UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

RIGO HERRERA-ESCOBAR

Petitioner

V. Case No. _____

Agency File [redacted]

PAMELA BONDI, U. S. Attorney General;

KRISTI NOEM, Secretary of the United States Department of Homeland Security;

U.S. DEPARTMENT OF HOMELAND SECURITY;

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;

FIELD OFFICE DIRECTOR, Miami Field Office, U.S. Immigration and Customs Enforcement,;

ASSISTANT FIELD OFFICE DIRECTOR, Miami Field Office, U.S. Immigration and Customs Enforcement,

Defendants-Respondents

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The petitioner, Rigo Herrera-Escobar, submits this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, by and through undersigned counsel, and alleges as follows:

INTRODUCTION

1. Rigo Herrera-Escobar is in the physical custody of Respondents at the Florida Broward Transitional Center (ICE) located in Pompano Beach, Florida. He is

unlawfully detained pursuant mandatory detention policies recently adopted by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR).

2. Petitioner is charged with having entered the United States without admission or parole at an unknown time and unknown place years ago. See 8 U.S.C. § 1182(a)(6)(A)(i). Based on this allegation, DHS and EOIR deem Petitioner subject to mandatory detention as an "applicant for admission" who is "seeking admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

3. DHS and EOIR each have nationwide policies mandating the detention of all persons who entered without admission or parole, regardless of whether that person was apprehended upon arrival. Most recently, on September 5, 2025, in Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (BIA) held that all persons who have entered the United States without admission or parole are now subject to mandatory detention under § 1225(b)(2)(A).

4. Petitioner will categorically denied, bond under DHS's and EOIR's nationwide policy of denying bond to persons like Petitioners.

5. Petitioner's detention based on § 1225(b)(2) violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner, who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. Indeed, § 1226(a)

expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without admission or parole.

7. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring their release unless Respondents provide a bond hearing under § 1226(a) within fourteen days.

Respondents' new legal interpretation is also plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

JURISDICTION

8. This action arises under the Constitution of the United States of America, 28 U. S. C. § 2241 et seq. (habeas corpus), 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. §§ 555(b), 701, et seq.

9. The Court has jurisdiction over this case under 28 U. S. C. § 2241 (habeas corpus), and § 1331 (federal question).

10. The Court may grant relief pursuant to the U.S. Const., art. I, § 9, cl. 2 (Suspension Clause), 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. §§ 701 et seq. (Administrative Procedure Act).

VENUE

11. Venue is proper in this district under 28 U. S. C. §§ 1391(e)(1) & 2241 because:

(1) "a substantial part of the events or omissions giving rise to the claim

occurred" in this district; and (2) this is the district where the "the custodian can be reached by service of process." Rasul v. Bush, 542 U. S. 466, 478–79 (2004).

12. Additionally, the Petitioner is being held in the custody of the respondents in this district.

PARTIES

13. Petitioner, **Rigo Herrera-Escobar** , is a citizen of Honduras. He was present in the United States as a result of entering the United States on June 2, 2014, via the border. He is being held in ICE custody at the Broward Transitional Center, in Pompano Beach, Florida under the jurisdiction of the respondents.

14. Respondent, **Pamela Bondi,** is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity

15. Respondent, **Kristi Noem**, is sued in her official capacity as the Secretary of the Department of Homeland Security (DHS). Because ICE is a subagency for the DHS, Secretary Noem is a legal custodian of the Petitioner, and is responsible for the prolonged detention of the Petitioner.

16. Respondent, **U.S. Department of Homeland Security (DHS),** is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

17. Respondent, **Executive Office for Immigration Review (EOIR),** is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

18. Defendant, **Field Office Director,** Miami Field Office, U.S. Immigration and Customs Enforcement is sued in his or her official capacity. In this capacity, the Field Office Director 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

19. Defendant, **Assistant Field Office Director**, Krome Service Processing Center, U.S. Immigration and Customs Enforcement is sued in his or her official capacity. In this capacity, the Assistant Field Office Director 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.

EXHAUSTION OF REMEDIES

20. No exhaustion is required for the petitioner's habeas claim because "Section 2241 itself does not impose an exhaustion requirement," Santiago-Lugo v. Warden, 785 F. 3d 467, 474 (CA11 2015)," and because "a petitioner need not exhaust his administrative remedies 'where the administrative remedy will not provide relief commensurate with the claim,' " *Boz v. United States,* 248 F. 3d 1299, 1300 (CA11 2001), abrogated on other grounds recognized by *Santiago-Lugo*, 785 F. 3d, at 474–75 n. 5 (citation omitted).

21. No statute, regulation, or other legal source with binding authority exists to provide the remedy that the petitioner's habeas claims seek to remedy.

22. Further, "[b]ecause the BIA does not have the power to decide constitutional claims—like the validity of a federal statute— . . . certain due process claims need not be administratively exhausted." *Warsame v. U. S. Att'y Gen.,* 796 Fed.

Appx. 993, 1006 (CA11 2020); accord *Haitian Refugee Ctr., Inc. v. Nelson,* 872 F. 2d 1555, 1561 (CA11 1989), aff'd sub nom. *McNary v. Haitian Refugee Ctr.,* Inc., 498 U. S. 479 (1991) (exhaustion had "no bearing" where petitioner sought to make a constitutional challenge to procedures adopted by the INS).

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

24. And with respect to the petitioner's APA claim, an agency's failure to take action is reviewable agency action, *Norton v. S. Utah Wilderness Alliance*, 542 U. S. 55, 61–62 (2004), and there are no administrative remedies available that the petitioner is required to exhaust under *Darby v. Cisneros*, 509 U. S. 137 (1993).

REQUIREMENTS OF 28 U.S.C. § 2243

25. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

26. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four

corners of the application." *Yong v. I.N.S.*, 208 F. 3d 1116, 1120 (CA 9 2000)(citation omitted); *See also, Johnson v. Rogers,* 917 F.2d 1283, 1284 (10th Cir. 1990).

FACTUAL ALLEGATIONS

27. Rigo Herrera-Escobar is a native and citizen of Honduras born [redacted].

28. Mr. Herrera-Escobar initially entered the U.S. on or about June 2, 2014 without inspection or admission at or near Miguel Aleman, Texas.

29. His entry was undetected by any immigration officials.

30. Since his entry, Mr. Herrera-Escobar has lived and worked in the United States, working in stucco and construction.

31. Mr. Herrera-Escobar has a United States citizen child born on [redacted] who has cerebral medical issues.

32. Mr. Herrera-Escobar has never been arrested for any crime in the United States or elsewhere.

33. On or about October 2, 2025, the respondents arrested Mr. Herrera-Escobar on his way home from McDonald's and he has been detained ever since.

LEGAL FRAMEWORK

34. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

35. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who

have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

36. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Most aliens are place into these "regular" proceedings, however there are exceptions, such as the removal of someone who has re-entered illegally after a prior removal or whether the alien has been convicted of an aggravated felony. Although not limited to these two exceptions, these two exceptions are relevant to this complaint and are explained in detail below.

37. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

38. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

39. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

40. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens;

Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

41. Thus, in the decades that followed, most people who entered without admission or parole and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

42. On July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.

43. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

44. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States

without admission or parole are considered applicants for admission who are seeking admission and are ineligible for IJ bond hearings.

45. Dozens of federal courts have rejected Respondents' new interpretation of the INA's detention authorities.

46. Notably, long before ICE or the BIA changed its position nationwide, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without admission or parole and who have since resided here. The Honorable Court in Washington held that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

47. Since the *Rodriguez Vazquez* preliminary injunction decision, court after court has adopted the same reading of the INA's detention authorities and rejected ICE's new policy and EOIR's new interpretation. See, e.g., *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde,* No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa,* No. CV 25-02157, PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis,* No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug.

15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce,* No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser,* No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem,* No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump,* No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi,* No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft,* No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025*); Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem,* No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft,* No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde,* No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump,* No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

48. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the Rodriguez Vazquez court and others have explained, the

plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioners.

49. Subsection 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

50. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without admission or parole. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the Rodriguez Vazquez court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." Rodriguez Vazquez, 779 F. Supp. 3d at 1257 (citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010)).

51. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

52. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of

entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

53. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioners, who have already entered and were residing in the United States at the time they were apprehended.

CLAIMS FOR RELIEF

COUNT I:
Unlawful Detention in Violation of Due Process

54. The allegations in paragraphs 1-50 are realleged and incorporated herein.

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

56. Petitioners have a fundamental interest in liberty and being free from official restraint.

57. The government's detention of Petitioners without a bond redetermination hearing to determine whether they are a flight risk or danger to others violates their right to due process.

58. The petitioner's continued civil immigration detention, without an individualized determination by a neutral decisionmaker as to whether that

detention should continue, has become prolonged is in violation of constitutional due process.

59. Therefore, the petitioner is entitled to a writ of habeas corpus granting him a bond hearing conducted either by the Court, or by the Immigration Judge, with the burden of proof upon the government to demonstrate by clear and convincing evidence that the petitioner is a danger or a flight risk.

COUNT II:
Violation of the Administrative Procedures Act

60. The allegations in paragraphs 1-50 are realleged and incorporated herein.

61. The purpose of the Administrative Procedures Act ("APA") is to prevent abuse of discretion by federal agencies by granting federal judiciary authority to review the actions of such agencies.

62. The APA also empowers Federal Courts to review federal agencies to "compel agency action unlawfully withheld or *unreasonably* delayed". 5 U.S.C. § 706(1) (emphasis added).

63. The Court may also hold unlawful and set aside agency action that, inter alia, is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law". 5 U.S.C. § 706(2)(A); or "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). "Agency action" includes, in relevant part, "an agency rule, order, license, sanction, relief or the equivalent or denial thereof, or *failure to act.*" 5 U.S.C. §551(13)(emphasis added).

64. The absolute about-face regarding the applications of § 1225 and § 1226 by the Board of Immigration Appeals, raises legal issues under the APA in the following way: the recent decisions by the BIA to abandon decades-old practice

of bond hearings under 1226(a) and in violation of Congressional intent and statutes, is a violation of the APA.

65. The APA, therefore, grants this Court authority to review that agency action (i.e. refusal to determine whether the appeal overcomes the grounds for denial) to determine whether such agency action constitutes an "abuse of discretion" or has been "unreasonably delayed" in violation of the APA.

COUNT III:
Violation of the Immigration and Nationality Act

66. The allegations in paragraphs 1-50 are realleged and incorporated herein.

67. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

68. The application of § 1225(b)(2) to Petitioners unlawfully mandates their continued detention and violates the INA.

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) Issue a writ of habeas corpus clarifying that the statutory basis for petitioner's detention is 8 U.S.C. § 1226(a) and that 8 U.S.C. § 1225(b)(2)(A) does not apply to petitioner;

(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) Alternatively, grant the petitioner a writ of habeas corpus ordering that the petitioner be afforded bond hearing conducted either by the Court, or by the Immigration Judge, with the burden of proof upon the government to demonstrate by clear and convincing evidence that the petitioner is a danger or a flight risk;

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

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

Dated November 2, 2025

_/s/Bonnie Smerdon_____
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VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I, Bonnie Smerdon, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney. I am acting on behalf of the petitioner, Rigo Herrera-Escobar, based on discussions with him. 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: November 2, 2025

/s/Bonnie Smerdon
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