UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.:

EDUARDO DUVALLON BOFFILL,

Petitioner,

v.

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

KRISTI NOEM, in her official capacity as the Secretary of the Department of Homeland Security (DHS),

Respondents.
_____/

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

The petitioner, Eduardo Duvallon Boffil (Mr. Duvallon), submits this Verified Petition for Writ of Habeas Corpus & Complaint for Injunctive and Declaratory Relief, by and through undersigned counsel, and alleges as follows:

INTRODUCTION

1. Mr. Duvallon, (the petitioner) is a native and citizen of Cuba, and is currently under civil immigration custody by the respondents at the Federal Detention Center[1] (FDC) in Miami, Florida. **Appx, pp. 1**.

[1] Although held a federal detention center, his civil immigration custody is governed by the Krome Service Processing Center (Krome), where his bond hearing was held, located in Miami, Florida. The petitioner's placement at FDC is due to lack of space issues at Krome. **App's, pp. 1**

2. On September 30, 2025, as a part of an ongoing inter-agency enforcement operation, the petitioner was detained on his way to work in Monroe County, Florida. He was a passenger in a vehicle that was stopped during a coordinated raid between Florida Highway Patrol and Customs and Border Patrol (CBP). Although the petitioner was not charged with any civil or criminal traffic violations, he was subsequently transferred to Immigration and Customs Enforcement (ICE) custody on October 2, 2025, where he remains. **Appx, pp 2**.

3. At a bond hearing on November 4, 2025, Immigration Judge Romy Lerner denied the petitioner's request for custody redetermination citing to lack of jurisdiction under *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025) which held that applicants for admissions are subject to mandatory detention for the remainder of their removal proceedings under 8 U.S.C. § 1225(b)(2)(A) (2018).

4. The reliance of the Department of Homeland Security (DHS) on *Matter of Hurtado*—rejecting the argument that a noncitizen who entered the United States without inspection and has resided here for years is not seeking admission under § 1225(b)(2)(A)—is misplaced and does not align with the circumstances surrounding the petitioner's recent detention.

5. The petitioner is entitled to an individualized bond hearing as a detainee under 8 U.S.C. § 1226(a).

JURISDICTION

6. The Court has jurisdiction over this case and may grant relief pursuant to 28 U. S. C. § 2241, et seq., (habeas corpus) and pursuant to Art. I § 9, cl. 2 of the U.S. Constitution (the Suspension Clause).

7. The Court also has jurisdiction over this case under 28 U. S. C. § 1331 (federal question), and may grant relief pursuant to the Administrative Procedure Act (APA), 5 U. S. C.

§§ 701, et seq., the All-Writs Act, 28 U. S. C. § 1651, and the Declaratory Judgment Act, 28 U. S. C. §§ 2201–02.

8. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

VENUE

9. Venue is proper in the Southern District of Florida under 28 U.S.C. §§ 1391(e)(1)(B) and (C) because "a substantial part of the events or omissions giving rise to the claim occurred," and because the plaintiff resides in this district.

PARTIES

10. The petitioner, Eduardo Duvallon Boffil, is a Cuban citizen and national, who resides in Miami, Florida. His alien registration number ("A no.") is A [redacted] He last entered the United States on April 24, 2022, through San Luis, Arizona along with his wife and child. At the time of his detention, the petitioner had an application for Asylum, Withholding of Removal, and protections under the Convention Against Torture pending before the Immigration Court.

11. The respondent, **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.

12. The respondent, **Kristi Noem**, is sued in her official capacity as the United States Secretary of the Department of Homeland Security (DHS). In this capacity, she has supervisory authority over all operations of the Department of Homeland Security (DHS) and its component

agencies. 6 U. S. C. § 112, 8 U. S. C. § 1101(a)(1). This includes authority over: United States Customs and Border Protection (CBP), United States Border Patrol (USBP), U. S. Citizenship and Immigration Services (USCIS), and U. S. Immigration and Customs Enforcement (ICE).

EXHAUSTION OF REMEDIES

13. No exhaustion is statutorily required for the petitioner's habeas claims because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo v. Warden*, 785 F.3d 467, 474 (CA11 2015).

14. As to the petitioner's claims under the Administrative Procedure Act, there are no administrative remedies available that the plaintiff is required to exhaust under *Darby v. Cisneros*, 509 U.S. 137 (1993), and an agency's failure to act is reviewable agency action, *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 61-62 (2004).

15. In this case, exhaustion serves no purpose because the conclusion of the administrative process can be readily presumed and would not provide for an adequate remedy given the Board of Immigration Appeal's (BIA) recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

16. Generally, "exhaustion is not required where no genuine opportunity for adequate relief exists . . . or an administrative appeal would be futile[.]" *Linfors v. United States*, 673 F.2s 33, 334 (CA11 1982). Accordingly, 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. *Boumediene v. Bush*, 553 U.S. 723, 783 (2008).

LEGAL FRAMEWORK FOR ENTRY AND DETENTION

17. Section 1229a of Title 8 of the U.S. Code (Section 240 of the INA) describes the primary process through which the government seek to remove non-citizens from the United

States. It specifies that "[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be . . . removed from the United States." 8 U.S.C. § 1229a(a)(3).

18. To initiate removal proceedings against a non-citizen under Section 1229a, the Government must issue the non-citizen a Notice to Appear (NTA). 8 U.S.C. § 1229(a)(1). Most non-citizens go through removal proceedings from outside detention. But ICE is increasingly detaining non-citizens during their removal proceedings.

19. Section 1226 of Title 8 of the U.S. Code (Section 236 of the INA) is the default provision that governs the arrest and detention of non-citizens pending removal proceedings. It states that "on a warrant issued by the Attorney General,[2] a[] [non-citizen] may be arrested and detained pending a decision on whether the [non-citizen] is to be removed from the United States" 8 U.S.C. § 1226(a). **Non-citizens arrested upon a warrant and in ongoing removal proceedings are eligible to seek bond from an IJ**. *Id.* § 1226(a)(2) (emphasis added).

20. A **separate** provision governs the detention of people who seek admission to the United States **at the border**. It states that "in the case of a [non-citizen] who is an applicant for admission, if the examining immigration officer determines that a [non-citizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the non-citizen shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). IJs do not have jurisdiction to grant bond for such "applicant[s] for admission," though DHS retains the discretion to release

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[2] In 2003, the Immigration and Naturalization Service (INS) within the Department of Justice (DOJ) became what is now ICE, which is housed within DHS. Therefore, some statutory references to the "Attorney General," like this one, now refer to the Secretary of DHS.

such non-citizens on a specific type of parole "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

FACTUAL ALLEGATIONS

21. On April 24, 2022, the petitioner entered the United States without inspection or parole at or near San Luis, Arizona. **Appx, pp. 3**.

22. The petitioner, along with his wife and child, fled the totalitarian regime of Cuba and sought to apply for asylum, withholding of removal, and protection under the regulations implementing the Convention Against Torture (CAT).[3]

23. Upon apprehension by CBP, the petitioner was detained and issued a Notice to Appear which charged him as an alien present in the United States without admission or parole who was removable under section 212(a)(6)(A)(i) of the INA. **Appx, pp. 3-5**.

24. On April 25, 2022, the petitioner was released by ICE on an Order of Release on Recognizance. **Appx, pp. 6**.

25. The petitioner's removal proceedings were docketed before the Miami Immigration Court where his I-589, Application for Asylum was, and remains, pending.

26. On July 17, 2025, DHS filed an additional charge of inadmissibility with the Miami Immigration Court via Form I-261, citing that the petitioner is also inadmissible under section 212(a)(7)(A)(i)(I). **Appx, pp. 7-8**.

27. The petitioner, who has a valid and current Employment Authorization Document, works in construction in Monroe County. **Appx, pp. 9**.

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[3] The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States on Nov. 20, 1994).

28. On September 30, 2025, the petitioner was a passenger in a vehicle that was stopped by CBP agents during a coordinated, inter-agency raid near North Key Largo. Although not cited with any civil or criminal traffic violations—as he was not driving—he was detained at a local jail and subsequently transferred to ICE civil immigration detention. **Appx, pp. 2**.

29. At a custody redetermination hearing on November 4, 2025, the Immigration Judge denied the petitioner's request for bond citing lack of jurisdiction under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). **Appx, pp. 10-11**.

30. The petitioner remains detained at the Federal Detention Center (FDC) in Miami, Florida, a federal prison operated by the Federal Bureau of Prisons (BOP), which is not suited to house immigrants in civil detention cases.[4] However, the petitioner appears to be detained there due to space issues at Krome, which is the docket control office overseeing the petitioner's immigration case. **Appx, pp. 1**.

31. The petitioner remains in removal proceedings before the Krome Immigration Court while detained at FDC as of the date of this petition.

ALLEGATIONS OF LAW

I. The Petitioner's Continued Detention is Unlawful Because He is Not Subject to Mandatory Detention under 8 U.S.C. § 1225(b)(2).

32. The respondents have subjected the petitioner to unlawful mandatory detention pursuant to 8 U.S.C. § 1225(b)(2), despite the fact that he was apprehended inside the United States after having resided here for over three years.

33. As a result, the respondents have deprived the petitioner of his liberty without due

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[4] Human Rights Watch, *US: Immigrants Abused in Florida Detention Sites*, (Jul. 21, 2025) available at https://www.hrw.org/news/2025/07/21/us-immigrants-abused-in-florida-detention-sites (last accessed Nov. 5, 2025).

process, contrary to the Fifth Amendment and the INA.

34. At the petitioner's bond hearing, DHS asserted that the petitioner is properly detained under § 1225(b)(2) and that DHS therefore lacks the authority to release him on bond.

35. The Immigration Judge found that because § 1225(b)(2) mandates detention until the conclusion of removal proceedings, the petitioner's custody is lawful and the Immigration Court lacks jurisdiction to review it.

36. Petitioner disputes these contentions and submits that his detention falls squarely within the scope of § 1226(a), which provides for discretionary detention and permits release on bond or conditional parole pending completion of removal proceedings.

37. The Immigration Judge's November 4, 2025 Order relies on the BIA decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which courts in this district and other districts across the country have rejected to follow. *See e.g., Garcia v. Noem*, Case No. 2:25-CV-00879-SPC-NPM, 2025 WL 3043895 (M.D. Fla. Oct. 31, 2025); *Puga v. Ass't Field Office Director*, Case No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369 (S.D. Fla. Oct. 15, 2025); *Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025).[5]

38. This Court should also decline to follow *Matter of Yajure Hurtado*, whose interpretation of § 1225 is at odds with the text of § 1225 and § 1226, is inconsistent with earlier BIA decisions, and renders superfluous the recent Laken Riley Act amendments to § 1226(c).

39. Specifically, the Chief United States District Judge Cecilia M. Altonaga, recently issued a decision in *Puga*, rejecting the Respondents' reliance on *Matter of Yajure Hurtado*. In

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[5] *See also Barrera v. Tindall*, No. 3 :25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Zumba v. Bondi*, No. 25-CV-14626-KSH-, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Lopez-Campos*, No. 2:25-CV12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025).

that decision, the Court explained:

> "Respondents' reliance on the BIA's decision in *Matter of Yajure Hurtado* — rejecting the argument that a noncitizen who entered the United States without inspection and has resided here for years is not 'seeking admission' under section 1225(b)(2)(A) — is also misplaced. The Court need not defer to the BIA's interpretation of law simply because the statute is ambiguous. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) ("[C]ourts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous." (alteration added)). As explained, the statutory text, context, and scheme of section 1225 do not support a finding that a noncitizen is 'seeking admission' when he never sought to do so. Additionally, numerous courts that have examined the interpretation of section 1225 articulated by Respondents — particularly following the BIA's decision in *Matter of Yajure Hurtado* — have rejected their construction and adopted Petitioner's. … For these reasons, the Court finds that section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A). Petitioner is entitled to an individualized bond hearing as a detainee under section 1226(a)."

Puga v. Assistant Field Office Director, No. 1:25-CV-24535-ALTONAGA, 2025 WL 2938369, at 5 (S.D. Fla. Oct. 15, 2025).

40. In a similarly postured case, United States District Judge Jose E. Martinez noted:

> "In distinguishing between noncitizens arriving to the U.S. versus noncitizens residing in the U.S., Congress acknowledged the more substantial due process rights of noncitizens already residing in the U.S. with those of noncitizens recently arriving. See H.R. REP. 104-469, p. 1, at 163-66 . . . Since then, agencies interpreting the INA have applied § 1226(a) to noncitizens like Petitioner, who were apprehended while residing in the U.S., rather than at the border . . . DHS' interpretation of the applicability of § 1225(b)(2), rather than § 1226, to noncitizens who have resided in the country for years and were already in the United States when apprehended runs afoul of the statutes' legislative history, plain meaning, and interpretation by courts in the First, Second, Fifth, Sixth, Eight, and Ninth Circuits."

Merino v. Ripa, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025) (citations omitted).

41. This case turns on the statutory distinction between § 1226(a) and § 1225(b)(2) of the INA. Section 1226(a) governs the arrest and detention of noncitizens already present in the United States pending removal proceedings, while § 1225(b)(2) governs the detention of noncitizens arriving at the border or ports of entry. In enacting these provisions, Congress

expressly recognized the greater due process rights of noncitizens residing within the United States as compared to those of "arriving" noncitizens. *See* H.R. REP. 104-469, pt. 1, at 163–66 ("an alien present in the U.S. has a constitutional liberty interest to remain in the U.S.") (citing *Knauff v. Shaughnessy*, 338 U.S. 537 (1950)).

42. Consistent with this statutory framework, immigration agencies and courts have long applied § 1226(a)—not § 1225(b)(2)—to noncitizens apprehended inside the United States who were not seeking admission at the border. *See Maldonado v. Feely*, No. 25-cv-01542-RFB-EJY (D. Nev. Sept. 17, 2025) ("Despite being applicants for admission, aliens who are present without admission or parole will be eligible for bond and bond redetermination... inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not.") (citing *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)).

43. Nonetheless, on July 8, 2025, DHS issued a notice instructing ICE officers to detain all noncitizens "who have not been admitted" under § 1225(b)(2), regardless of where they were apprehended. *See* ICE Memo: *Interim Guidance Regarding Detention Authority for Applications for Admission*, AILA Doc. No. 25071607 (July 8, 2025). The Notice purports to eliminate bond eligibility for such individuals, directing that they "may not be released from ICE custody except by INA § 212(d)(5) parole."

44. This expansive interpretation contradicts the statutory text, legislative history, and consistent judicial authority in multiple circuits. *See, e.g.*, *Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D.

Mass. July 7, 2025); *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025); *Rosado v. Figueroa*, No. 2:25-cv-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025). Each of these courts rejected DHS's position and held that noncitizens residing in the United States when taken into custody are detained under § 1226(a) and therefore entitled to a bond hearing.

45. Petitioner, who has lived in the United States for over three years and was apprehended well inside the country, is therefore not properly classified as an "arriving alien." His detention under § 1225(b)(2) is unlawful. Because § 1226(a) governs his custody, Petitioner is entitled to a custody redetermination and to consideration for bond based on individualized factors. The government's continued reliance on § 1225(b)(2) to deny bond violates both the statute and Petitioner's constitutional right to due process.

II. The Petitioner's Continued Detention Violates His Substantive and Procedural Due Process Rights.

46. The Fifth Amendment guarantees that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. Amend. V. This protection extends to all persons within the United States—citizens and noncitizens alike—regardless of immigration status. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Because Petitioner has been detained for an extended period without a meaningful opportunity to seek release, his detention offends both procedural and substantive due process.

47. Civil 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) (citing *Zadvydas*, 533 U.S. at 690). The Supreme Court has made clear that there are only two plausible purposes for immigration detention: ensuring a non-citizen's appearance at his removal proceedings and/or preventing danger to the community. *Zadvydas*, 533 U.S. at 690. Indeed, where civil detention "is of potentially *indefinite* duration," courts have "also demanded that the

dangerousness rationale be accompanied by some other special circumstance." *Id.* If immigration detention is not reasonably related to one of these purposes, it is essentially punitive and therefore violative of the Due Process Clause. *See id.*

48. To determine whether the Government's procedures satisfy procedural due process, courts apply the three-part balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). Under *Mathews*, courts consider: (1) the private interest affected by the government action; (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value of additional safeguards; and (3) the government's interest, including administrative or fiscal burdens of additional process. *Mathews*, 424 U.S. at 335. Each of these factors strongly favors the petitioner.

49. First, the petitioner's liberty interest is undoubtedly substantial. Freedom from physical constraint is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004). Petitioner has been detained for almost a month without any individualized assessment of flight risk or danger despite his long residence in the United States, family ties, and lack of any disqualifying criminal record because the IJ refused to consider those factors, finding he lacked jurisdiction to set bond.

50. Second, the risk of erroneous deprivation is extreme. The IJ's refusal to even consider bond, based on DHS's position that Petitioner is subject to "mandatory detention" under §1225(b)(2), deprived him of the only procedural mechanism designed to test the necessity of his continued confinement. This result effectively transformed the bond hearing into an empty formality, denying Petitioner a meaningful opportunity to contest his detention. Courts have consistently held that procedures which categorically foreclose individualized review of detention violate due process. *See Günaydin v. Trump*, No. 25-cv-1151, 2025 WL 1459154 (D. Minn. May

21, 2025) (describing DHS's unilateral detention authority as creating "not just a risk, but a likelihood" of erroneous deprivation).

51. Third, the Government's interests are adequately protected by the individualized bond determination procedure already contemplated by §1226(a). As the Ninth Circuit recognized in *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017), "the government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future proceedings can be reasonably ensured by less restrictive conditions." Far from imposing any undue burden, allowing bond hearings for noncitizens apprehended inside the United States promotes fairness and efficiency.

52. Accordingly, under *Mathews*, the procedures used to detain Petitioner fail to satisfy procedural due process. The IJ's refusal to exercise jurisdiction, based solely on DHS's misclassification of Petitioner as subject to §1225(b)(2), constituted a denial of any meaningful opportunity to be heard. The Government's blanket invocation of "mandatory detention" cannot substitute for constitutionally required process.

53. Even apart from procedural deficiencies, the petitioner's continued confinement violates substantive due process. Government detention is constitutionally permissible only when it occurs in a criminal context with robust procedural protections, or in civil circumstances where a "special justification" outweighs the individual's liberty interest. *Zadvydas*, 533 U.S. at 690. No such justification exists here.

54. The petitioner's confinement is purely civil and ostensibly intended to ensure his presence for removal proceedings. Yet the Government has offered no individualized justification for his ongoing detention, no finding that he poses a danger or flight risk, because the IJ never

reached those issues. Detaining a long-term Florida resident without such a finding serves no legitimate regulatory goal and instead amounts to impermissible punishment.

55. Respondents rely on *Matter of Yajure-Hurtado*, 28 I. & N. Dec. 1 (BIA 2025), to argue that the IJ lacked jurisdiction to consider bond because Petitioner is "an arriving alien" detained under §1225(b)(2). That reliance is misplaced. As discussed *supra*, the petitioner was apprehended well inside the United States, after residing here for several years. He is therefore properly detained under §1226(a), which provides for discretionary release on bond. The BIA's decision in *Yajure-Hurtado* cannot override Congress's clear statutory distinction between §1225(b)(2) (governing 'applicants for admission' **seeking admission at the border**) and §1226(a) (governing those already present in the United States).

56. By adopting DHS's erroneous interpretation, the IJ effectively denied the petitioner any opportunity for an individualized bond determination. This denial renders his continued detention arbitrary, indefinite, and unconstitutional. *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025) (holding that detention of noncitizens apprehended within the U.S. under §1225(b)(2) violates due process and exceeds statutory authority).

57. Because the petitioner's detention falls under §1226(a), he is entitled to a prompt and meaningful bond hearing at which the Government bears the burden to justify continued detention by clear and convincing evidence. The IJ's refusal to conduct such a hearing, and DHS's misapplication of *Yajure-Hurtado*, violated the Due Process Clause of the Fifth Amendment.

III. In the alternative, if the Court Finds that the Petitioner is Subject to Mandatory Detention Under *Matter of Q. Li*, then the Petitioner Was Initially Paroled Out of Detention and the Respondents must provide him an I-94 Parole Document.

58. If this Court finds that the petitioner is and was subject to mandatory detention under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), then it follows that DHS paroled

him out of custody pursuant to 8 U.S.C. § 1182(d)(5)(A) when the agency decided to release him, under its own volition, on April 25, 2022, as it was the **only** manner under the law in which it could have released the petitioner.

59. "[W]e hold that an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a). The **only** exception permitting release of aliens detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), is the parole authority provided by section 212(d)(5)(A) of the INA, 8 U.S.C. §1182(d)(5)(A)." *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (emphasis added); see also *Yajure Hurtado*, 29 I&N Dec. at 218-19, n.4.

60. If the respondents and this Court finds that the petitioner is subject to mandatory detention under *Yaruje Hurtado,* then the **only** lawful mechanism to explain his release from DHS custody on April 25, 2022 is **parole** under 8 U. S. C. § 1182(d)(5) (emphasis added). *Yajure Hurtado*, 29 I&N Dec. at 218-19, n.4; *Matter of Q. Li*, 29 I&N Dec. at 68.

61. Board precedent, even when it alters prior precedent or prior agency understandings of law, is "entitled to full retroactive effect in all cases still open on direct review, regardless of whether the events predated the [Board]'s decision." *Yu v. U. S. Att'y Gen.*, 568 F. 3d 1328, 1334 (CA11 2009) (citation omitted).

62. Courts of Appeals and the Board of Immigration Appeals have long held in precedential decisions that whether or not a parole did or did not occur in a given case depends on the application of law to fact, regardless of what the Government's paperwork reflects. *Vitale v. INS*, 463 F. 2d 579 (CA7 1972); *Medina Fernandez v. Hartman*, 260 F. 2d 569 (CA9 1958); *Matter*

of O-, 16 I&N Dec. 344 (BIA 1977). This tradition, known as the procedural regularity doctrine, is also true in the context of whether an admission has occurred. *Matter of Quilantin*, 25 I&N Dec. 285 (BIA 2010); *Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980). There is no authority to the contrary.

63. The petitioner arrived in the United States and was released from DHS custody, by DHS through its own volition, under these circumstances.

64. But DHS did not provide the petitioner with documentation of his parole under §1182(d)(5)(A) from custody, and has been treating him as though he had not been paroled.

65. DHS' failure to provide the petitioner with documentation of his parole under §1182(d)(5)(A), and its failure to treat him as having been paroled for all intents and purposes, is unlawful.

CLAIMS FOR RELIEF

COUNT I

Violation of the Immigration and Nationality Act, 8 U.S.C. § 1226(a)

66. The allegations in paragraphs 1-65 are realleged and incorporated herein.

67. 8 U.S.C. § 1226(a) authorizes immigration detention only during pending removal proceedings. The respondents' reliance on § 1225(b)(2) to deny the petitioner a bond hearing and to classify him as subject to mandatory detention is contrary to the plain language and structure of the INA, as well as its legislative history and judicial interpretations.

68. Because the petitioner is not subject to mandatory detention, the respondents lack authority to detain him without providing a meaningful opportunity for release on bond. Continued confinement under § 1225(b)(2) exceeds the government's statutory authority and violates both the INA and the Due Process clause of the Fifth Amendment.

COUNT II

Violation of the Due Process Clause of the Fifth Amendment
Substantive Due Process

69. The allegations in paragraphs 1-65 are realleged and incorporated herein.

70. The Supreme Court has found that the "Due Process Clause applies to all persons within the United States, including [non-citizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 682.

71. Immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore*, 538 U.S. at 527. The petitioner has been detained for almost two months without any individualized custody determination. At his initial bond hearing, the Immigration Judge declined to exercise jurisdiction, citing *Matter of Yajure-Hurtado*, 28 I&N Dec. 1 (BIA 2025), and therefore refused to assess whether the petitioner posed a danger or flight risk. As a result, the petitioner remains confined without any finding that his detention is necessary to serve a legitimate regulatory purpose. Such unexamined and indefinite detention bears no reasonable relation to ensuring appearance at removal proceedings or protecting public safety.

72. By categorically denying the petitioner the opportunity for individualized review, the respondents have transformed a civil regulatory scheme into punitive confinement in violation of substantive due process. The Fifth Amendment forbids detention that is arbitrary, excessive in relation to its purpose, or unsupported by individualized justification. *See Zadvydas*, 533 U.S. at 690.

73. Because the petitioner has never been found to be a danger or flight risk, and because the respondents have provided no special justification for continued incarceration, his detention is not reasonably related to its purpose and thereby violates his due process rights.

COUNT III

Violation of the Due Process Clause of the Fifth Amendment Procedural Due Process

74. The allegations in paragraphs 1-65 are realleged and incorporated herein.

75. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts evaluate whether adjudicatory procedures sufficiently protect individuals' due process rights.

76. The petitioner has been denied any meaningful process to challenge his confinement. Although the Immigration Court scheduled a bond hearing, the Immigration Judge declined jurisdiction and refused to consider release, citing *Matter of Yajure-Hurtado*, 28 I. & N. Dec. 1 (BIA 2025). As a result, the petitioner was never afforded an individualized determination of whether he poses a danger or flight risk.

77. The respondents' application of *Matter of Yajure-Hurtado* and the resulting refusal to hold a bond hearing violate the procedural component of the Due Process Clause of the Fifth Amendment.

COUNT IV

Injunctive Relief Regarding Unlawful Withholding of Parole Document

78. The plaintiff realleges and incorporates by reference paragraphs 1 through 65.

79. Under 8 CFR § 235.1(h)(2), "**[a]ny** alien paroled into the United States under section 212(d)(5) of the Act, including any alien crewmember, **shall** be issued a completely executed Form I-94, endorsed with a parole stamp." (emphasis added).

80. The respondents have a mandatory obligation to provide evidence of parole under 8 CFR § 235.1(h)(2).

81. By not documenting the plaintiff's release from custody on April 25, 2022, with a parole document, as is required under 8 CFR § 235.1(h)(2), the plaintiff "suffer[ed] legal wrong," and has been "adversely affected" and "aggrieved" by the actions of respondents. 5 U.S.C. § 702.

82. The respondents' failure to provide the petitioner with evidence of his parole at the time of his release from custody as mandated by 8 CFR § 235.1(h)(2) amounts to an unlawful withholding of agency action. *Id.* § 706(1).

83. As such, the petitioner is entitled to injunctive relief, *id.* § 703, ordering that the respondents provide the petitioner with evidence of his parole out of custody as required by 8 CFR § 235.1(h)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Honorable Court grant the following relief:

(a) Assume jurisdiction over this matter;

(b) Order, under the All-Writs Act, 28 U.S.C. § 1651, that the respondents not transfer the petitioner outside of the jurisdiction of the U.S. District Court for the Southern District of Florida during the pendency of this petition;

(c) Declare the respondents' actions or omissions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution and/or the Immigration and Nationality Act;

(d) Order the respondents to provide the petitioner with a prompt and constitutionally adequate bond hearing before an immigration judge with jurisdiction under 8 U.S.C. § 1226(a), at which the government bears the burden of proving by clear and convincing evidence that continued detention is justified;

(e) In the alternative, declare that the petitioner's release from physical DHS custody, by DHS of its own volition, was a parole under 8 U. S. C. § 1182(d)(5)(A), and that the respondents

have unlawfully failed to provide the petitioner with evidence of his parole out of physical custody as required by 8 CFR § 235.1(h)(2);

(f) In the alternative, order the respondents to provide the petitioner with evidence of his parole out of physical custody as required by 8 CFR § 235.1(h)(2), via a Form I-94, relating to the time of his original release from DHS custody on April 25, 2022;

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

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

Dated: November 7, 2025

Respectfully submitted,

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Counsel for the Plaintiff

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

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 7, 2025

Respectfully submitted,

s/Maitte Barrientos
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s/ Anthony Richard Dominguez
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