.S.C. §235. Under this release, the Petitioners are eligible for permanent residency under the Cuban Adjustment Act but only USCIS can adjudicate the application. Immigration Judges do not have the authority to adjudicate the permanent residency applications under the Cuban Adjustment Act. See, *Matter of Martinez-Montalvo*, 24 I&N Dec. 778 (BIA 2009)

16. Petitioner Yanier is detained and cannot attend the USCIS interview on his application for permanent residency under the Cuban Adjustment Act. The remaining Petitioners fear being arrested at USCIS while attending their interviews for permanent residency under the Cuban Adjustment Act.

II. JURISDICTION

17. This Court has habeas corpus jurisdiction and jurisdiction over the injunctive relief pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction) 28 U.S.C. §2201, 28 U.S.C. §2241 et seq., Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause), 28 U.S.C. § 1343; 28 U.S.C. §

1361; and 5 U.S.C. § 702, and common law.

18. This action arises under the First, Fourth and Fifth Amendments of the United States Constitution; the Immigration and Nationality Act (“INA”); and the Administrative Procedure Act, 5 U.S.C. § 701 et seq.

19. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of DHS conduct. Federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

20. This Court has jurisdiction under the Suspension Clause, notwithstanding statutory provisions that otherwise deprive the Courts of jurisdiction over executions of removal orders, to review the actions of the executive branch’s enforcement of the immigration laws if those actions violate the Constitution by depriving Petitioner of due process or other constitutional rights. Compare Suspension Clause with 8 U.S.C. § 1252(g); *see also Reno v. Am.-Arab Anti Discrimination Comm.*, 525 U.S. 471, 482 (1999). The Suspension Clause protects the right to the writ of habeas corpus where, as here, no adequate or effective alternative remedy exists. *See Boumediene v. Bush*, 553 U.S. 723 (2008).

III. VENUE

21. Venue lies in the Eastern District of Michigan, the judicial district in which the ICE Field Office Director is located. *See Roman v. Ashcroft*, 340 F.3d

314, 319-21 (6th Cir. 2003).

22. The Petitioners are in the custody of Respondent, Detroit Immigration and Customs Enforcement, (ICE – Detroit) The Petitioners are under the direct control of the Respondents and their agents.

IV. PARTIES

23. Yanier Hernandez Capote (Yanier) is a citizen of the Cuba who is married to a U.S. citizen. He fled Cuba, a country who the U.S. recognizes has a long history of human rights abuses and is run by a Communist dictatorship of that suppresses any freedom. He arrived in the United States on January 16, 2022 and has been in immigration court proceedings since March 4, 2022. He is currently detained by Respondent Immigration and Customs Enforcement Detroit Field Office in North Lakes Detention facility in Baldwin, Michigan.

24. Dagoberto Matilla Gutierrez (Dagoberto) is a Cuban citizen arrived in the United States on July 13, 2021. He was placed in immigration court proceedings on August 11, 2021. He is currently in those proceedings before the Immigration court in Detroit, Michigan. He has appeared at every scheduled immigration court hearing. He is subject to detention by ICE at any time based on the recent actions of ICE towards Cubans.

25. Alain Suarez-Arbona (Alain) is a Cuban citizen who fled the dictatorship in Cuba and arrived in the United States on July 21, 2021. He was placed in immigration proceedings before the Detroit Immigration court on October 7, 2021.

He has appeared at every immigration court hearing. He is subject to detention by ICE at any time based on the recent actions of ICE towards Cubans.

26. Amauri Orozco Blanco (Amauri) is a Cuban citizen who fled the oppressive Communist regime of Cuba and arrived in the United States on July 21, 2021. He was placed in immigration proceedings before the Immigration court in Detroit, Michigan on October 7, 2021. He has appeared at every immigration court hearing. He is subject to detention by ICE at any time based on the recent actions of ICE towards Cubans.

27. Arianna Fernandez-Velazquez (Arianna) is a citizen of Cuba who fled that country and arrived in the United States on March 7, 2022. On April 12, 2022, she was placed in immigration proceedings at the Detroit Immigration Court. She has appeared for every court hearing for which she has been scheduled to date. She is subject to detention by ICE at any time based on the recent actions of ICE towards Cubans.

28. Roylan Hodelin Fabars (Roylan) is a Cuban citizen who fled Cuba and arrived in the United States on March 12, 2022 and was placed in immigration proceedings before the immigration court in Detroit, Michigan on March 14, 2022. He has appeared for every court hearing for which he has been scheduled to date. He is subject to detention by ICE at any time based on the recent actions of ICE towards Cubans.

29. Eridanys Amaury Grinan-Venzant (Eridanys) is a Cuban citizen who fled

The Communist regime in Cuba and arrived in the United States on April 15, 2022. He was placed in proceedings before the immigration court in Detroit, Michigan on October 5, 2022. He has appeared for every court hearing for which he has been scheduled to date. He is subject to detention by ICE at any time based on the recent actions of ICE towards Cubans.

30. Defendant, Kristi Noem is the Secretary, U.S. Department of Homeland Security (DHS). She is generally charged with enforcement of the Immigration and Nationality Act and is further authorized to delegate such powers and authority to subordinate employees of the DHS and its various divisions. 8 USC §1103(a). She is being sued in her official capacity.

31. Defendant Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE) and is responsible for the administration of the detention and removal of aliens in the United States. He is being sued in his official capacity.

32. Defendant Kevin Raycraft is the Acting Director of the Detroit Field Office of the Immigration and Customs Enforcement (ICE - Det) He is responsible for the detention and removal of aliens within the Detroit District. He is being sued in his official capacity.

33. Joseph B. Edlow is the Director of the United States Citizenship and Immigration Services (USCIS). He is responsible for the administration of applications and petitions for immigration benefits and oversees all the USCIS

offices in the U.S. Specifically, he oversees the processing of applications for permanent residency under the Cuban Adjustment Act and asylum applications. He is being sued in his official capacity.

34. Michael Klinger is the Field Office Director of USCIS in Detroit Field Office (USCIS Det) currently located in Troy, Michigan. He oversees the applications and petitions for residents of Michigan. Specifically, he oversees applications for permanent residency under the Cuban Adjustment Act and marriage petitions for residents of Michigan and oversees the actions of the employees at the USCIS Detroit Field Office. He is being sued in his official capacity.

35. Pam Bondi is the Attorney General of the United States. She is responsible for the enforcement of the immigration laws which includes the immigration courts. She is being sued in her official capacity.

36. Sirce E. Owen is the Acting Director of the Executive Office of Immigration Review. (EOIR) His responsibilities include overseeing immigration court proceedings, appellate reviews, and administrative hearings, as well as supervising Immigration Judges and members of the Board of Immigration Appeals. He is being sued in his official capacity.

37. Anna C. Little is the Acting EOIR Chief Immigration Judge. Her responsibilities include managing the nation's immigration courts and supervising all immigration judges. She is being sued in her official capacity.

V. FACTS

38. Yanier is a citizen of Cuba who fled to the United States seeking refuge and protection. He arrived in the United States on January 16, 2022, more than three years ago. After crossing the border, he presented himself to Respondent DHS at one mile north of the U.S. border with Mexico. (Ex. 2 – I-831) The Respondent DHS found that Yanier was not a “threat to national security or public safety “ and decided to release him. (See, Ex. 1) Respondent DHS released him the following day on an Order of Release on Recognizance (ROR) so he could apply for asylum. (Ex. 3 – Release on Recognizance) Respondent DHS gave Yanier a List of Pro Bono Legal Services, a change of address form and a Notice To Appear (NTA) which states the date, time and address of his immigration court date.

39. Yanier filed an application for relief timely with Respondent USCIS. He filed with USCIS because the NTA which must be filed with the immigration court had not been filed by ICE’s Detroit attorneys. Therefore, the application had to be filed with USCIS.

40. Subsequently the Respondents filed the NTA with the immigration court in Detroit, Michigan and the immigration court sent out a hearing notice. Yanier did not attend that court date because, though he had notified ICE Det of his change of address, ICE Det failed to notify the immigration court of the Plaintiff’s

new address. When Yanier discovered that he had been ordered deported because he missed that first hearing, he filed a Motion to Reopen which was granted by the Immigration Judge. He also filed a copy of his application for relief with the immigration court.

41. Yanier retained counsel and has appeared at all of the Immigration Court Hearings since that time.

42. Yanier married Magela a U.S. citizen born in Cuba on November 18, 2024. Magela filed an I-130 Alien Relative Petition (Petition) with USCIS which is the first step in obtaining permanent residency in the U.S. through marriage. She filed the Petition on February 25, 2025. (Ex. 4 – Petition Approval Notice)

43. On that same date, February 25, 2025, Yanier filed an I-485 application to obtain permanent residency based on the marriage petition.

44. Yanier notified the court of the marriage, and the Immigration Judge has continued the case until USCIS makes its decision on the Petition. The next status conference is scheduled for April 6, 2026. (Ex. 5 – Status Conference notice)

45. In the interim, USCIS scheduled Yanier and Magela for an interview on the Petition on August 12, 2025. (Ex. 6 – Petition Interview Notice)

46. However, unbeknownst to them and their counsel, this was not an Interview but rather a trap by USCIS and ICE – Det to detain Yanier.

47. The USCIS officer Harrison told Magela to remain in the waiting room since she was just going to interview Yanier. She asked Yanier very few questions

on the I-485 application for permanent residency. Without saying a word to Yanier or Yanier's counsel and upon information and belief, Officer Harrison informed ICE-Det that Yanier was in the office so they could now arrest him. Two ICE-Det officers handcuffed Yanier and took him away. These officers told his counsel that Yanier was being taken to the ICE Detroit offices for processing but told counsel they would allow Yanier to call her after and did not allow her to accompany them or to meet them at the ICE – Det offices. When his counsel asked why he was arrested she was simply told that they got an email to arrest Yanier. The ICE-Det officers then told counsel that they did not agree with arresting Yanier since he had no criminal record. They said they were just following orders.

48. Yanier was taken to the ICE-Det offices to be processed. He requested to call his wife which they allowed him to do. At the time Magela was in counsel's office and when counsel asked Yanier if his ICE-Det officer was there he said yes but the officer told him he would not talk to his attorney.

49. Afterwards, counsel attempted to contact ICE – Det Supervisor Eric Fifer by phone to ascertain why Yanier had been detained since Yanier was in immigration court proceedings, had no criminal record and was married to a U.S. citizen. ICE-Det Officer Horkey answered the phone and told counsel that she had the wrong number though that was completely untrue because Supervisor Fifer had provided his cellphone number to counsel previously. Counsel then asked if she could talk to Supervisor Fifer, but Officer Horkey refused to allow counsel and

stated he had no knowledge of or information on Yanier.

50. Counsel did not understand why Yanier was detained since the circumstances upon which he was released had not changed. In fact, Yanier had more equities now than he had when the Respondents released him in 2022.

51. Counsel waited half an hour and called the cell number again. This time she got a message stating it was Supervisor Fifer's number and to leave a message. Supervisor Fifer did call counsel back from the same number that Officer Horkey, an hour before, had told counsel was not Supervisor Fifer's number. Supervisor Fifer explained to counsel that he did not know why Yanier was arrested and that the orders came from Headquarters in Washington, D.C. He did not tell counsel whether ICE-Det was going to deport him or not. When counsel asked Supervisor Fifer about a bond to release Yanier he said she would have to contact Secretary Noem's office. Obviously, that is not possible because her office would not take a call from an immigration attorney inquiring about one particular individual in Detroit. Therefore, all administrative remedies with ICE had been exhausted.

52. Yanier is detained by ICE – Detroit at North Lake Processing Center in Baldwin, Michigan. This ICE Processing Center is managed by GEO, a private prison company. <https://www.geogroup.com/about-us/who-we-are/>

53. USCIS administratively closed the I-485 application for permanent residency on August 21, 2025. (Ex. 7 – USCIS notice of administrative closure of application for permanent residency.) The USCIS notice indicates that if

immigration court proceedings are terminated then they will reopen the case and proceed.

54. Yanier filed a Motion for Bond Reconsideration, and a hearing was held on August 29, 2025. For the first time since Yanier came to the United States from Cuba, ICE Det through its attorneys stated that Yanier was being detained pursuant to 8 U.S.C. §235(b). At that hearing ICE argued that the Immigration Judge had no authority to release Yanier and the Immigration Judge agreed which is correct if Yanier was processed at entry under 8 U.S.C. §235(b).

55. Since ICE Det is now conceding that Yanier was released under 8 U.S.C. §235(b), Yanier is an applicant for admission and therefore eligible to adjust his immigration status pursuant to the Cuban Adjustment Act and/or the petition which was approved based on his marriage to a United States citizen. However, only USCIS Det can adjudicate the adjustment application whether on the Cuban Adjustment Act of his marriage to a U.S. citizen.

56. His detention by ICE – Det prevents him from being able to have his applications for permanent residency adjudicated.

57. Dagoberto Matilla Gutierrez is a citizen of Cuba. He arrived in the United States on July 13, 2021, more than three years ago. After crossing the border, he presented himself to Respondent DHS at San Luis, Arizona – which is right on the U.S. border with Mexico. After 7 days, Respondent DHS released him under an ROR. (Ex. 8 – Order of Release on Recognizance) Respondent DHS gave

Dagoberto a List of Pro Bono Legal Services, a change of address form and a NTA which states the date, time and address of his immigration court date.

58. Dagoberto applied for adjustment of status pursuant to the Cuban Adjustment Act on December 15, 2022 with the immigration court. ICE – Det did not submit any documentation to pretermite this application. However, upon information and belief, ICE – Det at that time was still arguing that all persons released on ROR were not paroled into the U.S. and therefore ineligible to adjust status pursuant to the Cuban Adjustment Act.

59. Dagoberto is subject to mandatory detention under INA §235 and can be detained at any time despite already being released.

60. Alain Suarez-Arbona is a citizen of Cuba who fled to the United States seeking refuge and protection. He arrived in the United States on July 21, 2021, more than four years ago. After crossing the border, he presented himself to Respondent DHS at San Luis, Arizona – which is right on the U.S. border with Mexico. Respondent released him the following day so he could apply for asylum. (Ex. 9 – Release on Recognizance) Respondent DHS gave Alain an NTA which states the date, time and address of his immigration court date.

61. Alain filed an application to adjust his status to permanent residency pursuant to the Cuban Adjustment Act with EOIR at the Detroit Immigration Court on or about August 21, 2022.

62. When Alain disputed that he was released under INA §236 but rather he was

released under INA §235, the Respondent ICE – Detroit filed a brief specifically stating that Alain was released on INA§236. Under the ICE’s position in this brief, Alain is not eligible to apply for permanent residency under the Cuban Adjustment Act. Now that seems to have changed according to ICE’s new interim guidance at Ex.1.

63. Alain is subject to mandatory detention under INA §235 and can be detained at any time despite already being released.

64. Amauri Orozco Blanco is a citizen of Cuba who fled to the United States seeking refuge and protection. He arrived in the United States on March 11, 2022 , more than three years ago. After crossing the border, he presented himself to Respondent DHS at Eagle Pass, Texas which is on the border of the U.S. and Mexico. Respondent DHS detained him for three days and then released him so he could apply for asylum. (Ex. 10 – Release on Recognizance) Respondent DHS gave Amauri a List of Pro Bono Legal Services, a change of address form and a NTA which did not state the day, time and location of his immigration court proceedings. ICE-Det later provided a complete NTA.

65. On March 21, 2023, Amauri applied for permanent residency pursuant to the Cuban Adjustment Act with EOIR Detroit Immigration Court.

66. Alain is subject to mandatory detention under INA §235 and can be detained at any time despite already being released.

67. Arianna Fernandez-Velazquez is a citizen of Cuba who fled to the United States seeking refuge and protection. She arrived in the United States on March 7, 2022, more than three years ago. After crossing the border, she presented himself to Respondent DHS at San Luis, Arizona which is on the U.S. border with Mexico. Respondent released her the following day so she could apply for asylum. (Ex. 11 – Release on Recognizance) Respondent DHS gave Arianna an NTA which states the date, time and address of her immigration court date.

68. On August 26, 2022, the Respondent ICE-Det submitted a brief to the Detroit Immigration Court stating that Arianna was released under INA §236 and not INA §235.

69. On July 25, 2024, Arianna submitted an application for permanent residency pursuant to the Cuban Adjustment Act with the EOIR Detroit Immigration Court though at that time, Respondent ICE- Detroit contested the eligibility for permanent residency under the Cuban Adjustment Act of all Cubans released through ROR.

70. Now pursuant to the July 8 Interim Guidance memo issued by Respondent ICE, Arianna is subject to mandatory detention under INA §235 and can be detained at any time despite already being released.

71. Roylan Hodelin Fabars Yanier is a citizen of Cuba who fled to the United States seeking refuge and protection. He arrived in the United States on March 12, 2022, more than three years ago. After crossing the border, he presented himself to

Respondent DHS at San Luis, Arizona which is on the border between the U.S. and Mexico. Respondent DHS detained him for two days and then released him the following day so he could apply for asylum. (Ex. 12 – Release on Recognizance) Respondent DHS gave him an NTA which states the date, time and address of his immigration court date.

72. On July 15, 2024, Roylan filed an application for permanent residency under the Cuban Adjustment Act. Upon information and belief, at that time ICE-Det was still arguing that Roylan's release on ROR did not constitute a parole and therefore he was ineligible to adjust status under the Cuban Adjustment Act.

73. Now pursuant to the July 8 Interim Guidance memo issued by Respondent ICE, Roylan is subject to mandatory detention under INA §235 and can be detained at any time despite already being released.

74. Eridanys Amaury Grinan-Venzant is a citizen of Cuba who fled to the United States seeking refuge and protection. He arrived in the United States on April 15, 2022, more than three years ago. After crossing the border, he presented himself to Respondent DHS at San Luis, Arizona which is on the U.S. border with Mexico. Respondent DHS detained him for four days and then released him so he could apply for asylum. (Ex. 13 – Release on Recognizance) Respondent DHS gave Eridanys a Notice To Appear (NTA) which states the date, time and address of his immigration court date.

75. On January 4, 2024, Eridanys submitted an application for permanent

residency under the Cuban Adjustment Act.

76. On January 9, 2024, the Immigration Judge at EOIR Detroit Immigration Court denied the application stating that Eridanys was released under INA §236 which made him ineligible to apply for permanent residency pursuant to the Cuban Adjustment Act.

77. Now pursuant to the July 8 Interim Guidance memo issued by Respondent ICE, Eridanys is subject to mandatory detention under INA §235 and can be detained at any time despite already being released.

78. All of the Petitioners filed applications for permanent residency under the Cuban Adjustment Act and paid over \$1000 with the exception of one Petitioner who USCIS agreed to waive the filing fees.

79. All of the Petitioners were detained at the Southern Border when they presented themselves to DHS.

80. Respondent ICE argued in all of the cases that the Petitioners were released under INA §236 and therefore ineligible for permanent residency under the Cuban Adjustment Act.

81. All of the Petitioners are now subject to mandatory detention under INA §235 which previously the Respondents argued was not applicable in each of their cases.

VI. APPLICABLE LAW

82. The Court has broad, equitable authority under the habeas statute, 28 USC 2241, 2243 and the common law, to dispose of Petitioners' cases as law and justice require, based on the facts and circumstances of these cases, in order to remedy Petitioners' unlawful detention to which they can be subjected at any time.

83. The Court should exercise this authority to grant Petitioners' habeas corpus petition and to fashion any and all additional relief, necessary to effectuate Petitioner's Yanier's expeditious release from unlawful detention. In the absence of such relief, Petitioner Yanier is suffering and will continue to suffer irreparable harm.

84. The Due Process Clause provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. In this case there has been absolutely no due process of law. Consistent with the Due Process clause of the Fifth Amendment to the U.S. Constitution, ICE must release detainees where civil detention has become punitive and where release is the only remedy to prevent this impermissible punishment. Due to the circumstances of this case, the deception involved in Yanier's arrest and detention, and the misrepresentations to counsel, one can only surmise that Yanier's detention is punitive in nature.

85. The Cuban Adjustment Act, PL 89-732, 80 Stat 1161 (1966), amended by

PL 94-571, 90 Stat 2703; H.R. Rep. No. 89-1978, reprinted in 1996 U.S.C.C.A.N. 3792, allows Cuban citizens or “natives” qualify to adjust to lawful permanent resident (LPR) status as long as they: (1) have been inspected and admitted or paroled into the United States; (2) have been physically present in the United States for at least one year at the time of application; (3) are admissible to the United States; and (4) merit a favorable exercise of discretion.

86. INA235(a) [1225(a)] Inspection.-- 235(a)(1) [1225(a)(1)] Aliens treated as applicants for admission.--An 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) shall be deemed for purposes of this Act an applicant for admission. See also, *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (explaining that § 1225(b)(2)’s mandatory detention scheme applies to noncitizens “seeking admission into the United States.”)

87. INA sec. 235(b)(1)(B)(IV) states that “Mandatory detention: Any alien subject to procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.” And the pertinent regulations state that pending the credible fear determination by an asylum officer and any review of that determination by an immigration judge, the alien shall be detained. Parole of such alien shall only be considered in accordance with section 212(d)(5) of the Act and section 212(b) of

this chapter.” 8 C.F.R. sec. 235.3(b)(1)(4)(ii) (Emphasis added)

88. The only exception to this mandatory detention provision is for noncitizens who are released “for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). The Petitioners in this case were released by the Respondents under this section whether for urgent humanitarian reasons or significant public benefit since, after all, our country has an embargo against Cuba for its significant human rights abuses.

89. Because people who enter EWI are treated as applicants for admission under INA §235(a)(1) [8 USC §1225(a)(1)], they qualify for parole under INA §212(d)(5)(A) [8 USC §1182(d)(5)(A)], even if they do not meet the “arriving alien” definition under 8 CFR §1.2.

90. The Regulations also show that a person who seeks entry like the Petitioners are subject to INA §235(b). 8 CFR §235.1(f)(2) An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated port-of-entry, except as otherwise permitted in this section, is subject to the provisions of section 212(a) of the Act and to removal under section 235(b) or 240 of the Act.

91. The Petitioners are applicants for admission to the United States due to the circumstances surrounding their arrival and encounter with immigration authorities. See INA § 235(a)(1), 8 U.S.C. § 1225(a)(1).

92. The regulations at 8 CFR §§245.2(a)(1), 1245.2(a)(1)(ii), eliminate

the Immigration Judges' jurisdiction to adjust "arriving aliens" unless they are returning on advance parole.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

VIOLATION OF DUE PROCESS

93. Petitioners reallege the foregoing paragraphs as if set forth fully herein.

94. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The federal government also violates substantive due process when it subjects civil detainees to cruel treatment and conditions of confinement that amount to punishment.

95. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001)

96. Due process protects a noncitizen's liberty and property interest including the adjudication of applications for relief and benefits made available under the immigration laws.

97. Respondents currently stance on which statute applies to the prior release and current detention of Cubans impede their ability to pursue permanent residency pursuant to the Cuban Adjustment Act and thereby violate the Petitioners' due process by depriving them of statutory relief available to them under the Cuban Adjustment Act.

98. Petitioners were released and allowed to remain in the US to pursue their permanent residency based on the Cuban Adjustment Act and nothing has changed since that time other than their equities have increased and makes them less of a flight risk. The Respondents, without affording the Petitioners due process, believe that they can detain the Petitioners without access to request a bond from a court.

**SECOND CLAIM FOR RELIEF
VIOLATION OF THE
ADMINISTRATIVE PROCEDURES ACT**

99. Petitioner re-alleges and incorporates each and every allegation contained in the preceding paragraphs as if set forth fully herein.

100. Under the Administrative Procedures Act, "the final agency action for which there is no other adequate remedy in court [is] subject to judicial review." 5 U.S.C. § 704.

101. The reviewing court "shall . . . hold unlawful and set aside agency action,
findings, and conclusions found to be (A) arbitrary, capricious, an abuse of

discretion, or otherwise not in accordance with law, “or “unsupported by substantial evidence.” 5 U.S.C. § 706(2)(A), (E).

102. A court reviewing agency action “must assess . . . whether the Decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment; it must “examine the reasons for agency decisions – or, as the case may be, the absence of such reasons.” *Encino Motorcars LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (quoting *Motor Vehicles Mfrs.; Assn of U.S. State Farm Mut. Auto Ins. Co.*, 462 U.S. 29, 43 (1983)); *Judulang v. Holder*, 565 U.S. 42, 53 (2011) (quotations omitted).

103. Petitioner Yanier’s continued detention is arbitrary and capricious. There is no rationale as to why Yanier is detained other than to punish him for simply seeking to legally obtain permanent residency in the United States.

104. Petitioners are threatened with mandatory detention, which is arbitrary and capricious. It is very likely that they will be detained under the Respondents’ new interim guidance.

105. The Petitioners have a fundamental interest in being free from restraint and/or under the threat of restraint.

106. The APA requires reasoned decision making. “We have frequently reiterated that an agency must cogently explain why it has exercised its discretion in a given manner.” *Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48 (1983) In this case the

Respondents have failed at showing a reasoned decision as to why the Petitioners first detention at the southern border was under INA §236 and any redetention is now under INA §235.

107. The Respondents back and forth position on the initial release of the Petitioners clearly shows bad faith. A release under INA §236 makes the Petitioners ineligible for permanent residency under the Cuban Adjustment Act. Under the interim guidance from July 8, 2025, the Respondents continue to argue that the Petitioners were released under INA§236. At the same time, they argue that any redetention of the Petitioners is under INA §235 which requires mandatory detention with no access to bond. Since only USCIS has the authority to grant permanent residency to Petitioners under INA §235, the continued detention deprives the Petitioners from seeking permanent residency under the Cuban Adjustment Act.

108. The Petitioners are harmed by the Respondents arbitrary and capricious actions because in addition to not being able to apply for permanent residency, they also live with the fear of detention as do their families. These persons left a communist dictatorship where they could be detained at any time and where the rule of law does not matter only to seemingly be traumatized by the same actions in the U.S.

**THIRD CLAIM FOR RELIEF
VIOLATION OF THE
IMMIGRATION AND NATIONALITY ACT**

109. Petitioners reallege the foregoing paragraphs as if set forth fully herein.

110. The Immigration and Nationality Act at 8 U.S.C. § 1182(d)(5)(A) allows for the release from mandatory detention under certain circumstances. The Respondents already found that these circumstances existed in the Petitioners cases and since nothing has changed since that determination, any redetention violates the INA.

VII. CONCLUSION

THEREFORE, the Petitioners respectfully request that this Court:

- a. Issue a Writ of Habeas Corpus on the ground that the continued detention of Yanier violates the Due Process Clause and order Petitioner Yanier's immediate release;
- b. Issue a declaration that Respondents are restrained and enjoined from re-detaining Petitioners while their Immigration matters are pending with either the Immigration court or with USCIS;
- c. Order the Respondent EOIR to transfer the Cuban Adjustment Act

applications for permanent residency and for which the fees have already been paid to the USCIS Det so that the applications can be adjudicated;

d. Order Respondent ICE to cooperate with the Petitioners in allowing USCIS to adjudicate the Cuban Adjustment Act applications for permanent residency including releasing Petitioner Yanier from custody so he may attend the adjustment of status interview;

d. Award Plaintiffs their costs and reasonable attorneys' fees in this action.

e. Any other relief the Court deems appropriate.

Respectfully submitted:

s/Caridad Pastor
Caridad Pastor C (P43551)
Pastor and Associates, P.C.
Attorneys for Petitioner
11 Broadway Suite 1005
New York, New York 10004
(248) 619-0065
carrie@pastorandassociates.com

Dated: September 3, 2025