

1 Marcelo Gondim, SBN 271302
2 Gondim Law Corp.
3 1880 Century Park E, Suite 400
4 Los Angeles, CA 90067
5 Telephone: 323-282-7770
6 Email: court@gondim-law.com
7 Counsel for Petitioner

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Joao Alexandre Dos Reis Franco,
Petitioner,

vs.

Case No.:

CRAIG MEYER , San Francisco Field Office
Director, Enforcement and Removal
Operations, United States Immigration and
Customs Enforcement (ICE); ROBIN
BARRETT , San Francisco Field Office
Director, U.S. Citizenship and Immigration
Services; Kristi NOEM, Secretary, United
States Department of Homeland Security;
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; Pamela BONDI,
Attorney General of the United States;
JOSEPH B. EDLOW, Director, U.S.
Citizenship and Immigration Services

Respondents.

**PETITION FOR WRIT OF HABEAS
CORPUS AND COMPLAINT FOR
ADMINISTRATIVE PROCEDURE ACT
RELIEF**

1 Petitioner, through undersigned counsel, respectfully petitions this Court for a Writ of
2 Habeas Corpus pursuant to 28 U.S.C. § 2241 and requests emergency injunctive relief to
3 prevent her imminent transfer by Immigration and Customs Enforcement (ICE) outside of this
4 District. In support, Petitioner alleges as follows:

5
6 **INTRODUCTION**

7 1. Petitioner Joao Alexandre dos Reis Franco (“Petitioner”) is a noncitizen currently detained
8 at the San Francisco Field Office of Immigration and Customs Enforcement (ICE), located within
9 the jurisdiction of this Court. He was arrested on November 3, 2025, immediately following his
10 adjustment of status interview at the USCIS San Francisco Field Office.

11
12 2. Petitioner is not aware of any order of removal issued against him, and Respondents have
13 not provided notice of charges or a lawful basis for his arrest and confinement.

14 3. Petitioner has resided in the United States since January 2020, has established strong
15 family and community ties in California, and is married to a U.S. citizen who has filed a Form I-
16 130, Petition for Alien Relative, on his behalf.

17
18 4. ICE has indicated its intent to transfer Petitioner imminently to a distant detention facility,
19 far from his family and counsel. Such a transfer could occur within hours or days, consistent with
20 ICE’s usual practices.

21
22 5. Hours after his arrest, Petitioner did not appear in ICE’s Online Detainee Locator System,
23 impeding his constitutional and statutory rights, and making it difficult for counsel and family to
24 locate him and provide effective assistance.

25 6. If transferred, Petitioner will suffer irreparable harm, including the likely loss of
26 meaningful access to counsel and family, as well as severe interference with his ability to
27 understand and contest his custody or removal status.
28

1 7. Petitioner therefore seeks emergency intervention by this Court through a writ of habeas
2 corpus under 28 U.S.C. § 2241 to prevent his transfer and to order his immediate release from
3 unlawful detention while he pursues his rights under the Immigration and Nationality Act (INA)
4 and the U.S. Constitution.

5
6 8. Petitioner also seeks injunctive relief compelling Respondents to recognize and afford him
7 his full procedural and statutory rights. Additionally, Petitioner requests relief under the
8 Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A), as ICE's arrest of an adjustment
9 applicant at a USCIS field office constitutes arbitrary, capricious, and unlawful agency action.
10 ICE's policy of arresting individuals at USCIS appointments undermines the integrity of the
11 immigration process, disregards reliance interests, and violates due process.

12
13 **JURISDICTION AND VENUE**

14 9. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101–
15 1538, and its implementing regulations; the Administrative Procedure Act (APA), 5 U.S.C. §§
16 500–596, 701–706; and the U.S. Constitution.

17
18 10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28
19 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution
20 (Suspension Clause).

21 11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*,
22 the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651;
23 Federal Rule of Civil Procedure 65; and the Court's inherent equitable powers.

24
25 12. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because
26 Respondents are U.S. agencies and officers of the United States acting in their official capacities
27 or because they reside in this district. In addition, a substantial part of the events or omissions
28

1 giving rise to the claims occurred in this District, Petitioner is detained in this District, and no real
2 property is involved in this action.

3 **REQUIREMENTS OF 28 U.S.C. § 2243**

4 13. The Court must grant the petition for writ of habeas corpus or issue an order to show
5 cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C.
6 § 2243. If an order to show cause is issued, the Court must require respondents to file a return
7 “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.”
8 *Id.* (emphasis added).
9

10 14. Courts have long recognized the significance of the habeas statute in protecting
11 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
12 important writ known to the constitutional law of England, affording as it does a *swift* and
13 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,
14 400 (1963) (emphasis added).
15

16 **PARTIES**

17 15. Joao Alexandre dos Reis Franco, a citizen of Brazil, lawfully admitted to the United
18 States on a B-2 visitor visa in January 2020. Petitioner has a pending Form I-130, Petition for
19 Alien Relative, filed on his behalf. Petitioner simultaneously filed a Form I-485, Application to
20 Register Permanent Residence or Adjust Status.
21

22 16. Respondent Craig Meyer is the Field Office Director for ICE Enforcement and Removal
23 Operations (ERO) in San Francisco, California. As the ERO San Francisco Field Office Director,
24 he is Petitioner’s immediate custodian, responsible for his detention at San Francisco Field Office,
25 and the person with the authority to authorize her detention or release. Respondent Meyer is sued
26 in his official capacity.
27
28

1 17. Respondent Robin Barrett, Field Office Director of U.S. Citizenship and Immigration
2 Services, and has immediate physical custody of Petitioner pursuant to a contract with ICE to
3 detain noncitizens. Mr. Barret is sued in his official capacity as the Field Office Director of U.S.
4 Citizenship and Immigration Services.
5

6 18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. As
7 Secretary, she oversees the federal agency responsible for implementing and enforcing the INA,
8 including the detention of noncitizens. She is sued in her official capacity.
9

10 19. Respondent Department of Homeland Security (DHS) is the federal agency responsible
11 for implementing and enforcing the INA, including the detention of noncitizens.

12 20. Respondent Pamela Bondi is the Attorney General of the United States and head of the
13 U.S. Department of Justice. In that capacity, she oversees EOIR and the immigration court system
14 the agency administers. She is ultimately responsible for the agency's operation. She is sued in
15 her official capacity.
16

17 21. Respondent Joseph B. Edlow is the director of U.S. Citizenship and Immigration Services.
18 As the Director of USCIS, he oversees the agency responsible for adjudicating immigration
19 benefits, including the I-130 and I-485 petitions pertinent to the petitioner's case. He is sued in
20 his official capacity.
21

22 STATEMENT OF FACTS

23 22. Petitioner João Alexandre dos Reis Franco is a citizen of Brazil who entered the United
24 States on a B-2 nonimmigrant visitor visa in January 2020.

25 23. Petitioner was lawfully admitted and intended to comply with the conditions of his
26 nonimmigrant status.

27 24. Petitioner applied for and was granted an extension of his B-2 visitor status by USCIS,
28

1 which extended his authorized stay.

2 25. Petitioner's visitor status expired in early 2021, during the global COVID-19 pandemic,
3 when international travel restrictions made departure from the United States impossible.

4 26. Petitioner has resided continuously in the United States since that time, maintaining good
5 moral character and establishing strong family and community ties in the San Francisco Bay Area.

6 27. On March 18, 2025, Petitioner's U.S. citizen spouse filed a Form I-130, Petition for Alien
7 Relative, on his behalf. Simultaneously, Petitioner properly filed a Form I-485, Application to
8 Register Permanent Residence or Adjust Status, which remains pending before USCIS.

9 28. Petitioner and his U.S. citizen spouse lawfully and in good faith appeared for their
10 marriage-based adjustment of status interview at the USCIS San Francisco Field Office on
11 November 3, 2025.

12 29. At the conclusion of the interview, ICE agents arrested Petitioner on allegations that he
13 was present in the United States without authorization, and he was taken into immigration custody.

14 30. Petitioner has not received any written notice of removal proceedings, nor is he aware of
15 any final order of removal issued against him by the DHS or the Executive Office for Immigration
16 Review ("EOIR").

17 31. Petitioner's arrest and detention are unlawful because individuals with properly filed and
18 pending adjustment of status applications are in a period of authorized stay under 8 C.F.R. §
19 245.2(a)(1). Accordingly, Petitioner is not unlawfully present in the United States.

20 32. Petitioner's I-485 application was filed and accepted before any NTA was issued or filed,
21 making any subsequent removal charge procedurally invalid.

22 33. Petitioner's continued detention therefore lacks a lawful basis. Petitioner has no criminal
23 history, poses no flight risk, and remains fully eligible for adjustment of status through his U.S.
24
25
26
27
28

1 citizen spouse.

2 34. Petitioner's confinement deprives him of liberty and imposes severe hardship on his U.S.
3 citizen spouse, who relies on him for emotional and financial support. His detention also prevents
4 meaningful access to counsel and interferes with his ability to pursue his pending immigration
5 case.
6

7 35. Petitioner seeks his immediate release from custody under 28 U.S.C. § 2241 because his
8 detention violates the Immigration and Nationality Act, the Due Process Clause of the Fifth
9 Amendment, and the Administrative Procedure Act, as it constitutes arbitrary and capricious
10 agency action not in accordance with law.
11

12 LEGAL FRAMEWORK

13 Period of Authorized Stay

14 36. Under 8 C.F.R. 245.2(a)(1), individuals with pending adjustment of status applications
15 are considered to be in a period of authorized stay. Courts have consistently recognized this
16 principle. See *Matter of L-K-*, 23 I&N Dec. 677 (BIA 2004) (holding that an individual with a
17 pending adjustment of status application is in a period of authorized stay).
18

19 37. 13. The Ninth Circuit has further clarified that individuals in a period of authorized
20 stay are not unlawfully present and cannot be detained solely on the basis of their immigration
21 status. See *Singh v. Holder*, 638 F.3d 1196, *Singh v. Holder*, 638 F.3d 1196 (2011).
22

23 38. The filing of an I-485 halts the accrual of unlawful presence and authorizes the applicant
24 to remain in the United States while the application is pending. See *United States v. Atandi*, 376
25 F.3d 1186 (10th Cir. 2004); *Yesil v. Reno*, 958 F. Supp. 828 (S.D.N.Y. 1997); *United States v.*
26 *Brissett*, 720 F. Supp. 90 (S.D. Tex. 1989).
27

28 39. In *Larrea v. U.S. Attorney General*, 494 F. App'x 935 (11th Cir. 2012), the court

1 reaffirmed that properly filed I-485 applications stop the accrual of unlawful presence and confer
2 authorized stay.

3 **CAUSES OF ACTION**

4 **Count I: Violation of Fifth Amendment Due Process Rights**

5
6 40. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set
7 forth herein.

8
9 41. The Fifth Amendment guarantees that no person shall be deprived of liberty without due
10 process of law. Prolonged detention without an individualized custody determination by a neutral
11 arbiter violates due process. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538
12 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 131 (2018).

13
14 42. The Due Process Clause applies to all persons in the United States, including non-citizens,
15 and prohibits government action that strips them of liberty without fair process.

16 43. Access to counsel is a cornerstone of due process in immigration proceedings. Courts have
17 recognized that the right to counsel in immigration proceedings is rooted in the Due Process
18 Clause and codified at 8 U.S.C. § 1362 and 8 U.S.C. § 1229a(b)(4)(A).

19
20 44. Petitioner's detention constitutes a clear violation of both procedural and substantive due
21 process rights. Procedurally, Petitioner was deprived of notice, a fair hearing, and an opportunity
22 to challenge his detention before an impartial decision-maker. The government's failure to
23 provide these fundamental safeguards runs contrary to the most basic principles of due process.
24 As the Supreme Court emphasized in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), the
25 "fundamental requirement of due process is the opportunity to be heard at a meaningful time and
26 in a meaningful manner." Petitioner has been afforded neither.
27
28

1 45. Substantively, ICE's conduct in arresting Petitioner at a scheduled USCIS appointment,
2 an event designed to encourage lawful compliance with immigration procedures, is arbitrary,
3 capricious, and without rational justification. Such actions undermine public confidence in the
4 immigration process and deter individuals from engaging in good-faith efforts to regularize their
5 status. Courts have long recognized that government action that "shocks the conscience" or lacks
6 any legitimate purpose violates substantive due process. *County of Sacramento v. Lewis*, 523 U.S.
7 833, 846–47 (1998).

8
9 46. The arbitrary detention of individuals who voluntarily appear before immigration
10 authorities not only erodes trust in the legal system but also offends the most basic notions of
11 fairness enshrined in the Fifth Amendment. The government cannot lawfully punish cooperation
12 with immigration procedures by subjecting individuals to sudden and prolonged detention without
13 cause or hearing, warranting habeas relief.
14

15 **Count II: Petitioner's Detention Is Unlawful Because a Pending I-485 Places Him**
16 **in a Period of Authorized Stay**

17 47. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set
18 forth herein.

19
20 48. Under 8 C.F.R. § 245.2(a)(1), an individual who properly files an Application to Register
21 Permanent Residence or Adjust Status (Form I-485) "shall be regarded as having been granted a
22 period of stay authorized by the Attorney General." This regulatory protection reflects a well-
23 established principle of immigration law: once an I-485 has been properly filed and remains
24 pending, the applicant is considered to be lawfully present in the United States for the duration of
25 that adjudication period.
26

27 49. Federal courts have repeatedly recognized that the filing of a bona fide adjustment of
28

1 status application halts the accrual of unlawful presence and confers lawful authorization to
2 remain. See *United States v. Atandi*, 376 F.3d 1186, 1188–89 (10th Cir. 2004) (holding that a
3 properly filed I-485 places a noncitizen in a period of stay authorized by the Attorney General);
4 *Yesil v. Reno*, 958 F. Supp. 828, 838 (S.D.N.Y. 1997) (recognizing that a pending I-485
5 application entitles the applicant to remain in the United States until adjudication); *United States*
6 *v. Brissett*, 720 F. Supp. 90, 93 (S.D. Tex. 1989) (same). In *Larrea v. U.S. Attorney General*, 494
7 F. App'x 935, 937 (11th Cir. 2012), the court reaffirmed this principle, confirming that properly
8 filed I-485 applications not only suspend unlawful presence but confer an authorized period of
9 stay during their pendency.
10

11
12 50. Petitioner's detention on the grounds of "unlawful presence" is legally baseless and
13 constitutes a fundamental misapplication of the governing regulatory framework. Once USCIS
14 accepted Petitioner's I-485 for processing, he was by operation of law within a period of
15 authorized stay. ICE's decision to arrest and detain Petitioner despite this status is inconsistent
16 with both the letter and the spirit of 8 C.F.R. § 245.2 and reflects an impermissible encroachment
17 upon USCIS's exclusive jurisdiction over pending adjustment applications.
18

19 51. Moreover, detaining a noncitizen who is lawfully present pursuant to a pending I-485
20 serves no legitimate government purpose. Such actions undermine the integrity of the adjustment
21 process, chill participation in lawful immigration procedures, and contradict the policy rationale
22 underlying 8 C.F.R. § 245.2(a)(1), which was enacted to provide stability and predictability to
23 applicants actively pursuing legal status in the United States. See *Matter of Lok*, 18 I&N Dec.
24 101, 105 (BIA 1981) (recognizing that filing an adjustment application creates a legally
25 cognizable status distinct from unlawful presence).
26

27 52. ICE's assertion of enforcement authority over an individual in authorized stay also raises
28

1 serious separation-of-function concerns. The Department of Homeland Security has divided
2 responsibility between USCIS (for adjudication) and ICE (for enforcement). By detaining an
3 applicant under USCIS jurisdiction, ICE effectively usurps the authority of the very agency
4 charged with deciding the Petitioner's eligibility to remain in the United States. Courts have
5 condemned similar overreach as ultra vires and contrary to due process. See *Judulang v. Holder*,
6 565 U.S. 42, 53 (2011) (agency action must not be arbitrary or divorced from the statute's
7 purpose).

8
9 53. Petitioner's arrest and detention for alleged "unlawful presence" are not only unsupported
10 by law but directly contravene established federal regulations and judicial precedent. Petitioner
11 is, by operation of law, in a period of authorized stay, and his continued detention violates the
12 regulatory and constitutional framework governing adjustment applicants. Immediate release is
13 warranted to restore compliance with the rule of law and prevent further infringement of
14 Petitioner's lawful status and liberty interests
15

16
17 **Count III: Violation of the Administrative Procedure Act – Unlawful Detention**

18 54. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set
19 forth herein.

20 55. Formal removal proceedings are strictly governed by procedural requirements.
21 Specifically, 8 U.S.C. § 1229(a) provides that a removal proceeding is commenced only when the
22 Department of Homeland Security files a Notice to Appear ("NTA") with the Immigration Court.
23 The filing of an NTA is the threshold event that initiates proceedings and establishes the
24 jurisdiction of the Immigration Court over the noncitizen.
25

26 56. The Ninth Circuit has emphasized the centrality of this procedural step in *Samayoa-*
27 *Martinez v. Holder*, 558 F.3d 897 (9th Cir. 2009), holding that "removal proceedings commence
28

1 only upon the filing of a Notice to Appear with the immigration court.” Until an NTA is properly
2 filed, no removal proceedings exist, and the government lacks authority to detain a noncitizen on
3 the basis of removability or inadmissibility.

4 57. In Petitioner’s case, no NTA has been filed or served. Petitioner was arrested and detained
5 at his USCIS adjustment interview, prior to any formal commencement of removal proceedings.
6 Because there is no pending NTA, ICE lacks legal authority to justify detention as part of a
7 removal proceeding. Consequently, the detention is not incident to any lawful removal action,
8 and any claims of deportability or inadmissibility asserted after the fact are procedurally invalid.

9 58. The timing of Petitioner’s I-485 filing is critically significant. As the law recognizes, once
10 a properly filed I-485 application is submitted, the individual is in a period of authorized stay, and
11 removal proceedings cannot lawfully be retroactively imposed to nullify that status. See
12 *Samayoa-Martinez*, 558 F.3d at 900; *Larrea v. U.S. Attorney General*, 494 F. App’x 935, 937
13 (11th Cir. 2012). Any subsequent issuance of an NTA or enforcement action attempting to treat
14 Petitioner as unlawfully present would contradict federal regulations and established precedent,
15 which recognize the priority and legal protection afforded to pending adjustment applications.

16 59. ICE’s arrest of Petitioner at the USCIS office also violates basic principles of due process
17 and separation of functions within the immigration system. USCIS is charged with adjudicating
18 adjustment applications, while ICE is responsible for enforcement. By detaining a noncitizen
19 during a USCIS interview, without a filed NTA and outside the statutory framework for removal
20 proceedings, ICE effectively preempts USCIS adjudication, undermining the administrative
21 process and exceeding its statutory authority. See *Judulang v. Holder*, 565 U.S. 42, 53 (2011)
22 (agency action must not be arbitrary or inconsistent with statutory purpose).

23 60. Because no NTA has been filed and Petitioner’s adjustment application was properly
24
25
26
27
28

1 pending at the time of his arrest, no lawful removal proceedings have been initiated, and ICE's
2 detention lacks any statutory or regulatory foundation. Petitioner's continued confinement is
3 therefore arbitrary, unlawful, and in direct contravention of the APA, warranting immediate
4 release.
5

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

- 8 1) Assume jurisdiction and proper venue over this matter;
9
10 2) Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Respondents to
11 immediately release Petitioner from immigration detention, or in the alternative, issue a writ
12 of habeas corpus ordering Respondents to show cause within three (3) days why Petitioner
13 should not be released from custody.
14
15 3) Enjoin ICE from transferring Petitioner outside the jurisdiction of this Court during the
16 pendency of this matter.
17
18 4) Declare that Petitioner's detention is unlawful under the Immigration and Nationality Act,
19 the U.S. Constitution, and the Administrative Procedure Act;
20
21 5) Enjoin Respondents from further detaining Petitioner without providing a lawful and
22 individualized custody determination;
23
24 6) Award Petitioner reasonable attorneys' fees and costs under the Equal Access to Justice
25 Act, 28 U.S.C. § 2412; and
26
27 7) Grant such other and further relief as this Court deems just and proper.
28

Date: November 3, 2025

Respectfully submitted,

1 /s/ Marcelo Gondim

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Marcelo Gondim (SBN 271302)
Gondim Law Corp.
1880 Century Park East, Suite 400
Los Angeles, CA 90067
Telephone: 323-282-777
Email: court@gondim-law.com
Attorney for the Petitioner