IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CESAR ROMAN **MORA-VELAZQUEZ**, Petitioner, v. **DIRECTOR**, U.S. Department of Homeland Security ("**DHS**") Immigration and Customs Enforcement ("**ICE**") Enforcement and Removal Operations ("**ERO**") **Miami Field Office**; **ACTING DIRECTOR, U.S. DHS ICE**; **SECRETARY, DHS**; **U.S. ATTORNEY GENERAL**; **DIRECTOR**, U.S. Department of Justice Executive Office for Immigration Review ("**EOIR**"); and U.S. Citizenship and Immigration Services ("**USCIS**"); Respondents. _____/	CASE NO. JUDGE: MAGISTRATE JUDGE

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW the Petitioner, CESAR ROMAN MORA-VELAZQUEZ, by and through undersigned counsel, and hereby brings this Petition and sues the Respondents and alleges as follows:

I. INTRODUCTION

1. The Petitioner is a citizen and national of Mexico. *See* Exh. 1 (Mexico Passport).

2. The Petitioner is in the Respondents' physical custody at the DHS ICE ERO Krome North Processing Center, an immigration detention center under the Respondents' and their agents' direct control within this district in Miami, Florida. *See* Exh. 2 (ICE Detainee Locator Search Results dated October 08, 2025).

3. Earlier this year, the DHS attempted to implement a new policy to terminate nonimmigrant student records to strip nonimmigrant students of F-1 status. As one court explained, it resulted in "district courts around the country issu[ing] a cascade of [Temporary Restraining Orders] blocking DHS from arbitrarily terminating student statuses." *Shaik v. Noem*, 25-1584 (JRT/DJF), 2025 WL 2307619, at *2 (D. Minn. Aug. 11, 2025).

4. In *Shaik*, the Court explained as follows:

> Other similar cases have brought to light the origins of the mass [Student and Exchange Visitor Information System ("SEVIS")] record terminations. In March 2025, 10 to 20 federal employees or contractors spent over two weeks manually entering the names of 1.3 million students into the National Crime Information Center ("NCIC") database to see if any had criminal records. Over 16,000 names came up with a match in the database. Validation efforts whittled that number down to 6,400. DHS then sent those 6,400 names to the Department of State ("DOS"). DOS returned those names to DHS in two batches: students with expired visas and students who still had valid visas. For the roughly 3,000 students with valid visas, DOS revoked their visas. For the rest, those with expired visas, DOS directed DHS to terminate their SEVIS records.
>
> Then, in apparent response to frequent losses in federal court, DOS, DHS, and ICE reversed course. In fact, ICE restored all student records in SEVIS that had been terminated under the previous policy. ICE then promulgated a new policy for termination of records in SEVIS. That policy states that [the Student and Exchange Visitor Program ("SEVP")] can terminate records for a variety of reasons, including, but not limited to" ten different reasons, including "U.S. Department of State Visa Revocation (Effective Immediately)." The Policy also states that DOS "may at any time, in its discretion, revoke an alien's visa," and when DOS "revokes an alien's visa with immediate effect, ICE should take steps to initiate removal proceedings." The Policy notice disclaims that it is not "itself a rule or final agency action by SEVP."

Id. at *3 (citations omitted); *see also Doe #1 v. Noem*, 781 F.Supp.3d 246, 264 (D.N.J. 2025) (citing to seven cases) ("In recent weeks, Defendants' argument has been unsuccessful in a number of similar cases.").

5. Essentially, the DHS "attempt[ed] to render noncitizens with nonimmigrant status deportable by causing them to fail to maintain status." *Ajugwe v. Noem*, 8:25-cv-982-MSS-AEP, 2025 WL 1370212, at *7 (M.D. Fla. May 12, 2005).

6. In the instant matter, the Respondents have attempted to obtain the same result of rendering the Petitioner deportable by terminating his student status following a DOS revocation by detaining the Petitioner and preventing him, through no fault of his own, from complying with his status's requirement to maintain a full course of study. *See infra*, at ¶¶26-63.

7. The Respondents' attempt to render the Petitioner deportable fails again here because, as explained *infra*, the detention that made it impossible for the Petitioner to maintain his student status unlawfully violates the Petitioner's rights under the Fifth Amendment of the U.S. Constitution and the Administrative Procedure Act ("APA").

8. The Petitioner respectfully requests *inter alia* that: (1) this Honorable Court issue a Writ of Habeas Corpus; (2) declare that the Respondents have violated the Petitioner's Fifth Amendment Constitutional rights; (4) declare that the Respondents have violated the APA; (5) order the Respondents to release him from custody; (6) grant a preliminary injunction and/or a temporary restraining order requiring the Respondents to release him from custody and reinstate the Petitioner's status; and (7) order other relief as described herein.

9. This action arises under the United States Constitution and the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101 *et seq.*, as the Petitioner challenges his detention as a violation of: the Due Process Clause of the Fifth Amendment of the U.S. Constitution; the INA and regulations thereunder; and the APA.

10. This Honorable Court has jurisdiction over this complaint under the Suspension Clause, U.S. Const., Art. I, § 9, cl. 2, as the Petitioner is in custody under or by color of law of the

authority of the United States, and such custody violates the U.S. Constitution, laws, or treaties of the United States.

11. In addition, this Honorable Court has jurisdiction over this complaint under: 28 U.S.C. § 2241 (power to grant Writ of Habeas Corpus); the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (United States Defendant); and APA, 5 U.S.C. § 555(b), 5 U.S.C. § 702 (APA waiver of sovereign immunity), 5 U.S.C. § 704 (no other adequate remedy), and 5 U.S.C. § 706 (compel agency action unlawfully withheld or unreasonably delayed).

12. This Honorable Court may grant relief pursuant to 28 U.S.C. § 2241 and the All Writs Act, 28 U.S.C. § 1651.

II. VENUE

13. Venue is proper in this district under 28 U.S.C. § 1391(b), 28 U.S.C. § 1391(e)(1) (United States defendant resides in this district), 28 U.S.C. § 1391(e)(2) (cause of action arose in this district), and 28 U.S.C. § 1391(e)(4) (plaintiff resides in this district and no real property is at issue).

14. The Petitioner is in the Respondents' physical custody within this district at the Krome North Processing Center, an immigration detention center under the direct control of the Respondents and their agents in Miami, Florida. *See* 28 U.S.C. § 2241(a) (providing for habeas petitions "within [courts'] respective jurisdictions"); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) ("The plain language of the habeas statute […] confirms the general rule that for core habeas petitions challenging physical confinement, jurisdiction lies in only one district: the district of confinement").

III. PARTIES

15. Petitioner CESAR ROMAN MORA-VELAZQUEZ is citizen and national of Mexico who is in the Respondents' physical custody; the Respondents have assigned him Alien Registration No. A[redacted]

16. The Petitioner brings a suit against the Respondent DHS ICE ERO Miami Field Office Director. In this official capacity, he is responsible for the ICE Field Office with administrative jurisdiction over the Petitioner and he is a legal custodian of the Petitioner.

17. The Petitioner brings a suit against the Respondent DHS ICE Acting Director. In this official capacity, he is a legal custodian of the Petitioner.

18. The Petitioner brings a suit against the Respondent DHS Secretary. In this official capacity, she is a legal custodian of the Petitioner.

19. The Petitioner brings a suit against the Respondent/Defendant Attorney General of the U.S. Department of Justice. In this official capacity, she is responsible for the EOIR, the agency that administers the immigration courts, which conducts custody redetermination hearings and removal proceedings. *See* 8 U.S.C. § 1103.

20. The Petitioner brings a suit against the Respondent/Defendant EOIR Director. In this official capacity, he is responsible for the EOIR, the agency that administers the immigration courts, which conducts custody redetermination hearings and removal proceedings.

21. The Petitioner brings a suit against the Respondent/Defendant USCIS, the agency which adjudicates benefit requests under the INA, including request to reinstate F-1 nonimmigrant status.

IV. CUSTODY

22. The Petitioner is in the Respondents' physical custody within this district at the Krome North Processing Center, an immigration detention center in Miami, Florida, under the direct control of the Respondents and their agents. *See* 28 U.S.C. § 2241(c) (civil habeas statute applies to individuals who are "in custody").

V. STATEMENT OF THE FACTS

23. The Petitioner is a citizen and national of Mexico. *See* Exh. 1 (Mexico Passport).

24. On or about November 25, 2022, the DHS Customs and Border Protection ("CBP") inspected and admitted the Petitioner to the United States as a F-1 nonimmigrant student for the duration of his status. *See* Exh. 3 (CBP Form I-94).

25. On or about December 26, 2024, the Admissions Director at the Mariano Moreno Culinary Institute in Miami, Florida, issued the Petitioner his most recent Certificate of Eligibility for Nonimmigrant Student Status (ICE Form I-20) indicating that the school authorized the Petitioner to enroll in a program of study from February 10, 2025, through April 02, 2027. *See* Exh. 4 (ICE Form I-20)

26. Daniel B. Sibirsky, Esq., the Petitioner's counsel in custody redetermination (Bond Motion) and removal hearings before the EOIR, indicated that the Respondents detained the Petitioner on or about May 28, 2025, and, on or about May 30, 2025, Attorney Sibirsky filed the Petitioner's MOTION FOR BOND AND CUSTODY REDETERMINATION with the Miami Krome Immigration Court. *See* Exh. 5 (Bond Motion and Exhibit List with Exhibits).

27. In the Bond Motion, the Petitioner explained *inter alia* that: he had maintained nonimmigrant F-1 student status since entering the United States; he received a Form I-20 for a program valid until April 02, 2027; he had never been arrested of convicted of any crimes; he had

stated that his "activities and commitment to addressing public corruption in Hidalgo[, Mexico] as the Head of the Comptroller's Office led to [him] becoming a target for retaliation, threats, harassment, and, ultimately, the issuance in Mexico of detention orders (based entirely on false accusations) issued for the sole purpose of obtaining [his] confession in a major corruption scandal called 'Estafa Siniestra'"; and "[f]alse, politically motivated detention orders have been issued in Mexico for [the Petitioner] since 2023." *Id.*

28. In the Bond Motion, the Respondent also provided an Application for Asylum and for Withholding of Removal (Form I-589) dated May 29, 2025. *See id.*

29. On or about June 03, 2025, the Respondents filed a Notice to Appear ("NTA") (DHS Form I-862) with the Miami Krome Immigration Court. *See* Exh. 6 (NTA dated May 28, 2025).

30. The NTA alleged: (1) that the Petitioner is not a United States citizen or national; (2) is a citizen and national of Mexico; (3) was admitted to the United States on or about November 25, 2022, as a student; and (4) the DOS revoked his student visa on October 02, 2024. *See id.*

31. The NTA charged that the Petitioner has been admitted to the United States, but he is removable pursuant to 8 U.S.C. § 1227(a)(1)(C)(i) "in that after admission as a nonimmigrant under [8 U.S.C. § 1101(a)(15)], [he] failed to maintain or comply with the conditions of the nonimmigrant status under which [he was] admitted." *Id.*

32. On or about June 06, 2025, Attorney Sibirsky filed the Petitioner's NOTICE OF FILING OF DOCUMENTATION FOR BOND SPONSOR with the Immigration Court in support of the Bond Motion. *See* Exh. 7 (Notice of Filing without Exhibits).

33. On or about June 11, 2025, Attorney Sibirsky filed the Petitioner's NOTICE OF FILING OF JUNE 2025 CERTIFIED POLICE CLEARANCE FROM MEXICO CONFIRMING

THE RESPONDENT DOES NOT HAVE A CONVICTION with the Immigration Court in support of the Bond Motion. *See* Exh. 8 (Notice of Filing without Exhibits).

34. On or about June 12, 2025, Attorney Sibirsky filed the Petitioner's NOTICE OF FILING OF ADDITIONAL EVIDENCE DEMONSTRATING HIS CONTINUOUS LAWFUL F1 STUDENT NONIMMIGRANT STATUS SINCE HIS ADMISSION ON NOVEMBER 25, 2022 with the Immigration Court in support of the Bond Motion. *See* Exh. 9 (Notice of Filing without Exhibits).

35. Additionally, on June 12, 2025, Attorney Sibirsky filed the Petitioner's MOTION TO TERMINATE REMOVAL PROCEEDINGS with the Immigration Court. *See* Exh. 10 (Motion to Terminate with Exhibits).

36. In his Motion to Terminate, the Petitioner noted that despite the charge in the NTA, he had continuously maintained F-1 nonimmigrant status in the United States since his admission, permitting him to remain in F-1 nonimmigrant status for the duration of this status. *See id.*

37. On or about June 13, 2025, Attorney Sibirsky filed the Petitioner's NOTICE OF FILING OF LETTER BY [PETITIONER'S] ATTORNEY IN MEXICO with the Immigration Court in support of the Bond Motion; the Petitioner's Attorney in Mexico explained that the Petitioner had no criminal record and described the politically motivated nature of the accusations against the Petitioner in Mexico for the purpose of obtaining a false confession. *See* Exh. 11 (Notice of Filing with Exhibit).

38. On or about June 13, 2025, the Immigration Judge ("IJ") issued an order denying the Petitioner's Motion for Bond and Custody Redetermination. *See* Exh. 12 (Order).

39. On or about June 20, 2025, Attorney Sibirsky filed the Petitioner's SUPPLEMENTAL FILING TO FURTHER SUPPORT MOTION TO TERMINATE REMOVAL PROCEEDINGS, which argued *inter alia* that, when revoking the Petitioner's F-1 nonimmigrant

visa, the DOS acknowledged that the revocation takes effect upon departure and did not affect his F-1 nonimmigrant status, which continued to be active and lawful at the time of this supplemental filing. *See* Exh. 13 (Supplemental Filing and Exhibits).

40. The Supplemental Filing included an email that the U.S. Embassy in Mexico sent to the Petitioner dated August 02, 2024, notifying him of the visa revocation and informing him that the revocation takes effect upon his departure from the United States and it did not affect the status under which he was admitted. *See id.*

41. Furthermore, the Petitioner included (1) the Petitioner's Form I-20, dated June 16, 2025, by the Designated School Official at his SEVIS program of study and (2) the DHS publication "STUDENTS AND THE FORM I-20," which advised that "Your Form I-20 proves that you are legally enrolled in a program of study in the United States." *Id.*

42. On or about July 14, 2025, Attorney Sibirsky filed the Petitioner's Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26) seeking Board of Immigration Appeals ("BIA" or "the Board") review of the IJ's order denying bond. *See* Exh. 14 (EOIR-26).

43. On or about July 16, 2025, the Respondents filed a one-page response to the Petitioner's Motion to Terminate. *See* Exh. 15 (Response).

44. In this Response, which the Respondents filed at 10:27 p.m. at night with a hearing to consider the Motion to Terminate scheduled for the next day, the Respondents noted they were concurrently filing a Form I-261 Notice of Additional Charges of Inadmissibility/Deportability charging the Petitioner with removability pursuant to 8 U.S.C. § 1227(a)(1)(B) in that after admission under 8 U.S.C. § 1101(a)(15), the Petitioner remained in the United States for a time longer than permitted. *See id.*; *see also* Exh. 16 (Form I-261).

45. In this Response, the Respondents ignored the removability charge under 8 U.S.C. § 1227(a)(1)(C)(i) and instead argued that the Petitioner was removable under § 1227(a)(1)(B) due to the revocation of his student visa. *See* Exh. 15.

46. Attorney Sibirsky has indicated that on or about July 17, 2025, the Respondents withdrew their initial removal charge at the hearing before the IJ to review the Petitioner's Motion to Terminate. *See* Exh. 17 (Statement).

47. Additionally, Attorney Sibirsky noted that the IJ issued an order denying the Petitioner's Motion to Terminate because the removability charge under 8 U.S.C. § 1227(a)(1)(C)(i) was no longer applicable after the Respondents withdrew the charge and filed a new charge under § 1227(a)(1)(B). *See id.*

48. On or about July 25, 2025, the IJ issued a Bond Memorandum in support of the Order denying the Bond Motion. *See* Exh. 18 (Bond Memorandum).

49. In the Bond Memorandum, the IJ explained that "[t]o qualify for release, a noncitizen must establish that he or she is not a threat to the community or a flight risk" and that "[a]ccording to Board precedent, a noncitizen must first demonstrate that he or she does not pose a danger to the community before any release on bond may be considered." *Id.* (citations omitted).

50. Additionally, in the Bond Memorandum, the IJ erroneously found that "as of the present day, [the Petitioner] has not filed an application for relief; therefore, the Court is unable to determine the likelihood that he will obtain relief from removal." *Id.*; *but see* Exh. 5 (Bond Motion with I-589 Application).

51. On or about July 25, 2025, Attorney Sibirsky filed the Petitioner's Motion to Terminate Removal Proceedings Based On The Charge Under [8 U.S.C. § 1227(a)(1)(B)], in which he noted that revocation of a visa is effective upon departure and does not establish removability under 8 U.S.C. § 1227(a)(1)(B). *See* Exh. 19 (Motion without exhibits).

52. On or about August 20, 2025, the Respondents filed their RENEWED OPPOSITION TO THE RESPONDENT'S MOTION TO TERMINATE PROCEEDINGS with the Immigration Court, explaining that the Petitioner's SEVIS status had been terminated and, without providing any supporting precedent, that "revocation of a visa in and of itself is grounds to remove the [Petitioner] under [§ 1227(a)(1)(B)]." *See* Exh. 20 (Opposition).

53. On or about August 20, 2025, hours after the Respondents' filing, Attorney Sibirsky filed the Petitioner's NOTICE OF FILING OF EMAIL FROM DIRECTOR OF ADMISSIONS FROM THE [PETITIONER'S] SEVIS PROGRAM OF STUDY with the Immigration Court, in which the Director stated that (1) the institute understands that the Petitioner's detention is a circumstance beyond his control that has made it impossible to attend classes for the program of study and (2) he anticipated that USCIS would reinstate the Petitioner's F-1 nonimmigrant status upon his release from detention. *See* Exh. 21 (Notice of Filing).

54. On or about August 21, 2025, Attorney Sibirsky filed the Petitioner's BRIEF IN SUPPORT OF BOND APPEAL with the BIA. *See* Exh. 22 (Brief).

55. On or about August 28, 2025, Attorney Sibirsky filed the Petitioner's Response to the Respondent's Opposition with the Immigration Court. *See* Exh. 23 (Response).

56. On or about September 08, 2025, the Respondents filed another Form I-261 with the Immigration Court; the Form I-261 further alleged that the Petitioner's SEVIS Status was terminated on July 16, 2025, and it refiled the previously withdrawn removal charge under 8 U.S.C. § 1227(a)(1)(C)(i). *See* Exh. 24 (Form I-261).

57. On or about September 10, 2025, Attorney Sibirsky filed the Petitioner's Supplemental Filing In Support Of Motion To Terminate Removal Proceedings And Opposing The Refiled Charge Under [8 U.S.C. § 1227(a)(1)(C)(i)] with the Immigration Court. *See* Exh. 25 (Supplemental Filing).

58. In the Supplemental Filing, the Petitioner noted that "[t]he termination of his SEVIS can only be attributed to DHS detaining the [Petitioner] since May 28, 2025, making it impossible for him to attend classes. Thus, any alleged failure to maintain or comply with the condition of his F-1 status is due to a circumstance beyond the control of the [Petitioner]." *Id.*

59. In the Supplemental Filing, the Petitioner further explained that "DHS's withdrawal on July 17, 2025, of the charge under [§ 1227(a)(1)(C)(i)] reflects that it did not find there was a proper basis for finding the Respondent had failed to maintain or comply with the conditions of the nonimmigrant F-1 student status under which he was admitted on November 25, 2022." *Id.*

60. Attorney Sibirsky explained that "[s]ince August 21, 2025, [he and the Petitioner] have appeared at three additional Master Calendar hearings before the [IJ], the last two on September 11, 2025 and October [01], 2025." Exh. 17 (Statement).

61. "During these hearings," Attorney Sibirsky noted, "the Immigration Judge stated on the record that he recognizes the injustice of [the Petitioner's] F-1 SEVIS record being terminated due to his inability to attend classes because of his detention." *Id.*

62. "[The IJ] has also stated his opposition to DHS using removal proceedings to circumvent extradition proceedings," Attorney Sibirsky further mentioned. *Id.*

63. "Lastly, the [IJ] has also said multiple times that the federal court is likely the best venue to resolve [the Petitioner's] predicament and detention, for reasons including that even if he grants the Motion to terminate Removal Proceedings, DHS will file an appeal with the Board, and [the Petitioner] would remain detained during the pendency of the appeal which the Board would take multiple months to adjudicate," Attorney Sibirsky explained. *Id.*

64. The Petitioner anticipates filing a Motion for a Preliminary Injunction and/or Temporary Restraining Order requesting that this Honorable Court issue an order requiring the Respondents to release him from detention and to reinstate his F-1 nonimmigrant status.

VI. LEGAL BACKGROUND

A. Habeas Corpus Petition Rights

65. The right to file a habeas corpus petition pursuant to 28 U.S.C. § 2241 provides "a means of reviewing the legality of Executive detention." *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)).

66. Congress provided that district courts have the power to grant a writ of habeas corpus to a person who is in custody in violation of the Constitution or laws of the United States. *See* 28 U.S.C. § 2241(c)(3).

67. The Supreme Court has noted that habeas corpus review has historically played an important role in immigration cases:

> Before and after the enactment in 1875 of the first statute regulating immigration, 18 Stat. 477, [...] [habeas corpus] jurisdiction was regularly invoked on behalf of noncitizens, particularly in the immigration context. [...] In case after case, courts answered questions of law in habeas corpus proceedings brought by aliens challenging Executive interpretations of the immigration laws.

St. Cyr, 533 U.S. at 305-06.

68. "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." *Id.* at 301.

B. Due Process Constitutional Rights

69. The Fifth Amendment's Due Process Clause provides that "[n]o person [...] [shall be] deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

70. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

71. Immigration detention must always "bear [...] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003).

72. "[T]he Due Process Clause [of the Fifth Amendment] applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693-94 (citing *Wong Wing v. U.S.*, 163 U.S. 228 (1896)); *see also Frech v. U.S. Att'y Gen.*, 491 F.3d 1277, 1281 (11th Cir. 2007) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)) ("It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment").

73. "Detention during deportation proceedings [i]s a constitutionally valid aspect of the deportation process [...] [and] the Due Process Clause does not require [the government] to employ the least burdensome means to accomplish its goal," but civil detention of noncitizens is not without limits. *Demore*, 538 U.S. at 523, 528.

74. Civil detention cannot be punitive. *See Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893); *Zadvydas*, 533 U.S. at 690 (immigration detention must be "nonpunitive in purpose and effect").

75. "Rather than punishment, immigration detention must be motivated by the two valid regulatory goals that the government has previously argued motivate the statute: 'ensuring the appearance of aliens at future immigration proceedings and preventing damage to the community." *Ozturk v. Trump*, No. 25-CV-374, 2025 WL 1145250, at *20 (D. Vt. Apr. 18, 2025) (quoting *Zadvydas*, 533 U.S. at 690).

76. Due process cases recognize a broad liberty interest in deportation and removal proceedings. *See Bridges*, 326 U.S. at 154 (deportation "visits a great hardship on the individual and deprives him or the right to stay and live and work in the land of freedom").

77. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test that the Supreme Court set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

78. Procedural due process "imposes constraints on government decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Id.* at 332.

79. Once a petitioner has identified a protected liberty or property interest, the Court must determine whether respondents have provided constitutionally sufficient process. *See id.* at 332-33.

80. In making this determination, the Court balances (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

C. The APA

81. Federal agencies must comply with the APA when crafting and enforcing decisions, regulations, and legislative rules. 5 U.S.C. § 553.

82. Courts have authority to review and invalidate final agency actions that are not in accordance with the law, exceed agency authority, lack substantial evidence, or are arbitrary and capricious. 5 U.S.C. § 706.

83. "A person suffering legal wrong because of agency action [...] is entitled to judicial review thereof." 5 U.S.C. § 702.

84. The APA "sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts." *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1, 16 (2020) (internal quotation marks and citation omitted).

85. "It requires agencies to engage in reasoned decisionmaking and directs that agency actions be set aside if they are arbitrary or capricious." *Id.* (cleaned up).

86. When reviewing agency action, "[c]ourts must exercise independent judgment in deciding whether an agency has acted within its statutory authority." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

87. "To be sure, '[c]areful attention to the judgment of the Executive Branch may help inform that inquiry,'" but the courts "'need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.'" *Sunshine State Reg'l Ctr., Inc. v. Dir, U.S. Citizenship and Immigr. Servs.*, 143 F.4th 1331, 1338 (11th Cir. 2025) (quoting *Loper Bright*, 603 U.S. at 412-13).

88. Moreover, the courts do not owe deference to one agency's interpretation of another agency's regulation. *See Nat'l Emps. Union v. Fed. Lab. Rels. Auth.*, 942 F.3d 1154, 1156 (D.C. Cir. 2019).

89. "An agency's decision is arbitrary or capricious when it overlooks relevant issues or when it fails to 'articulate a satisfactory explanation for its action.'" *Hernandez-Lara v. Lyons*, 10 F.4th 19, 49 (1st Cir. 2021) (Lynch, J., dissenting) (citing *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

90. "When an agency changes an established policy, it must show that 'the new policy is permissible under the [relevant] statute, that there are good reasons for it, and that the agency believes it to be better.'" *Hernandez-Lara*, 10 F.4th at 49 (Lynch, J., dissenting) (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

91. "Pursuant to the APA, a reviewing court must 'hold unlawful and set aside agency action' when that action is *ultra vires*, or 'in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." *Marland v. Trump*, 498 F. Supp. 3d 624, 634 (E.D. Pa. 2020) (citing 5 U.S.C. §706(2)(C)); *see also Romero v. INS*, 39 F.3d 977, 980 (9th Cir. 1994) (holding that an immigration regulation that is inconsistent with the statutory scheme is invalid).

92. "An agency acts *ultra vires* when it 'go[es] beyond what Congress has permitted it to do.'" *Ayala Chapa v. Bondi*, 132 F.4th 796, 798-99 (5th Cir. 2025) (citing *City of Arlington v. FCC*, 569 U.S. 290, 297-98 (2013)).

D. Detention and Bond

93. Congress established a discretionary detention framework within the INA for noncitizens who are "arrested and detained" "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226; *see also Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) ("Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal").

94. For such noncitizens, the Attorney General (1) "may continue to detain the arrested alien," (2) "may release the alien on [...] bond of at least $1,500," or (3) "may release the alien on [...] conditional parole." 8 U.S.C. §§ 1226(a)(1)-(2).

95. An arresting officer makes an initial custody determination, but a detained noncitizen has the right to request a custody redetermination hearing before an Immigration Judge. *See* 8 C.F.R. §§ 1236.1(c)(8), (d)(1); *see also Jennings*, 583 U.S. at 306 (noting that 8 C.F.R. §§ 236.1(d)(1) and 1236.1(d)(1) "provide that aliens detained under [8 U.S.C.] § 1226(a) receive bond hearings at the outset of detention").

96. "If the respondent is detained," regulations require applications for Immigration Judge review of bond determinations "to the Immigration Court having jurisdiction over the place of detention." 8 C.F.R. § 1003.19(c)(1).

97. "The statute provides no guidance as to how IJs make discretionary bond determinations" and "[§] 1226(a) is silent as to whether the Government or the noncitizen bears the burden of proof." *J.G. v. Warden, Irwin County Detention Center*, 501 F.Supp.3d 1331, 1334 (M.D. Ga. 2020).

98. "To fill this gap, the BIA adopted 8 C.F.R. § 236.1(c)(8)'s standard for release." *Id.* (citing *Matter of Adeniji*, 22 I&N Dec. 1102, 1113 (BIA 1999)).

99. "The regulation, promulgated by the [legacy] Immigration and Naturalization Service ("INS"), allows '[a]ny officer authorized to issue a warrant of arrest' to release the noncitizen provided that he 'must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding.'" *Id.* (citing 8 C.F.R. § 236.1(c)(8)).

100. "The noncitizen carries the burden to prove that he is not a flight risk nor a danger to the community, and the standard of proof is 'to the satisfaction of the officer' executing the arrest warrant." *Id.*

101. Notably, "[t]he regulation only applies to officials issuing arrest warrants for immigration violations." *Id.* at 1335.

102. "As written, this regulation does not apply to IJs determining release at bond hearings." *Id.* (citing *Matter of Adeniji*, 22 I&N Dec. at 1112).

103. "Nevertheless, the BIA concluded that 8 C.F.R. § 236.1(c)(8) provided the appropriate standard 'for ordinary bond determinations' under 8 U.S.C. § 1226(a)." *Id.* (citing *Matter of Adeniji*, 22 I&N Dec. at 1113).

104. Two of the Circuit Courts of Appeals have found that the government must bear the burden of establishing that a detainee is a flight risk or will be a danger to the community. *See id.* (citing *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) and *Velasco Lopez v. Decker*, 978 F.3d 842, 853-56 (2d Cir. 2020)); *see also Hernandez-Lara*, 10 F.4th at 41 (IJ may deny bond only if the DHS "either (1) prove[s] by clear and convincing evidence that [the detained noncitizen] poses a danger to the community or (2) prove[s] by a preponderance of the evidence that [the detained noncitizen] poses a flight risk"); *but see Borbot v. Warden Hudson Cty. Corr. Facility*, 906 F.3d 274, 279 (3d Cir. 2018) (stating it "perceive[d] no problem" with noncitizens bearing the burden of proof under 8 U.S.C. § 1226(a)); *Miranda v. Garland*, 34 F.4th 338, 366 (4th Cir. 2022) (agreeing with *Borbot*).

105. In *J.G.*, the District Court joined "the Ninth and Second Circuits as well as 'the overwhelming majority of district courts' that hold the Government must bear the burden of proof to justify a noncitizen's detention pending removal proceedings." *Id.* (citations omitted).

106. The Court further found that the Government must bear this burden by meeting the clear and convincing evidence standard. *Id.* at 1341-42.

107. Although the Court in *Hernandez-Lara* found that the BIA precedent regarding the burden of proof in bond hearings to violate the Constitution, a dissenting Circuit Judge argued that BIA's position unlawfully violated the APA. *See Hernandez-Lara*, 10 F.4th at 46-54 (Lynch, J., dissenting) (finding that *Matter of Adeniji* violates APA).

108. In his dissent, which he issued before the Supreme Court issued its decision in *Loper Bright*, the Circuit Judge found that (1) the BIA misinterpreted 8 C.F.R. § 235.1(c)(8) and (2) the BIA acted arbitrarily and capriciously by relying on 8 C.F.R. § 235.1(c)(8) in *Matter of Adeniji* to abrogate its prior decision in *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976). *See Hernandez-Lara*, 10 F.4th at 49-52 (Lynch, J., dissenting)

E. Nonimmigrant Student Status and Deportability Grounds

109. Under the INA, a foreign student may enter the United States in nonimmigrant student status to complete a course of study at an approved educational institution. 8 U.S.C. § 1101(a)(15)(F)(i); 8 C.F.R. § 214.2(f).

110. The DOS may approve a visa application and issue a nonimmigrant visa to allow the foreign student admission to the United States to pursue a course of study. *See* 22 C.F.R. § 41.61(b)(1)

111. Congress authorized creation of the SEVP to collect information from universities about noncitizens maintaining or applying for F-1 nonimmigrant student status. 8 U.S.C. § 1372(a)(1)(A).

112. The SEVP satisfies the Congressional directive that the government establish "an electronic means to monitor and verify[,]" *inter alia*, "the issuance of a visa to a foreign student or an exchange visitor program participant," and "the admission into the United States of the foreign student or exchange visitor participant." *Id* at § 1372(a)(3).

113. Universities participating in foreign student programs must collect and provide information about their noncitizen students through SEVP. *Id*. at § 1372(c)-(d).

114. This information includes the students' current academic status, including whether a student is maintaining status as a full-time student." *Id*. at § 1372(c)(1)(C).

115. A nonimmigrant maintains F-1 status if the student is pursuing a full course of study at an SEVP-certified university. 8 C.F.R. § 214.2(f)(5)(i).

116. One prerequisite to admission in F-1 nonimmigrant status is the presentment of a Form I-20 in the foreign student's name that a SEVP-certified school issues for attendance. 8 C.F.R. § 214.2(f)(1)(i)(A).

117. Upon admission to the United States, the DHS grants an F-1 nonimmigrant student permission to remain in the United States for the duration of status as long as the student continues to meet regulatory requirements. 8 C.F.R. § 214.2(f).

118. A nonimmigrant student who fails to maintain a full course of study without approval from a Designated School Official ("DSO") fails to maintain status. *See id.* at § 214.2(f)(5)(iv); *Jie Fang v. Dir. U.S. Immigr. & Customs Enf't*, 935 F.3d 172, 175-76 (3d Cir. 2019).

119. A DSO must report through an online database, the SEVIS, when a student fails to maintain status. 8 C.F.R. § 214.2(g)(2).

120. A nonimmigrant student further fails to maintain status if he engages in unauthorized employment, provides false information, or is convicted of certain crimes. 8 C.F.R. § 214.1(e)-(g).

121. A noncitizen who fails to maintain nonimmigrant status, or to comply with the conditions of that status, "is deportable" pursuant to 8 U.S.C. § 1227(a)(1)(C)(i).

122. "A termination of status initiated by DHS is governed by 8 C.F.R. § 214.1(d), and permits DHS to terminate status when: (1) a previously granted waiver under 8 U.S.C. § 1182(d)(3) or (4) is revoked; (2) a private bill to confer lawful permanent residence is introduced in Congress; or (3) DHS publishes a notification in the Federal register identifying national security, diplomatic, or public safety reasons for termination." *Doe 1 v. Bondi*, 780 F.Supp.3d 1277, 1281-82 (N.D. Ga. 2025).

123. "After the issuance of a visa or other documentation to any alien, the consular officer or the Secretary of State may at any time, in his discretion, revoke such visa or other documentation." 8 U.S.C. § 1201(i); 22 C.F.R. § 41.122(b)(2) (providing for visa revocation by

"[a] consular officer, the Secretary [of State], or a [DOS] official to whom the Secretary has delegated this authority").

124. "[T]he revocation of an F-1 visa does not constitute failure to maintain status pursuant to the relevant regulations and does not provide a basis to terminate F-1 student status under the SEVIS registration system." *Doe 1*, 780 F.Supp.3d at 1282.

125. "Instead, if the visa is revoked, the student is permitted to continue to pursue her course of study in school, but upon departure from the United States, the SEVIS record is terminated, and the student must obtain a new visa from a consulate or embassy abroad before returning." *Id.* (citations omitted).

126. "Put differently, F-1 student status and F-1 student visas are not one in the same." *Id.*

127. Earlier this year, a District Court issued a nationwide preliminary injunction enjoining the DHS from *inter alia* unlawfully terminating SEVIS records after the DOS revoked F-1 nonimmigrant visas or "arresting and incarcerating any of the named Plaintiffs in these cases and similarly situated individuals nationwide pending resolution of these proceedings." *Doe v. Trump*, -- F.Supp.3d ----, 2025 WL 1467543, at **2-5 (N.D. Cal. May 22, 2025) (modified by *Doe v. Trump*, 2025 WL 2430494 (N.D. Cal. Aug. 22, 2025)).

128. In some circumstances, a student who fails to maintain status may submit a request with USCIS for reinstatement of status. *See* 8 C.F.R. § 214.1(f)(16)(i).

129. USCIS "may consider" reinstatement for a student who demonstrates that he or she: (1) has not been out of valid status for more than five months at the time of filing the reinstatement request (or demonstrates the failure to file within the period resulted from exceptional circumstances and the student filed the request "as promptly as possible" under these circumstances; (2) "[d]oes not have a record of repeated or willful violations of Service

regulations."; (3) "[i]s currently pursuing, or intending to pursue, a full course of study"; (4) "[h]as not engaged in unauthorized employment"; (5) "[i]s not deportable on any other ground than 8 U.S.C. § 1227(a)(1)(B) and (C)(i)"; and (6) establishes to USCIS's satisfaction either that "[t]he violation of status resulted from circumstances beyond the student's control" or that "[t]he violation of status relates to a reduction in the student's course load that would have been within a DSO's power to authorize, and that failure to approve reinstatement would result in extreme hardship to the student." 8 C.F.R. §§ 214.2(f)(16)(i)(A)-(F); *see also Jie Fang*, 935 F.3d at 176.

130. Although evidence of maintenance of status can be grounds for dismissing removal proceedings, an IJ has no ability to review F-1 status termination. *See Jie Fang*, 935 F.3d at 183.

VII. CLAIMS FOR RELIEF

COUNT I

RESPONDENTS HAVE VIOLATED THE PETITIONER'S DUE PROCESS RIGHTS

131. Petitioner MORA-VELAZQUEZ repeats and re-alleges paragraphs 1 through 130 as though fully set forth herein.

132. The Respondents have failed to provide the Petitioner with due process pursuant to the Fifth Amendment. *See Mathews*, 424 U.S. at 335; *see also Jie Fang*, 935 F.3d at 185 (holding district court had jurisdiction to review claim that termination of F-1 nonimmigrant status violated Due Process Clause).

133. To comport with Due Process requirements, detention must bear a reasonable relationship to its two regulatory purposes of ensuring the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690-91.

134. The Respondents' detention of the Petitioner is punitive and does not bear a reasonable relationship to the regulatory purposes; rather the detention makes it impossible for the Petitioner to continue to maintain his nonimmigrant status by pursuing a full course of study. *See* 8 C.F.R. § 214.2(f)(5)(i).

135. The inability to maintain status, through no fault of his own, then permits the Respondents to find that the Petitioner has failed to maintain status and his deportable. *See* 8 U.S.C. § 1227(a)(1)(C)(i) (deportation ground); 8 C.F.R. § 214.2(f)(5)(iv) (failure to maintain status).

136. Without the punitive detention, the Petitioner would remain in lawful F-1 nonimmigrant status, and the Petitioner was not deportable at any point during the maintenance of his F-1 nonimmigrant status. *See* 8 C.F.R. § 214.2(f) (maintenance of status).

137. The immigration bond procedure in the instant matter also deprives the Petitioner of Due Process Rights. *See Mathews*, 424 U.S. at 335 (three-factor balancing test to evaluate whether procedures comply with constitutional due process demands).

138. Here, the first *Mathews* factor weighs in the Petitioner's favor as freedom from physical restraint is an interest that "lies at the heart of the liberty that the [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690; *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("[T]he most elemental of liberty interests [is] the interest in being free from physical detention […]").

139. The second *Mathews* factor is "the risk of an erroneous deprivation of such [private] interest through the procedures used, and the probable value, if any of additional or substitute procedural safeguards." *Id.* at 335.

140. This factor also weighs heavily in the Petitioner's favor. *See J.G.*, 501 F.Supp.3d at 1337 ("The risk of an erroneous deprivation under the bond procedure is high").

141. In *J.G.*, the Court explained as follows:

> The current scheme places the onus on noncitizens who are incarcerated to gather and present evidence regarding their flight risk or potential danger. Incarceration restricts the noncitizen's ability to communicate with attorneys, family members, or other individuals who may present testimony or have access to the noncitizen's records. Limited resources and investigative tools increase the likelihood that the factual record developed at the bond hearing will be incomplete. An incomplete record creates a considerable risk of error in the IJ's findings and impairs the BIA's ability to correct erroneous deprivations.

Id.; *see also* Exh. 5 and Exh. 18 (Petitioner's Bond Motion including asylum application and IJ's Bond Memorandum indicating no relief applications).

142. The third *Mathews* factor is "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

143. "Weighing the Government's interests and finding the fiscal and administrative burdens to be minimal, the Court concludes that the third factor is neutral." *J.G.*, 501 F.Supp.3d at 1340.

144. One Court, in finding "deprivation of due process" in a similar case to be "particularly egregious," explained as follows:

> Although the Government claims that Mr. Garcia is "a deportable alien" and therefore, it implies, he is presumably entitled to fewer rights than someone not deportable, at the time of Mr. Garcia's bond hearing no judicial officer found he was removable and even today he is seeking cancellation of removal. Under the government's argument, even if a detainee under Section 1226(a) denies that she is deportable or, as was the case with Petitioner in this case, remains silent, she can still be detained for months before the merits of her detention are heard.
>
> That proposition is breathtaking. It deviates grossly from the Supreme Court precedent that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739 (1987).

Garcia v. Decker, 448 F.Supp.3d 297, 301-02 (S.D.N.Y. 2020) (cleaned up).

145. Accordingly, the Respondents have violated the Petitioner's due process rights and, should the Court not order the Petitioner's immediate release from custody, the Court should

nonetheless require the Respondents to conduct a bond hearing with the burden of proof placed on the Government to establish danger and flight risk by presenting clear and convincing evidence. *See J.G.*, 501 F.Supp.3d at 1431.

COUNT II

APA VIOLATIONS

146. Petitioner MORA-VELAZQUEZ repeats and re-alleges paragraphs 1 through 130 as though fully set forth herein.

147. "An agency's decision is arbitrary or capricious when it overlooks relevant issues or when it fails to articulate a satisfactory explanation for its action." *Hernandez-Lara*, 10 F.4th at 49 (Lynch, J., dissenting) (citation omitted).

148. When denying the Petitioner's bond motion, the IJ erred by determining that the Petitioner had not established *prima facie* relief from removal. *See* Exh. 5 and Exh. 18 (Petitioner's Bond Motion including asylum application and IJ's Bond Memorandum indicating no relief applications); *see also Taylor v. U.S.*, 396 F.3d 1322, 1327 n.5 (11th Cir. 2005) (citation omitted) ("The writ of habeas corpus may be used to attack deportation proceedings when some essential finding of fact is unsupported by the evidence.").

149. Moreover, the BIA decision in *Matter of Adeniji* and its adoption of 8 C.F.R. § 236.1(c)(8) is arbitrary and capricious and not due any deference. *See Hernandez-Lara*, 10 F.4th at 46-54 (Lynch, J., dissenting); *see also Sunshine State Reg'l Ctr., Inc.*, 143 F.4th at 1338 (quoting *Loper Bright*, 603 U.S. at 412-13) ("To be sure, '[c]areful attention to the judgment of the Executive Branch may help inform that inquiry,'" but the courts "'need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.'").

VIII. RELIEF REQUESTED

WHEREFORE, Petitioner MORA-VELAZQUEZ prays that this Honorable Court grant the following relief:

1. Accept jurisdiction over this action.

2. Issue an Order to Show Cause pursuant to 8 U.S.C. § 2243 directing the Respondents to file a return in three days of the Order directing the Respondents to show cause why the Court should not grant a Writ of Habeas Corpus.

3. Issue a Writ of Habeas Corpus requiring the Respondents to produce the Petitioner.

4. Declare that the Respondents' detention of the Petitioner violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution.

5. Declare that the Respondent Attorney General and EOIR Acting Director have violated the APA.

6. Grant temporary and permanent injunctive relief requiring the Respondents/Defendants to release the Petitioner from custody and to reinstate his nonimmigrant F-1 student status.

7. Alternatively, order the IJ to conduct another bond hearing with the burden of establishing danger and flight risk by clear and convincing evidence on the Respondents.

8. Award Petitioner MORA-VELAZQUEZ reasonable costs and attorney fees for bringing this action.

9. Grant such further relief as Petitioner MORA-VELAZQUEZ may request and/or this Honorable Court deems just and proper under the circumstances.

Respectfully submitted this 08th day of October, 2025,

By: **/s/ Andrew W. Clopman**
Andrew W. Clopman, Esq.
Florida Bar No. 0087753
aclopman@clopmanlaw.com
Andrew W. Clopman, P.A.
P.O. Box 86
Fort Covington, NY 12937
Telephone: (772) 210-4337
Attorney for Petitioner Cesar Roman Mora-Velazquez

/s/ Michael D. Padula
Michael D. Padula, Esq.
Florida Bar No. 314810
Mpadula@padulalawfirm.com
Padula Law Firm PLLC
601 Brickell Key Drive, Suite 700
Miami, FL 33131
Telephone: (305) 455-5206
Attorney for Petitioner Cesar Roman Mora-Velazquez

VERIFICATION

Pursuant to 28 U.S.C. § 2242, undersigned counsel certifies under penalty of perjury that I am submitting this verification because I am one of the Petitioner's attorneys and I have discussed the facts within this Petition with the Petitioner's counsel in removal and custody redetermination proceedings before Respondents. Pursuant to these discussions, I have reviewed the foregoing petition and that, to the best of my knowledge, the facts therein are true and accurate and the attachments to the petition are true and correct copies of the originals.

Respectfully submitted this 08th day of October, 2025,

By: **/s/ Andrew W. Clopman**

Andrew W. Clopman, Esq.
Florida Bar No. 0087753
aclopman@clopmanlaw.com
Andrew W. Clopman, P.A.
P.O. Box 86
Fort Covington, NY 12937
Telephone: (772) 210-4337
Attorney for Petitioner Cesar Roman Mora-Velazquez