UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____

YOEL PITALUGA NUNEZ,
DAYAMI ROLDAN CRUZ,

Petitioners,

v.

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;

DIRECTOR, National Benefits Center, U.S. Citizenship and Immigration Services,

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

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

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

MARCO RUBIO, in his official capacity as Secretary of State.

Respondents.

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VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND RELATED RELIEF

The petitioners, Yoel Pitaluga Nunez and Dayami Roldan Cruz, submit this petition for

writ of habeas corpus and related relief and allege as follows:

INTRODUCTION

1. Petitioners, Yoel Pitaluga Nunez and Dayami Roldan Cruz, are a husband and wife from Cuba who entered the United States legally in 2024 through the "Humanitarian Parole for Cubans, Haitians, Nicaraguans, and Venezuelans" program (CHNV) parole program. *See Implementation of a Parole Process for Cubans*, 88 Fed. Reg. 1266 (Jan. 9, 2023).

2. Both petitioners, after being paroled into the United States, applied for permanent residency under the Cuban Adjustment Act (CAA) after establishing physical presence in the United States for over a year. Their permanent residency petitions remain pending.

3. However, as part of an ongoing inter-agency enforcement operation called "Operation Tidal Wave," on July 6, 2025, Florida Highway Patrol stopped petitioners' vehicle in Key West for an alleged window tint violation, and an Immigration and Customs Enforcement (ICE) agent subsequently placed them both into federal custody. Neither petitioner has any known criminal history.

4. After detaining both petitioners, government records indicate that ICE attempted to subject them to expedited removal. Expedited removal is a fast-track deportation process typically employed against recently arrived noncitizens encountered at or near the border, at sea, or at ports-of-entry.

5. As parolees, petitioners are statutorily exempt from expedited removal. 8 U.S.C. §1225(b)(1)(A)(iii). Petitioners also fall within the scope of pending litigation under the Administrative Procedure Act (APA) that temporarily stayed the application of expedited removal for parolees nationwide. *See Coalition for Humane Immigration Rights v. Noem*, 25-

cv-872 (D.D.C 2025) (D.E. 41).[1]

6. Petitioners have been detained by Respondents in civil immigration custody since July 6, 2025. As further explained *infra*, Respondents lacked the authority to arrest and detain them under the Immigration and Nationality Act (INA), its implementing regulations, and the Constitution. They seek a writ of habeas corpus from this Honorable Court. They also ask that this Court intervene to ensure that their petitions for permanent residency are properly adjudicated and not pretextually denied on account of their confinement.

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

[1] The effect and scope of that stay are matters currently on appeal to the Circuit Court of Appeals for the District of Columbia.

U. S. 466, 478–79 (2004).

10. The petitioners are currently detained by the respondents at a DHS contract facility, BTC, in Pompano Beach, Florida.

PARTIES

11. 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.

12. 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.

13. The Director of the National Benefits Center, U.S. Citizenship and Immigration Services is sued in his or her official capacity. In this capacity, the Director has supervisory authority over all operations of the USCIS National Benefits Center which is responsible for the adjudication of the petitioners' adjustment of status petitions.

14. 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.

15. 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.

16. 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).

17. Marco Rubio is sued in his official capacity as the Secretary of State, the Department of U.S. government responsible for diplomatic relations.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. 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).

19. 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.

20. 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).

21. Here, there is no reason to require exhaustion of administrative remedies, as Petitioner have no meaningful alternative to habeas relief, and have already requested bond from the immigration court. *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.").

22. Accordingly, Petitioners urgently seek and are entitled to habeas relief because they have no meaningful opportunity to challenge the constitutionality of their detention through any available administrative process. *See Boumediene*, 553 U.S. 723, 783 (2008).

STATEMENT OF FACTS

YOEL PITALUGA

23. Petitioner, Yoel Pitaluga Nunez ("Mr. Pitaluga"), legally entered the United States through the CHNV parole program on January 13, 2024. See Exh. "A," Mr. Pitaluga's I-94 Arrival/Departure Record. After being paroled into the United States, see Exh. "B," Mr. Pitaluga's Parole, he subsequently filed a petition for permanent residency under the Cuban Adjustment Act (CAA) after a year of physical presence in the United States. See Exh. "C," Mr. Pitaluga's I-485 Adjustment of Status Receipt Notice. Mr. Pitaluga complied with his biometrics requirements, and his permanent residency petition is still pending. See Exh. "D," Mr. Pitaluga's Stamped Biometrics Notice.

24. After he submitted his petition for permanent residency, his parole was abruptly revoked on or around March 2025 during Respondents' attempts to wind down the CHNV program. *See Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13611 (Mar. 25, 2025).

25. The parole revocation does not affect his statutory eligibility for adjustment under the CAA.

26. In furtherance of an inter-agency enforcement action entitled "Operation Tidal Wave,"[2] on July 6, 2025, Mr. Pitaluga's vehicle was stopped, and he was ultimately

[2] "Largest Joint Immigration Operation in Florida History Leads to 1,120 Criminal Alien Arrests During Weeklong

placed in the custody of Immigration and Customs Enforcement (ICE). First, a Florida Highway Patrol officer stopped his vehicle for an alleged window tint violation. An ICE agent arrived at the scene and then interrogated him. See Exh. "E," Mr. Pitaluga's I-213 Record of Deportable/Inadmissible Alien. He has no known criminal history.

27. This arrest record "disposition" indicated that Respondents attempted to subject him to expedited removal sometime after his arrest. See id.

28. Upon information, knowledge, and belief, Respondents ignored or took no account of the past issuance of Mr. Pitaluga's parole and did not follow the proper statutory or regulatory procedures to invoke the expedited removal process.

29. Mr. Pitaluga has not been scheduled for a credible fear screening or for any immigration court hearings for removal proceedings.

30. On August 27, 2025, an Immigration Judge denied his request for bond, finding him to be "an arriving alien" and determining that "his only remedy would be to seek habeas corpus review in the district court." See Exh. "F," IJ Bond Denial Order.

31. In support of his bond motion, Mr. Pitaluga had submitted copious evidence of family, employment, and community ties and support in the United States. See Exh. "G," Letters of Support for Mr. Pitaluga.

32. Mr. Pitaluga remains detained at the Broward Transitional Center in Pompano Beach, Florida, as of the date of this petition.

DAYAMI ROLDAN

33. Petitioner, Dayami Roldan Cruz ("Ms. Roldan"), legally entered the

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Operation." Executive Office of the Governor. May 1, 2025. Available at: https://www.flgov.com/eog/news/press/2025/largest-joint-immigration-operation-florida-history-leads-1120-criminal-alien

United States through the CHNV parole program on January 13, 2024. See Exh. "H," Ms. Roldan's I-94 Arrival/Departure Record. After being paroled into the United States on the same date, see Exh. "I," Ms. Roldan's Parole, she subsequently filed a petition for permanent residency under the Cuban Adjustment Act (CAA) after establishing physical presence in the United States for over a year. See Exh. "J," Ms. Roldan's I-485 Receipt Notice. Ms. Roldan also completed her biometrics appointment related to her adjustment of status. See Exh. "K," Ms. Roldan's Stamped Biometrics Notice.

34. After she submitted her petition for permanent residency, her parole was revoked as part of Respondents' attempts to dismantle the CHNV program. *See Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13611 (Mar. 25, 2025). Her permanent residency petition remains pending to the present day, and the parole revocation does not affect her statutory eligibility for adjustment of status under the CAA.

35. As a part of "Operation Tidal Wave" in Key West on July 6, 2025, Florida Highway Patrol stopped the vehicle in which she was seated as a passenger. See Exh. "L," Ms. Roldan's I-213 Record of Deportable Alien. An ICE agent arrived at the scene and interrogated her. See id. She has no known criminal history. Ms. Roldan was ultimately placed in ICE custody. See id.

36. After detaining her, ICE's arrest report indicates in its "disposition" that at some point, ICE attempted to subject her to expedited removal. See id. Upon information, knowledge, and belief, Respondents have not followed the statutory or regulatory procedures to invoke the expedited removal process against Ms. Roldan.

37. On July 21, 2025, an Immigration Judge denied Ms. Roldan's release on

bond, finding that Ms. Roldan "appears to be an applicant for admission ('arriving alien')" and that "the Court does not have jurisdiction." See Exh. "M," IJ Bond Denial Order for Ms. Roldan.

38. In support of her bond motion, Ms. Roldan had submitted copious evidence of family, employment, and community ties and support in the United States. See Exh. "N," Letters of Support for Ms. Roldan.

39. What is more, upon information, knowledge, and belief, on or around August 27, 2025, Respondents illegally attempted to force Ms. Roldan aboard a flight to Cuba and deprive her of her opportunity to obtain permanent residency. See Exh. "O" Email Correspondence between Ms. Roldan's attorney and immigration officers.

40. Ms. Roldan has not been scheduled for a credible fear screening or for any immigration court hearings for removal proceedings.

41. She remains detained at the Broward Transitional Center as of the present date.

I. Legal Framework

A. Scope of Expedited Removal Process

42. 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.

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

44. 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).

45. 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).[3]

46. Third, 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.*

47. The expedited removal statute also limits determinations of inadmissibility 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).

48. Fourth, 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).

49. Fifth, the expedited removal statute "shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry." §1225(b)(1)(F).

50. The Department of Homeland Security (DHS) earlier this year expanded

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[3] 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

expedited removal to include certain persons who have been present in the United States for less than two years, but did not—and by statute cannot—extend this designation to parolees. *See Notice, U.S. Dep't of Homeland Sec., Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025).

i. Determinations of Inadmissibility Are Governed by Federal Regulations

51. 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).

52. 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).

53. 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).

54. 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.*

55. 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.*

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

57. ICE has published a form I-860[4] 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 regulations are binding upon the agency, even if they restrict the scope of authority under the

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

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 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").

58. If an immigration officer finds a noncitizen inadmissible, the noncitizen will be asked whether he fears returning to his country of origin. *See* § 235.3(b)(2)(i), (b)(4). Noncitizens are not entitled to counsel during this questioning, and no recording or transcript is made. *Compare* 8 C.F.R. § 235.3(b)(2)(i) with 8 U.S.C. § 1229a(b)(4)(C). If the noncitizen is inadmissible and does not indicate intent to apply for asylum, the inspecting officer issues a Notice and Order of Expedited Removal, and the noncitizen may respond in a sworn statement. 8 C.F.R. § 235.3(b)(2)(i). Once a supervising officer reviews and signs off on the inspecting officer's determination, the noncitizen is ordered removed. *See id.*

ii. Parole Issuance Forecloses Expedited Removal

59. Federal regulations governing expedited removal allow a noncitizen an opportunity to establish his or her admission or parole into the United States before immigration officials initiate expedited removal. 8 CFR §235.3(a)(6).

60. The governing regulation shows that only upon a finding that no parole was issued at the time of a noncitizen's arrival at a port of entry may an immigration official initiate expedited removal under 1225(b)(1):

> "**(6)** ***Opportunity for alien to establish that he or she was admitted or paroled into the United States.*** If the Commissioner determines that the expedited removal provisions of section 235(b)(1) of the Act shall apply to any or all aliens described in paragraph b(2)(ii) of this section, such alien will be given a 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… An alien who cannot satisfy the examining officer that he or she was lawfully admitted or paroled will be ordered removed pursuant to section 235(b)(1) of the Act [1225(b)(1) of the U.S. Code]." 8 CFR §235.3(b)(6).

61. The governing regulation otherwise mandates that an examining officer should consider whether other grounds of inadmissibility apply under 8 U.S.C. §1182. 8 CFR §235.3(b)(6). (If the alien establishes that he or she was…paroled, the case will be examined to determine…whether such parole has been, or should be, terminated, and whether the alien is inadmissible under section 212(c) of the Act [8 U.S.C. §1182].")

62. In order for a noncitizen to be amenable to expedited removal, he or she must be found inadmissible under 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7), must be "arriving in the United States" and must not have been " admitted or paroled into the United States." 8 U.S.C. § 1225(b)(1)(A)(i), (iii).

63. The DHS Secretary has extended expedited removal by designation to include certain noncitizens located anywhere in the country who cannot show that they have been physically present in the United States continuously for two years. *See Notice, U.S. Dep't of Homeland Sec., Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). Nevertheless, that does not change the statutory exclusion of noncitizens who have been paroled into the country from any such expansion under 8 U.S.C. § 1225(b)(1)(A)(iii).

B. Judicial Review of Orders of Expedited Removal

i. Judicial Review of Expedited Removal Decisions In the INA

64. 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).

65. 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).

66. What is more, the only available remedy under U.S.C. §1252(e) is issuance of a Notice to Appear (NTA) in immigration court, not release from detention. 8 U.S.C. §1252(e)(2)(C).

67. However, 8 U.S.C. §1252(e) does allow District Courts to review whether "an alien has not been ordered removed [under 1225(b)(1)]," and, if not, order Respondents to "provide a hearing in accordance with section 1229a." 1252(e)(4)(A)-(B).

68. 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).

69. 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 the expedited removal process is inapplicable.

ii. Habeas Corpus Jurisdiction

70. 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) as 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.)

71. 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—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.")

72. 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.)

73. 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).

74. 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.)

75. 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).

76. "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).

77. 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.")

78. 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).

79. 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.")

ARGUMENT

80. Respondents lacked the authority to arrest and detain Petitioners pursuant to the expedited removal provisions of 8 USC §1225(b)(1) because they are parolees from Cuba with pending applications for adjustment of status. Traditional habeas review is available here not to address the adequacy of the expedited removal process but whether the expedited removal process is statutorily applicable to them.

I. <u>Petitioners Have Not Been Charged with the Requisite Grounds of Inadmissibility</u>

81. 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.

82. 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)

83. 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.*

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

85. In the instant case, upon information, knowledge, and belief, Petitioners have not been issued a determination of inadmissibility on form I-860, as required by statute and federal regulation. Therefore, their continued detention is not in conformity with respondents' obligations for expedited removal processing.

86. 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).

87. Petitioners have not been determined or charged as subject to the grounds of inadmissibility referenced in the expedited removal statute, or in accordance with applicable regulations.

II. Petitioners Are Exempt from Expedited Removal

A. Parolees are Exempt from Expedited Removal

88. Federal regulations generally allow a noncitizen an opportunity to establish his or her admission or parole into the United States before immigration officials. 8 CFR §235.3(a)(6).

89. Upon information, knowledge, and belief, Petitioners have either not been afforded this opportunity, or Respondents have ignored their responsibility to comply with the governing statutes.

90. The plain language of the expedited removal statute, 8 U.S.C. § 1225(b)(1)(A), makes clear that noncitizens present in the United States after being inspected and paroled are categorically ineligible for expedited removal, regardless of whether that parole has expired or been terminated. Noncitizens can be statutorily subject to expedited removal if *inter alia* they are found inadmissible under 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7), and have "not been admitted or paroled into the United States." 8 U.S.C. § 1225(b)(1)(A)(i), (iii). The Secretary has extended by designation the expedited removal scheme to cover certain noncitizens located anywhere in the country who cannot show that they have been physically present in the United States continuously for two years. *See Notice, U.S. Dep't of Homeland Sec., Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). That does not change the fact that noncitizens who have been "paroled" into the country are statutorily excluded from the expanded designation under 8 U.S.C. § 1225(b)(1)(A)(iii).

91. Federal regulations are clear that the "has not been admitted or paroled" language of 8 U.S.C. § 1225(b)(1)(A)(iii)(II) refers to a past event, rather than a continuing immigration status that is maintained. Federal regulations describing to whom expanded expedited removal may be applied refer to "aliens who . . . have entered the United States without having been admitted or paroled." 8 C.F.R. § 235.3(b)(1)(ii). In that same provision, the regulations specify that a noncitizen who establishes that they have been present in the U.S. for longer than two years may not be subjected to expedited removal even if that noncitizen "was not inspected and admitted or paroled into the United States"). *Id.* Additionally, federal regulations require that a noncitizen be permitted to prove he "was . . . paroled into the United States following inspection at a port-of-entry" before being subjected to expedited removal under 8 U.S.C. § 1225(b)(1)(A)(iii); a noncitizen can be subjected to expedited removal under that statutory provision only if they

"cannot satisfy the examining officer that he or she was lawfully admitted or paroled." 8 C.F.R. § 235.3(b)(6). The focus is on the manner of entry into the United States (i.e., whether the individual was or was not inspected and admitted or paroled) rather than on the individual's current status.

B. Absent Full Diplomatic Relations with Cuba, Petitioners are Exempt from Expedited Removal

92. As of January 2025, the United States has re-designated Cuba as a state sponsor of terrorism.[5] Cuba is one of only four (4) countries on this list, along with North Korea, Iran, and Syria.[6]

93. Designation as a state sponsor of terrorism triggers broad sanctions and trade prohibitions under various sections of the U.S. Code, including: Section 620A of the Foreign Assistance Act of 1961 (FAA'61; P.L. 87-195; 22 U.S.C. §2371), Section 40 of the Arms Export Control Act (AECA; P.L. 90-629; 22 U.S.C. §2780), Section 1754(c) of the Export Controls Act of 2018 (ECA'18; part I, subtitle B, title XVII, of the John S. McCain National Defense Authorization Act for Fiscal Year 2019; P.L. 115-232; 50 U.S.C. §4813).

94. Additionally, Cuba has been under an economic embargo for over sixty (60) years—an embargo which was codified in 1996 and continues in full force. *See The Cuban Liberty and Democratic Solidarity Act of 1996* (Helms-Burton Act) Pub. L. 104-114 Stat. 785, 22 U.S.C. §§6021-6091.

95. Among the key aims of the above statute is "[t]o consider the *restoration of*

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[5] "Trump revokes Biden Removal of Cuba from US State Sponsors of Terrorism List." Reuters. January 20, 2025. Available at: https://www.reuters.com/world/americas/trump-revokes-biden-removal-cuba-us-state-sponsors-terrorism-list-2025-01-21/

[6] "State Sponsors of Terrorism." U.S. Department of State. Available at: https://www.state.gov/state-sponsors-of-terrorism/

diplomatic recognition and support the reintegration of the Cuban Government into Inter-American organizations when the President determines that there exists a democratically elected government in Cuba." *See id.* (emphasis added.)

96. The expedited removal scheme in 1225(b)(1) therefore has a special carve-out that is applicable here: "Subparagraph (A) [screening for expedited removal] shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have *full* diplomatic relations and who arrives by aircraft at a port of entry." (emphasis added.)

97. Despite a rapprochement between Cuba and the United States in 2015[7], Cuba and the U.S. lack full diplomatic relations *inter alia* on account of Cuba's designation as a state sponsor of terrorism, the ongoing economic embargo, and the U.S. position vis-à-vis reserving diplomatic recognition for a democratically elected Cuban government, as codified in 1996. Therefore, Petitioners are exempt from the expedited removal scheme, as they arrived by aircraft from a Western Hemisphere country that lacks full diplomatic relations with the U.S. 8 U.S.C. §1225(b)(1)(F).

III. Traditional Habeas Review is Available Under the Suspension Clause

98. 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

[7] "Why are Cuba and the United States still Mired in the Cold War?" Foreign Policy Magazine. December 2024. https://foreignpolicy.com/2024/12/12/cuba-us-cold-war-normalization-economy-sanctions/

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).

99. 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).

100. As Petitioners are *bona fide* applicants for adjustment of status, they can invoke the Suspension Clause to challenge the legality of their detention. *See Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 166-79 (CA3 2018).

101. Petitioners' extended physical presence in the United States and pending petitions for adjustment of status entitle them to seek judicial recourse before a habeas court. *See id.*

102. 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

103. Respondents lacked the authority to arrest and detain Petitioners pursuant to the expedited removal provisions of 8 USC §1225 because they are exempt from expedited removal as Cuban parolees. 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.)

104. Respondents' attempt to subject Petitioners to expedited removal is punitive and

has the effect of preventing them from securing a favorable adjudication of their permanent residency petitions under the Cuban Adjustment Act.

105. Petitioners are entitled to a writ of habeas corpus ordering their immediate release from custody due to their clearly improper designation as an "alien described" under 8 USC § 1225(b)(1)(A)(iii)(II). 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). This Court should also award a writ of mandamus to ensure that Petitioners' petitions for adjustment of status are adjudicated.

COUNT I:

Unlawful Use of Civil Immigration Detention for Punitive Purposes

106. The allegations in paragraphs 1-105 are realleged and incorporated herein.

107. Civil immigration detention is presumptively unconstitutional absent it authorization by a special justification enacted pursuant to an Act of Congress. *Sopo*, 825 F. 3d, at 1210 ("Under the Due Process Clause, civil detention is permissible only when there is a 'special justification' that 'outweighs the individual's constitutionally protected interest in avoiding physical restraint.' ") (citation omitted).

108. Only criminal detention, following a lawful conviction by jury trial, may be utilized for punitive purposes.

109. Civil detention becomes punitive when it is being used for purposes that are not contemplated within the special statutory justification authorizing its use. See *Bell* v. *Wolfish*, 441 U. S. 520, 539 (1979) ("Thus, if a particular condition or restriction of pretrial detention is

reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.' Conversely, if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees.") (citations and footnotes omitted); *In re Grand Jury Proc.*, 877 F. 2d 849, 850 (CA11 1989) ("Civil contempt is a coercive device imposed to secure compliance with a court order and if the circumstances illustrate that the sanction will not compel compliance, it becomes punishment and violates due process.") (citation omitted); *Lynch* v. *Baxley*, 744 F. 2d 1452, 1463 (CA11 1984) ("A court must decide whether the restriction is imposed to punish or whether it is simply an incident of legitimate governmental purpose. . . . Absent an express intent to punish, that determination will turn on whether the restriction appears excessive in relation to the alternative purpose assigned to it. . . . If a restriction is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court may infer that the purpose of the government action is punishment.") (citations omitted); *United States* v. *Vasquez-Escobar*, 30 F. Supp. 2d 1364, 1365 (M.D. Fla. 1998) (ruling that improper use of civil immigration detention was unconstitutionally punitive).

110. Respondents are unlawfully and punitively using civil detention to manufacture a pretextual denial of the petitioners' pending petitions for permanent residency under the Cuban Adjustment Act.

111. Therefore, petitioners are entitled to a writ of habeas corpus ordering that they be immediately released from the respondents' custody.

COUNT II:

Declaratory and Injunctive Relief to Prevent Denial of the Petitioners' Petitions for Adjustment of Status under the Cuban Adjustment Act

112. The allegations in paragraphs 1-105 are realleged and incorporated herein.

113. The petitioners have "suffer[ed] legal wrong," and have been "adversely affected" and "aggrieved" by the actions of the respondents. 5 U. S. C. § 702.

114. To the extent that the respondents' actions aim to effect a denial of Petitioners' applications for adjustment of status, this is also "arbitrary," "capricious," "an abuse of discretion," and "otherwise not in accordance with law." § 706(2)(A).

115. As such, petitioners are entitled to injunctive and declaratory relief, § 703, to enjoin the respondents' from denying Petitioners' pending applications for permanent residency before USCIS.

COUNT III

Petition for Writ of Mandamus

116. The allegations in paragraphs 1-105 are realleged and incorporated herein.

117. Petitioners are entitled to mandamus relief to compel a response to their pending petitions for adjustment of status because: (1) the respondents have a nondiscretionary, ministerial, clear duty to adjudicate their petitions under the Cuban Adjustment Act; (2) Petitioners have a clear right to a decision; and (3) there is no other adequate remedy available under the circumstances.

COUNT IV

Violation of the Immigration and Nationality Act and Its Implementing Regulations

118. The allegations in paragraphs 1-105 are realleged and incorporated herein.

119. Petitioners are not detained pursuant to lawful agency action or for any lawful purpose.

120. The Immigration and Nationality Act defines noncitizens "described" by the expedited removal statute so as to exclude parolees. 8 U.S.C. §§ 1225(b)(1)(A)(i) & (iii)(II). Further, Petitioners arrived from a Western Hemisphere country without full diplomatic relations with the U.S. *See id.* Petitioners fall outside the scope of the expedited removal statute.1225(b)(1)(F). Petitioner are not subject to expedited removal.

COUNT V:

Violation of the Due Process Clause of the Fifth Amendment

121. Petitioner re-alleges and incorporates by reference paragraphs 1-105.

122. Petitioners' *ultra vires* arrest under the expedited removal statute has deprived them of liberty without due process of law.

123. 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)).

124. No jurisdictional bars apply to challenges of unlawful removal based upon a claim that no valid removal order exists. *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1365–68 (11th Cir. 2006).

125. Petitioners are unlawfully detained and entitled to a writ of habeas corpus ordering 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 petitioners a writ of habeas corpus that orders immediate release from the custody of the respondents;

(f) If appropriate, order respondents to schedule an immigration court hearing under 8 U.S.C. § 1229a outside of detention.

(g) Direct respondents to adjudicate Petitioners' pending petitions for adjustment of status;

(h) 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

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

Dated: September 10, 2025

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Counsel for Petitioner

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

I, Martin Beguiristain, am submitting this verification on behalf of the petitioner because I am the petitioners' attorney. I have discussed the events described in this petition with the petitioners. 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: September 10, 2025

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