UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-61814-RS

YOEL PITALUGA NUNEZ,
DAYAMI ROLDAN CRUZ,

Petitioners,

v.

GARRETT RIPA, et al.,

Respondents.
_____/

PETITIONERS' TRAVERSE

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Petitioners hereby enter their traverse to Respondents' Return and Memorandum of Law, [ECF No. 9], and request an order directing Respondents to immediately release Petitioners from detention under 8 U. S. C. § 1225(b)(1)[1] with or without subsequent placement in standard 8 U.S.C. §1229a removal proceedings through issuance of a Notice to Appear in immigration court. See *Boumediene* v. *Bush*, 553 U. S. 723, 779 (2008) ("release need not be the exclusive remedy") (citing, *inter alia*, *Ex parte Bollman,* 4 Cranch 75, 136 (1807)); *Trump* v. *J.G.G.*, 145 S. Ct. 1003, 1005 (2025) ("And 'immediate physical release [is not] the only remedy under the federal writ of habeas corpus.' ") (quoting *Peyton* v. *Rowe*, 391 U. S. 54, 67 (1968)) (other citations omitted) (alteration in original). Respondents have held Petitioners, a husband and wife from Cuba with no criminal history, in civil confinement without legal authority for over two (2) months while actively seeking to remove them from the United States. Respondents' records indicate that Respondents did not issue and serve any notice and order of expedited order of removal against Petitioners until September 18, 2025. [ECF No. 9-2.]. The Constitution requires due process protections and the availability of habeas review to prevent Petitioners' continued detention; in view of clear statutory constraints, at an absolute minimum, immediate release from detention and the cancellation of Petitioners' expedited removal process (with the possibility of transfer to standard removal proceedings) are available and appropriate relief in habeas. *See* U.S. Const. art. I, § 9, cl. 2; 8 U.S.C. §1252(e)(4).

Argument

I. Habeas relief is available and constitutionally required

Other than habeas corpus review under 28 U.S.C. §2241 , there is no statutorily available judicial remedy that is either adequate or effective to bring the challenge they make before this Court. That is exactly why the Suspension Clause must provide for that jurisdiction. Prior to the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005), habeas review of immigration removal orders was a regular occurrence. Compare *Alexandre* v. *U. S. Att'y Gen.*,

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[1] Detention is authorized throughout expedited removal proceedings "pending a final determination of credible fear of persecution and, if found not have such a fear, until removed," § 1225(b)(1)(B)(iii)(IV), and after a positive finding of credible fear "for further consideration of the application for asylum," § 1225(b)(1)(B)(ii). Accord 8 CFR § 235.3(b)(2)(iii) ("An alien whose inadmissibility is being considered under this section or who has been ordered removed pursuant to this section shall be detained pending determination and removal.").

452 F. 3d 1204, 1205–06 (CA11 2006) (finding no habeas review after REAL ID Act); with *Cadet* v. *Bulger*, 377 F. 3d 1173, 1183–85 (CA11 2004) (addressing scope of habeas review prior to REAL ID Act).

"The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris* v. *Nelson*, 394 U. S. 286, 290–91 (1969). It is "uncontroversial . . . that the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." *Boumediene* v. *Bush*, 553 U. S. 723, 779 (2008) (quoting *INS* v. *St. Cyr*, 533 U. S. 289, 302 (2001)). "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**." *Id.*, at 783 (emphasis added).

The Immigration and Nationality Act (INA) bars Courts of Appeals from reviewing expedited removal orders upon petition for review. 8 U. S. C. §§ 1252(a)(2)(A), (e); *see also Shunaula* v. *Holder*, 732 F. 3d 143 (CA2 2013); *Khan* v. *Holder*, 608 F. 3d 325 (CA7 2010); *Brumme* v. *INS*, 275 F. 3d 443 (CA5 2001). Instead, 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. §§ 1252(e)(2)(A)–(C) & (e)(5). What is more, the only available remedy under an §1252(e) "habeas" petition is the issuance of an notice to appear in immigration court for full removal proceedings, not release from detention. § 1252(e)(2)(C). Outside of this limited procedure, the INA bars judicial review of the respondents' application of expedited removal to individual persons and matters "arising from" expedited removal proceedings. § 1252(a)(2)(A).

The INA therefore solely addresses federal judicial review for the purposes of either: (a) narrow factually-based "habeas corpus" challenges to expedited removal orders under § 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 under § 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.

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 questions about alienage, identity, and whether a noncitizen has obtained a select few immigration statuses. Traditional habeas review by contrast entitles a petitioner to seek relief from " 'detention by executive authorities without judicial trial,' " and "was not limited to challenges to the jurisdiction of the custodian, but encompassed detentions based on errors of law, including the erroneous application or interpretation of statutes." *INS* v. *St. Cyr*, 533 U. S. 289, 302 (2001) (citations and footnote omitted); *Boumediene*, 553 U.S., at 779; see also *id.*, at 732 (holding that "[f]ederal habeas petitioners long have had the means to supplement the record on review"); *DHS v. Thuraissigiam*, 591 U.S. 103, 103–104 ("Habeas has traditionally provided a means to seek release from unlawful detention.").

"At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *St. Cyr*, 533 U.S, at 301 (footnote and citations omitted); accord *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."). Further, "[t]he scope and flexibility of the writ—its capacity to reach all manner of illegal detention—its ability to cut through barriers of form and procedural mazes—have always been emphasized and jealously guarded by courts and lawmakers." *Harris*, 394 U.S., at 291.

> Indeed, common-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed depending upon the circumstances. See 3 Blackstone *131 (describing habeas as "the great and efficacious writ, in all manner of illegal confinement"); see also *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"). It appears the 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, 553 U.S. at 779–80. "Habeas corpus is a collateral process that exists, in Justice Holmes' words, to 'cu[t] through all forms and g[o] to the very tissue of the structure. It comes in from the outside, not in subordination to the proceedings, and although every form may have

been preserved opens the inquiry whether they have been more than an empty shell.' " *Id.*, at 785 (citation omitted) (alteration in original).

A finding that traditional habeas review is unavailable here to decide questions of law would run afoul of the Suspension Clause. U.S. Const. art. I, § 9, cl. 2; *St. Cyr*, 533 U. S., at 300 ("A construction of the amendments at issue that would entirely preclude review of a pure question of law by any court would give rise to substantial constitutional questions. . . . Because of th[e] [Suspension] Clause, some 'judicial intervention in deportation cases' is unquestionably 'required by the Constitution.' ") (quoting *Heikkila* v. *Barber,* 345 U. S. 229, 235 (1953)). The Suspension Clause provides a legal basis to challenge detention, even if a statute is construed to deprive jurisdiction. In fact, a Court of Appeals has already found that the Suspension Clause provides for review of expedited removal orders in circumstances like those present here. *Osorio-Martinez* v. *Att'y Gen.*, 893 F. 3d 153, 166–79 (CA3 2018) (holding that even if the INA precludes 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); *id.*, at *6 ("While the motion to reopen process is facially adequate, it does not provide an adequate and effective remedy for the exceptional circumstances of this case."); *Agarwal v. Lynch*, 610 F. Supp. 3d 990, 1003 (E.D. Mich. 2022) ("the Suspension Clause of the United States Constitution precludes Section 1252(a) from stripping this Court of jurisdiction to address a petition presenting [an Appointments Clause] that claim."); *id.*, at 1003–05 (applying *Osorio-Martinez*).

In *Osorio-Martinez*, the Third Circuit applied the Supreme Court's two-step test from *Boumediene*. In *Osorio-Martinez*, the Court of Appeals found that the petitioners there were "readily distinguished from aliens ' "on the threshold of entry" who clearly lack constitutional due process protections concerning their application for admission.' " 893 F. 3d, at 168 (citations omitted). Reviewing several Supreme Court precedents regarding the "*develop*[*ment*] [*of*] *ties*" and "*substantial connections with this country*," *id.* (emphasis in original), the Court of Appeals found that such ties arose from the approval of a Special Immigrant Juvenile (SIJ) petition which is simply one step towards an application for permanent residence, *id.*, at 168–77. And more recently in the expedited removal context, the Supreme Court took a more expansive approach, reaffirming that "the Court had held long before that the writ could be invoked by aliens **already in the country** who were held in custody pending deportation," *Thuraissigiam*, 591 U. S., at 137—

as long as the requested remedy is release from custody. *See Agarwal*, 610 F. Supp. 3d, at 1007 ("Unlike the petition in *Thuraissigiam*, Agarwal's petition *did* seek 'simple release.' In fact, that was the very first type of relief that Agarwal requested.") (citations omitted). Here, Petitioners are closer to permanent residency than the litigants in *Osorio*, as they have had pending I-485 petitions for more than nine (9) months. [ECF No. 9] at p. 14.

With that in mind, there are at least four crucial distinctions between *Thuraissigiam* and Petitioner's case. *Thuraissigiam* dealt with a habeas petitioner in different circumstances because 1) Mr. Thuraissigiam was still at the threshold of entry and had never been domiciled in the United States or applied for permanent residency; 2) his habeas petition did not request release from detention, but vacatur of his expedited removal order on procedural grounds; 3) he was seeking resolution of fact-laden inquiries during the credible fear process, not pure questions of law regarding the meaning of the expedited removal statute as applied to him; and 4) due to his recent entry without inspection, he did not—and could not—legally challenge the threshold application of the expedited removal statute to him. On these four points, Petitioner's case is distinguishable from *Thuraissigiam* and the district court decisions cited by the government. *See generally Diaz del Cid. v. Barr,* 394 F. Supp. 3d 1342, 1344 (S.D. Fla. 2019) (habeas petitioner was apprehended near the border was never released and never established a domicile in the United States); *Torrez* v. *Swacina* No. 20-20650-CIV, 2020 WL 13551822, (S.D. Fla. Apr. 17, 2020) (habeas petitioner requested vacatur of his expedited removal order, not release.)

Petitioners have been domiciled in the United States for over a year while actively seeking relief before the USCIS in the form of Cuban Adjustment. This is the first vital distinction between *Thuraissigiam* and Petitioners' case. The Supreme Court noted in *Thuraissigiam* that, "as to 'foreigners who have never been naturalized, **nor acquired any domicil or residence within the United States**, nor even been admitted into the country pursuant to law,' 'the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.' " 591 U. S., at 138 (emphasis added) (citations omitted).

Mr. Thuraissigiam "crossed the southern border without inspection or an entry document at around 11 p.m. one night in January 2017," and where "[a] Border Patrol agent stopped him within 25 yards of the border, and the Department detained him for expedited removal" since then. *Id.*, at 114. The Supreme Court in *Thuraissigiam* emphasized and reiterated that its decision

applied to persons "at the initial threshold of entry." *Id.* at 107. By contrast, here Petitioners were released into the United States on parole. Neither chronologically nor in terms of procedural posture could Petitioners be said to be at the initial threshold of entry.

Second, the Supreme Court noted that *Thuraissigiam* did not present a traditional habeas claim because "(i)n this case, however, respondent did not ask to be released. Instead, he sought entirely different relief: namely, vacatur of his 'removal order' and 'an order directing [the Department] to provide him with a new . . . opportunity to apply for asylum and other relief from removal." *Id* at 117-118. On this second point, Petitioner's case is clearly distinguishable. Petitioners unambiguously request release from detention and present a challenge to the legality of their detention.

Thirdly, the relief requested in *Thuraissigiam* also did not involve resolution of a pure question of law, as here, but judicial review of fact-intensive inquiries about the credible fear interview process. *Id.* at 157. ("[to] interpret the Suspension Clause as insisting upon habeas review of these claims would require, by constitutional command, that the habeas court make indeterminate and highly record-intensive judgments on matters of degree.") Petitioners' case presents a pure question of law that does not require "indeterminate and highly record-intensive judgments," so none of the justiciability concerns presented by *Thuraissigiam* exist here. Lastly, Petitioners' case is distinct from *Thuraissigiam* because they challenge the threshold applicability of the expedited removal statute on account of their status as paroled persons from Cuba. In other words, definitionally they are not "alien[s] described" by the expedited removal statute.

The prior local cases cited by the respondents are readily distinguishable. In *Diaz del Cid* v. *Barr*, the petitioner there "entered the United States near Hidalgo, Texas without authorization, and, **approximately one hour after**, was apprehended by Border Patrol," and "was ordered expeditiously removed. 394 F. Supp. 3d 1342, 1344 (S.D. Fla. 2019) (emphasis added); see also *id.*, at 1347 (distinguishing *Osorio-Martinez*). In contrast, petitioners entered on parole, were released from custody, and **over a year later** later were detained and processed for expedited removal proceedings. Further, the petitioner in *Diaz del Cid* was arguing that "the order for expedited removal should be vacated and he be granted a new, meaningful opportunity to apply for asylum," *id.*, at 1345, rather than challenging his subjection to such proceedings (and related custody) at all. In fact, the petitioner in *Diaz del Cid* appears to not even have sought an order

releasing him from government custody.

Torrez v. *Swacina* is easily distinguishable as well. In what was really a challenge to a USCIS denial of a permanent residence application, the Court distinguished the case from *Thuraissigiam* as being more far afield from a valid habeas claim. No. 20-20650-CIV, 2020 WL 13551822, at *4 (S.D. Fla. Apr. 17, 2020) ("Instead, Petitioner initially claimed he was not ordered removed at all (*see generally* Pet.), and, following receipt of documents from Respondents conclusively showing he was removed, now points to two "inconsistencies" in the record (*see* Resp. 13–16)."). The Court also distinguished *Osorio-Martinez* on the facts. *Id.*, at *4, n. 6.

Respondents' reliance on other recent cases is completely misplaced. One of the cases they cite has been vacated. *Quintero v. Field Off. Director of Miami ICE Field Office* No. 25-cv-22428-CMA D.E. No. 28 (S.D. Fla 2025). Another is still on appeal to the Eleventh Circuit Court of Appeals. *Chaviano v. Bondi*, No. 25-22451-civ-2025 WL 1744349 (S.D. Fla. 2025.) Also neither case concerned a person with a pending application for adjustment of status which totally removes Petitioners from the position of someone at the threshold of entry for constitutional purposes.

The Third Circuit easily determined that the INA failed to provide an adequate and effective alternative for habeas review. *Osorio-Martinez*, 893 F. 3d, at 177–78; *id.*, at 177, n. 22 ("Given the starkness of the jurisdiction-stripping statute's deficiency, we need not engage in an extended inquiry here."). Reviewing the Supreme Court cases discussed above, the Court of Appeals held:

> [T]he INA's jurisdiction-stripping provisions do not provide even this "uncontroversial" baseline of review. Instead, § 1252(e)(2) permits habeas review of expedited removal orders as to only three exceptionally narrow issues: whether the petitioner (1) is an alien, (2) was "ordered removed" (which we have interpreted to mean only "whether an immigration officer issued that piece of paper [the removal order] and whether the Petitioner is the same person referred to in that order," *Castro*, 835 F.3d at 431 (internal citation omitted)), and (3) can prove his or her lawful status in the country. 8 U.S.C. § 1252(e)(2). It also explicitly precludes review of "whether the alien is actually inadmissible or entitled to any relief from removal," *id.* § 1252(e)(5), and of "any other cause or claim arising from or relating to the implementation or operation of" the removal order, *id.* § 1252(a)(2)(A)(i). Together, these provisions prevent us from considering "whether the expedited removal statute was *lawfully applied* to petitioners," *Castro*, 835 F.3d at 432 (quoting *Am.-Arab*, 272 F.Supp.2d at 663), and thus preclude review of "the erroneous application or interpretation of relevant law," *Boumediene*, 553 U.S. at 779, 128 S.Ct. 2229 (quoting *St. Cyr*, 533 U.S. at 302, 121

> S.Ct. 2271). That, however, is the "uncontroversial" minimum demanded by the Great Writ. *Id.*

Id., at 177 (footnote omitted).

II. Petitioners have due process rights.

To begin with, in *Boumediene*, the Supreme Court was clear that Suspension Clause rights exist independently of, and without regard to, due process rights or violations thereof:

> Even if we were to assume that the CSRTs satisfy due process standards, it would not end our inquiry. Habeas corpus is a collateral process that exists, in Justice Holmes' words, to "cu[t] through all forms and g[o] to the very tissue of the structure. It comes in from the outside, not in subordination to the proceedings, and although every form may have been preserved opens the inquiry whether they have been more than an empty shell." *Frank v. Mangum,* 237 U.S. 309, 346, 35 S.Ct. 582, 59 L.Ed. 969 (1915) (dissenting opinion). **Even when the procedures authorizing detention are structurally sound, the Suspension Clause remains applicable and the writ relevant**. See 2 Chambers, Course of Lectures on English Law 1767–1773, at 6 ("Liberty may be violated either by arbitrary *imprisonment* without law or the appearance of law, or by a lawful magistrate for an unlawful reason"). This is so, as *Hayman* and *Swain* make clear, even where the prisoner is detained after a criminal trial conducted in full accordance with the protections of the Bill of Rights. Were this not the case, there would have been no reason for the Court to inquire into the adequacy of substitute habeas procedures in *Hayman* and *Swain*. That the prisoners were detained pursuant to the most rigorous proceedings imaginable, a full criminal trial, would have been enough to render any habeas substitute acceptable *per se*.

553 U. S., at 785 (emphasis added). Regardless, the petitioner does have due process rights.

In a separate discussion about due process, independent from its habeas and Suspension Clause discussion, the Supreme Court noted in *Thuraissigiam* that, "as to 'foreigners who have never been naturalized, **nor acquired any domicil or residence within the United States**, nor even been admitted into the country pursuant to law,' 'the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.' " 591 U. S., at 138 (emphasis added) (citations omitted). This was explained in the context of a case where the petitioner "crossed the southern border without inspection or an entry document at around 11 p.m. one night in January 2017," and where "[a] Border Patrol agent stopped him within 25 yards of the border, and the Department detained him for expedited removal" since then. *Id.*, at 114.

That is completely inapposite to the circumstances of the petitioners here who: (1) were released **for over a year** after being paroled and subsequently filed for permanent residency; (2) were thereafter **allowed** to live at liberty and establish a domicile in the United States, *id.*, at 138, and "develo[p] substantial connections with this country," *Osorio-Martinez*, 893 F. 3d, at 168 (punctuation omitted). For over 100 years, even as to a statute allowing deportation of an "alien immigrant . . . at any time within **the year** after his illegally coming into the United States," the Supreme Court held that "it is not competent for . . . any executive officer . . . to cause an alien who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here, to be taken into custody and deported without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States." *Yamataya* v. *Fisher*, 189 U. S. 86, 101 (1903) (emphasis added). This principle of due process was just recently affirmed without qualification. *A.A.R.P.* v. *Trump*, 145 S. Ct. 1364, 1367 (2025) (quoting *Yamataya*, 189 U. S., at 101).

III. Respondents subject to the statutory limitations in § 1225(b)(1)(A).

The respondents lacked the authority to arrest and detain the petitioners pursuant to the expedited removal provisions of 8 U.S.C. §1225 because they were paroled into the United States. As per § 1225(b)(1)'s own terms, the expedited removal statute only applies to persons who have not been admitted or paroled before issuance of a statutorily valid determination of inadmissibility. 8 U.S.C. §1225(b)(1)(A)(iii)(II). Furthermore, notwithstanding regulations promulgated related to the "wet foot dry foot policy" years ago, Respondents appear to not take a position today on the status of diplomatic relations *today* with Cuba, such that 8 U.S.C. § 1225(b)(1)(F) on its face forcefully still forecloses expedited removal of "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 arrived by aircraft or port of entry." Deference to the agency's regulations are not required, much less outcome determinative, because the Court must independently determine what the statute means. *Loper Bright Enters.* v. *Raimondo*, 603 U. S. 369, 373 (2024). Petitioners have already shown that Cuba is designated as a state sponsor of terrorism and on that account full diplomatic relations are not in place. Therefore, expedited removal is not applicable because of the clear language of the statute.

Furthermore, Congress excluded those who have been paroled or admitted from the

application of expedited removal. § 1225(b)(1)(A)(iii)(II). 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.

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). Only after the sworn statement and record are created on Form I-867A are immigration officials authorized to issue a determination of inadmissibility on Form I-860 for purposes of expedited removal. *Id.* Federal regulations require that the noncitizen be provided notice of the determination of inadmissibility. *Id.* Here, Petitioners were not issued and served with a determination of inadmissibility on Form I-860 as required by statute and federal regulation until after litigation commenced. Their placement in expedited removal proceedings is therefore unlawful due to the absence of a timely issued notice and order of expedited order of removal. 8 U.S.C. § 1225(b)(1)(A)(iii) (the definition of an "alien described" in the expedited removal statute excludes those who have been admitted or paroled.) Here, no removal order appeared to be in existence at the time that Petitioner's habeas petition was filed. [ECF No. 9-1.]

Ultimately, an agency interpretation that does not comply with a statute's text is simply impermissible because it "makes no sense to speak of a 'permissible' interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best." *Loper Bright Enters.* v. *Raimondo*, 603 U. S. 369, 373 (2024). In fact, Eleventh Circuit precedent emphasizes the point. The inadmissibility charge under § 1182(a)(7)(A)(i)(I)—which the respondents rely upon here is inapplicable once someone has already physically entered the United States. *Ortiz-Bouchet* v. *U.S. Atty. Gen.*, 714 F. 3d 1353, 1356 (CA11 2013) ("In this case, Ortiz and Malpica **were not outside the United States seeking entry, but rather already in the United States** and seeking an adjustment of status permitting them to remain.") (emphasis added); *id.* ("Ortiz and Malpica were not applicants for admission **within the meaning of** § 1182(a)(7)(A)(i)(I)') (emphasis added).

Respondents' error is that they ignore the overall context of the governing statute and the

regulations themselves. *Roberts* v. *Sea-Land Servs., Inc.*, 566 U. S. 93, 101 (2012) (" 'It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.' ") (citation omitted). Aside from the statutory and regulatory violations *supra*, the respondents rely on an expansion of their delegated authority to use expedited removal "at any time, to any class of aliens described in this section," which are described as persons "who have not established to the satisfaction of the immigration officer that they have been physically present in the United States continuously for the 2–year period immediately prior to the date of determination of inadmissibility." 8 CFR § 235.2(b)(1)(ii). Even with a designation expanding the Attorney General's application of expedited removal to the statutory maximum, respondents cannot exceed the statutory maximum. Nor can Respondents take action that has impermissible retroactive effect on persons already present for over a year when the expansion took effect. *See Rendon v. Att'y Gen of the US*, 972 F.3d 1252, 1252 (11th Cir. 2020) (discussing impermissible retroactive penalties). Petitioners are also exempt from the statute as parolees from Cuba seeking adjustment of status, which places them within a position where habeas review of the erroneous application of the expedited removal statute must be available. *See Osorio-Martinez* v. *Att'y Gen.*, 893 F. 3d 153, 166–79 (CA3 2018).

Petitioners also seek mandamus relief because the law requires that, "[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it." 5 U. S. C. § 555(b). With regard to immigration cases specifically, it has long been "the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application…" Act of Oct. 17, 2000, Pub. L. No. 106-313, Title II, § 202, 114 Stat. 1262 (codified at 8 U. S. C. § 1571(b)). In light of their continued detention and the risk of fast-track removal, Respondents have a clear duty to process Petitioners' permanent residency applications to avoid an end-run around a fair adjudication of their I-485s. Respondents should not be permitted to indirectly undermine their petitions for relief, as only the United States Citizenship and Immigration Service has jurisdiction over their I-485s, which is a separate process from any removal proceedings. 8 CFR §§ 245.2; 1245.2.

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Respectfully submitted,

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