

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:25-cv-62285-DSL

CESAR AUGUSTO MARTINEZ MONCADA,

Petitioner,

vs.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security (DHS); **TODD M. LYONS**, Acting Director, U.S. Immigration and Customs Enforcement (ICE); **DEREK GORDON**, Acting Executive Associate Director, Homeland Security Investigations (HSI), U.S. Immigration and Customs Enforcement (ICE); **MARCOS CHARLES**, Acting Executive Associate Director, Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE); **SIRCE E. OWEN**, Acting Director, Executive Office For Immigration Review

Respondents.

PETITIONER'S FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW Petitioner Luis A. Martinez Moncada, by and through undersigned counsel, and respectfully petitions this Honorable Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and the Due Process Clause of the Fifth Amendment to the United States Constitution, to challenge the legality of his continued detention and the enforcement of an expedited removal order that was issued in violation of mandatory statutory and regulatory procedures. Petitioner is currently

detained at the Krome Detention Center in Miami, Florida, within the jurisdiction of this Court, and is held pursuant to a removal order that is invalid as a matter of law.

INTRODUCTION

1. This case challenges the unlawful and unconstitutional detention and removal of Petitioner Luis A. Martinez Moncada, a Nicaraguan national and father of a U.S. citizen child, who has resided in the United States continuously since November 2021. Petitioner is currently detained at the Krome Detention Center in Miami, Florida, under threat of removal based on an expedited removal order that was issued in violation of federal law.
2. Upon his apprehension by immigration authorities in 2021, Petitioner expressed a fear of persecution if returned to Nicaragua. However, the Department of Homeland Security (DHS) failed to provide the mandatory credible fear interview required by 8 U.S.C. § 1225(b)(1)(A)(ii) and 8 C.F.R. §§ 208.30, 235.3(b)(4). Instead, DHS issued a Form I-860 expedited removal order and subsequently released Petitioner, who has since filed a timely asylum application, obtained work authorization, and remained in full compliance with all U.S. immigration procedures.
3. In June 2025, nearly four years after the original violation, Petitioner was arrested by ICE and subjected to renewed enforcement of the defective removal order. DHS has since conducted a belated credible fear interview, but now seeks to detain and remove Petitioner under a process it had no legal authority to invoke in the first place.

4. DHS's actions violate both statutory and constitutional law. The expedited removal order is void because DHS failed to timely comply with a mandatory prerequisite, the credible fear screening. Its attempt to enforce that order now is ultra vires, arbitrary and capricious, and a violation of Petitioner's Fifth Amendment due process rights. Furthermore, Petitioner is currently detained without an individualized bond hearing, in violation of 8 U.S.C. § 1226(a) and constitutional protections against prolonged civil detention.
5. Because Petitioner's liberty is at stake, and because DHS has flouted mandatory statutory protections, this Court's intervention is necessary to vindicate the rule of law and to protect constitutional guarantees. Petitioner respectfully requests prompt judicial review and relief.

JURISDICTION AND VENUE


6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 2241, which authorizes federal courts to grant writs of habeas corpus to individuals in custody in violation of the Constitution, laws, or treaties of the United States.
7. This Court also has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), as this action arises under the Constitution and laws of the United States, including the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.
8. Petitioner's claim is not barred from review by 8 U.S.C. § 1252(g) as Petitioner does not challenge the Respondent's decision to commence removal proceedings against

him, the decision to arrest and detain him, or the methods by which he is detained. Petitioner challenges the Attorney General's treatment of him as an "alien seeking admission," whose detention is governed by 8 U.S.C. § 1225(a)(2) rather than 8 U.S.C. § 1226(a). *Cf. Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ("While [Section 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions.").

9. Similarly, this Court is not stripped of jurisdiction by the "zipper clause" of the INA, *see* 8 U.S.C. § 1252(b)(9), because Petitioner is "not asking for review of an order of removal;" he is not "challenging the decision to detain [him] in the first place or to seek removal;" and he is "not even challenging any part of the process by which [his] removability will be determined. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018); *see also Madu*, 470 F.3d at 1365 (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation).
10. To the extent applicable, this Court further has jurisdiction pursuant to the Administrative Procedure Act, 5 U.S.C. § 701 et seq., which authorizes judicial review of final agency actions where no adequate alternative remedy exists. *See* 5 U.S.C. §§ 702, 704, and 706(2)(A); *see also Califano v. Sanders*, 430 U.S. 99, 105-07 (1977).

11. This Court may issue declaratory relief under 28 U.S.C. § 2201 and may compel agency action unlawfully withheld or unreasonably delayed under 28 U.S.C. § 1361 where appropriate.
12. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391(e)(1)(B), because Petitioner is currently detained in this District and a substantial part of the events or omissions giving rise to this action occurred here.

PARTIES

13. Petitioner, Cesar Augusto Martinez Moncada, is a native and citizen of Nicaragua, born on .
14. Respondent Kristi Noem, Secretary of the U.S. Department of Homeland Security (DHS), is the head of DHS, the federal department charged with administering and enforcing the nation's immigration laws. Secretary Noem has the ultimate authority over ICE and all subordinate agencies involved in Petitioner's detention. She is sued in her official capacity.
15. Respondent Todd M. Lyons, Acting Director of U.S. Immigration and Customs Enforcement (ICE), is responsible for the nationwide administration and oversight of ICE, the agency charged with enforcement of immigration detention and removal. He is sued in his official capacity.
16. Respondent Derek Gordon, Acting Executive Associate Director of Homeland Security Investigations (HSI), ICE, oversees investigative operations of ICE including matters involving the apprehension of noncitizens. While HSI is primarily

investigative, its leadership participates in the broader enforcement mechanisms of DHS. He is sued in his official capacity.

17. Respondent Marcos Charles, Acting Executive Associate Director of Enforcement and Removal Operations (ERO), ICE, is directly responsible for the supervision and operation of ICE's detention and removal activities. His division has direct oversight of the detention facility where Petitioner is currently held. He is sued in his official capacity.
18. Defendant, Sirce E. Owen, is the Acting Director of the Executive Office for Immigration Review (EOIR), a component of the U.S. Department of Justice responsible for adjudicating immigration cases, including asylum claims, in removal proceedings. She is sued in her official capacity.

LEGAL BACKGROUND

19. Congress has established asylum as a core humanitarian protection under United States immigration law. The Immigration and Nationality Act (INA) provides that “[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and irrespective of such alien’s status) may apply for asylum.” INA § 208(a)(1), 8 U.S.C. § 1158(a)(1).¹ This language is broad and unequivocal. It reflects Congress’s intent that asylum be available to all individuals present in the United States, regardless of how they

¹ In general. Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 235(b) [8 USCS § 1225(b)]. 8 U.S.C.S. § 1158.

entered, so long as they can establish eligibility under the substantive asylum provisions.

20. The implementing regulations establish that USCIS has original jurisdiction over affirmative asylum applications filed by individuals not in removal proceedings. See 8 C.F.R. § 208.2(a). Once an applicant properly files Form I-589 with USCIS, the agency is required to accept jurisdiction and adjudicate the claim on the merits. If the case is not approved, it is transferred to the immigration courts under 8 U.S.C. § 1229a. The asylum process is designed to ensure orderly review, including interview procedures, opportunities to present evidence, and issuance of an employment authorization document during the pendency of the application.
21. Where a noncitizen is referred to the immigration courts, it must be through lawful means. If DHS attempts to short-circuit this process by invoking expedited removal in situations where it does not apply, it effectively strips the applicant of the rights Congress has conferred and places the agency's decision-making outside the bounds of its statutory authority.
22. In contrast to the protections afforded under the asylum statute, Congress created expedited removal under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1), as a limited and exceptional procedure. Expedited removal authorizes DHS officers to summarily remove certain arriving noncitizens who are inadmissible for misrepresentation or lack of valid documents. See INA § 235(b)(1), 8 U.S.C. § 1225(b)(1).
23. The statute, however, expressly limits who may be subjected to expedited removal. Section makes clear that expedited removal does not apply to individuals who can

affirmatively demonstrate continuous physical presence in the United States for the two-year period immediately preceding the inadmissibility determination. INA 235(b)(1)(A)(iii)(II), 8 U.S.C. § 1225(b)(1)(A)(iii)(II). This safeguard ensures that individuals with an established presence in the United States are not deprived of full removal proceedings and the opportunity to have their claims heard before an immigration judge.

24. The regulations implementing expedited removal confirm this distinction. They provide that individuals subject to expedited removal are afforded first a “credible fear” screening interview under 8 C.F.R. § 208.30; 8 U.S.C. § 1225(b)(1)(A)(ii).² By contrast, those who are not subject to expedited removal retain the right to pursue asylum directly through USCIS under 8 C.F.R. § 208.2(a)(1)(i).
25. Thus, the two processes, affirmative asylum before USCIS and expedited removal before DHS, are mutually exclusive. A noncitizen who has resided in the United States for two years or more falls squarely within the protection of the asylum statute and outside the scope of the expedited removal proceedings under Section 235 of the INA.
26. The asylum statute and the expedited removal statute operate in tandem but serve distinct purposes. The asylum statute ensures access to protection for all noncitizens physically present in the United States. The expedited removal statute permits DHS

² Claims for asylum. If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or 212(a)(7) [8 USCS § 1182(a)(6)(C) or 1182(a)(7)] and the alien indicates either an intention to apply for asylum under section 208 [8 USCS § 1158] or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B). 8 U.S.C.S. § 1225.

to summarily remove only those with minimal presence and without documentation, subject to a credible fear safeguard.

27. To guard against erroneous removal and to uphold the United States' obligations under international and domestic refugee law, Congress required that any noncitizen subject to expedited removal who expresses a fear of persecution or torture must be afforded a "credible fear" interview before any removal order is executed. *See* INA § 235(b)(1)(A)(ii), 8 U.S.C. § 1225(b)(1)(A)(ii). DHS is required to refer such individuals to an asylum officer for an interview to determine whether the fear is credible and whether the applicant may pursue asylum, withholding of removal, or relief under the Convention Against Torture.³

28. The statute does not permit removal of an individual who has expressed a fear of return prior to the completion of a credible fear determination. Congress codified this safeguard precisely to ensure that expedited removal procedures do not result in the refoulement of refugees. The implementing regulations, at 8 C.F.R. § 208.30, requires that a credible fear interview be conducted before proceeding with the removal of the noncitizen and that the individual be detained until the screening process is completed.

29. A credible fear determination is not a discretionary act, it is a jurisdictional prerequisite to the removal of an individual under 8 U.S.C § 1225(b)(1). Furthermore, in the case where the officer conducting the interview finds that there is no credible

³ *See Id.*

fear determination, 8 U.S.C.S. § 1225 requires that the officer prepare a written record of the determination.⁴

30. Here, DHS issued a Form I-860 expedited removal order against Mr. Martinez Moncada on November 7, 2021, yet failed to provide him with a credible fear interview at that time, despite his expressed fear of persecution in Nicaragua. This constitutes a clear violation of 8 U.S.C.S. § 1225(b)(1)(A)(ii). The government detained Petitioner, issued an expedited order, and then released him into the community without ever following through on the procedures mandated by statute and regulation.
31. The government's failure to conduct the required screening prior to removal, combined with its subsequent long-term release of Mr. Martinez Moncada, constitutes a waiver or forfeiture of its statutory authority to proceed under the expedited removal scheme. The Supreme Court has emphasized that agencies must act within the scope of their delegated authority and in conformity with procedural requirements. *See INS v. Chadha*, 462 U.S. 919, 953 n.16 (1983) (noting that when Congress delegates authority to an administrative agency...the agency must adhere to the procedural requirements set forth by Congress).
32. The government's belated provision of a credible fear interview in 2025, nearly four years after the original order, cannot retroactively validate the defective process. The

⁴ Record of determination. The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary. 8 U.S.C.S. § 1225.

due process guarantees of the Fifth Amendment "include a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-02 (1993).

33. The regulatory framework in 8 C.F.R. § 235.3(b)(4) confirms that credible fear interviews are to occur immediately upon expression of fear.⁵
34. In this case, Petitioner (1) expressed fear of return in 2021; (2) was issued a removal order without a credible fear interview; (3) was subsequently released into the United States for nearly four years; (4) filed a Form I-589 application with USCIS in early 2022; (5) was granted an employment authorization document (EAD); (6) complied with all biometrics and USCIS requirements; and (7) was not provided any immigration court hearing or removal proceedings during that time.
35. This sequence of events shows that the government did not treat Petitioner as someone under expedited removal jurisdiction, until it attempted to revive the dormant order following his 2025 arrest. Such post hoc resurrection is inconsistent with the statutory scheme and raises profound due process concerns.
36. Because DHS failed to conduct a credible fear interview at the time it issued the expedited removal order, and instead permitted Petitioner to live and work in the United States for several years without action, the agency effectively relinquished its authority to rely on the expedited removal framework. The 2025 credible fear


⁵ "If an alien subject to the expedited removal provisions indicates an intention to apply for asylum...the inspecting officer shall not proceed further with removal until the alien has been referred for a credible fear interview." 8 C.F.R. § 235.3(b)(4).

interview cannot cure the original legal error, nor does it restore jurisdiction to remove Petitioner under INA § 235(b)(1). As such, Petitioner is entitled to full removal proceedings under INA § 240, including the right to seek asylum before an immigration judge.

37. By issuing a Form I-860 and dismissing his asylum application, DHS acted contrary to law. It applied expedited removal in a context where Congress did not authorize. The agency's actions deprived Petitioner of his statutory right to pursue asylum and denied him the protections guaranteed by 8 U.S.C. § 1158 and 8 C.F.R. § 208.2.

38. This overreach is not a matter of agency discretion. It is a jurisdictional error. DHS has no lawful authority to place Petitioner in expedited removal proceedings when he has demonstrably expressed a credible fear of being removed from the United States. The agency's actions must therefore be vacated, and USCIS must be compelled to exercise its proper jurisdiction over Petitioner's asylum application.

FACTUAL ALLEGATIONS

39. Petitioner Luis A. Martinez Moncada is a 31-year-old citizen and native of Nicaragua, born on . See Exhibit A.

40. Petitioner is the father of a U.S. Citizen child born on June 28, 2022 in Hialeah, Florida. See Exhibit B.

41. He entered the United States without inspection on or around November 6, 2021, and has resided continuously in the country ever since.

42. On November 7, 2021, Petitioner was issued Form I-860, Notice and Order of Expedited Removal, stating that he was inadmissible under INA § 212(a)(7)(A)(i)(I).⁶ See Exhibit C.
43. Petitioner did not receive a credible fear interview at the onset, after expressing his well-founded fear of harm, should he be removed from the United States and required to return to Nicaragua.
44. Since his arrival, Petitioner has made Miami, Florida, his home. He has lived quietly, worked to support himself, and has not had any interaction with immigration authorities or law enforcement until the date of his arrest.
45. Petitioner has no criminal record in the United States or in Nicaragua. He has never been arrested, charged, or convicted of any offense. He has no history of immigration fraud, document misuse, or prior removals.
46. Petitioner has had a pending Form I-589, Application for Asylum and for Withholding of Removal with U.S. Citizenship and Immigration Services (USCIS) since February 2022. See Exhibit D. He has complied with all the procedures established by law: (1) he attended his biometrics appointment with DHS, see Exhibit E; and (2) he applied and was granted an Employment Authorization Document since 2022, see Exhibit F.

⁶ Except as otherwise specifically provided in this chapter, any immigrant at the time of application for admission- (I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title. 8 USC § 1182(a)(7)(A)(i)(I).

47. On June 17, 2025, Petitioner was traveling in his vehicle in Miami, Florida, near the intersection of North West 12th Avenue and 50 Street, when their vehicle was stopped by a joint task force composed of officers from the Miami Police Department and agents of U.S. Immigration and Customs Enforcement (ICE).
48. The vehicle stop was not based on any known criminal investigation or immigration warrant involving Mr. Martinez Moncada, and at the time of the stop, Petitioner's Driver's License was valid until April 7, 2026. *See* Exhibit G.
49. The detaining officers told Petitioner that he was being stopped because a search of his license plate revealed that he was subject to an order of removal.
50. On August 10, 2025, Petitioner was issued a Form I-862, Notice to Appear, stating that the "notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture." *See* Exhibit H.
51. Under 8 U.S.C. §§ 1225(b)(1)(A)(i), if an immigration officer determines that an alien "is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed . . . without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution." (emphasis added). If the alien expresses such intentions, "the inspecting officer shall not proceed further with removal of the alien until the alien has been referred for an interview by an asylum officer in accordance with 8 C.F.R. § 208.30." 8 C.F.R. § 235.3(b)(4) (emphasis added) (cleaned up).

52. Since his arrest, Petitioner has been detained and remains in the custody of the DHS in the Southern District of Florida, a civil immigration detention center. He has been held continuously since June 17, 2025, without any opportunity to seek release or appear before an immigration judge to challenge his detention.

CAUSES OF ACTION

COUNT I

Violation of 8 U.S.C. § 1225(b)(1) and Associated Regulations

53. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through fifty-two (52) as though fully set forth herein.

54. Petitioner brings this claim pursuant to the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(1), and its implementing regulations at 8 C.F.R. §§ 208.30 and 235.3, which govern the procedures that the Department of Homeland Security (DHS) must follow when initiating expedited removal proceedings against noncitizens who express a fear of return to their country of origin.

55. Under the INA, individuals who are subject to expedited removal but who express a fear of persecution or torture must be referred to an asylum officer for a credible fear interview prior to any further removal action. *See* 8 U.S.C. § 1225(b)(1)(A)(ii). This requirement is nondiscretionary and forms a mandatory procedural safeguard against the erroneous removal of individuals who may qualify for asylum, withholding of removal, or relief under the Convention Against Torture (CAT).

56. The implementing regulations further provide that if an immigration officer determines that an individual “intends to apply for asylum,” or “expresses a fear of persecution or torture,” the officer “shall not proceed further with removal” until the individual has been referred to an asylum officer for a credible fear determination. *See* 8 C.F.R. § 235.3(b)(4) (emphasis added); *see also* 8 C.F.R. § 208.30(a).
57. Petitioner, Luis A. Martinez Moncada, was apprehended on or about November 6, 2021, shortly after entering the United States. At that time, he expressed a fear of return to Nicaragua, a country where he reasonably feared persecution based on political opinion and related grounds.
58. Notwithstanding this express fear, DHS failed to provide Petitioner with a credible fear interview at the time of his apprehension or prior to the issuance of a Form I-860, Notice and Order of Expedited Removal. This failure violated the plain terms of 8 U.S.C. § 1225(b)(1)(A)(ii) and 8 C.F.R. §§ 208.30 and 235.3(b)(4).
59. As a result, the expedited removal order issued against Petitioner was unlawful and void *ab initio*, because it was entered in violation of a jurisdictional prerequisite. DHS lacked authority to issue or execute a removal order until a credible fear interview had been conducted and the asylum officer determined whether Petitioner had established a significant possibility of eligibility for protection.
60. DHS’s omission of this required step is not a procedural irregularity that can be overlooked or retroactively cured. The credible fear screening is a critical gateway to relief and a jurisdictional requirement under the INA. *See Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005) (“where...an alien has either indicated a desire to apply for

asylum or has expressed a fear of persecution, the alien may not be immediately removed and must be referred to an asylum officer for a credible fear interview. Sections 235(b)(1)(A)(i), (ii) of the Act; 8 C.F.R. § 1235.3(b)(4).”). This further confirms that such procedures must be adhered to before jurisdiction to remove exists. Providing a credible fear interview is not a discretionary privilege that DHS can arbitrarily choose to withhold from an alien that expresses such fear.

61. 8 U.S.C. § 1225(b)(1)(A)(ii) provides for the mandatory detention of aliens who are being processed under section 235(b)(1) proceedings “pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”

62. Petitioner was never afforded his statutory right to a credible fear interview despite expressing a fear of persecution, and was subsequently ordered removed without a credible fear determination.

63. Petitioner was subsequently released from DHS custody and remained in the United States for nearly four years without being removed. During this time, he filed a Form I-589 Application for Asylum and was issued an Employment Authorization Document by U.S. Citizenship and Immigration Services (USCIS), which further confirms that the government treated him as outside of expedited removal jurisdiction.

64. It was not until August 10, 2025, after Petitioner’s arrest and prolonged detention, that DHS issued a Notice to Appear (Form I-862), acknowledging for the first time that he had now been found to have a credible fear of return. This post hoc interview does not retroactively validate the original unlawful removal order. The statute does

not permit DHS to conduct a credible fear interview four years after the fact in order to revive its authority under § 1225(b)(1).

65. The expedited removal framework, by its own terms, applies only to “arriving aliens” and recent entrants without documentation. *See* 8 U.S.C. § 1225(b)(1)(A)(i). Once DHS failed to follow required procedure at the threshold, i.e., failed to conduct the credible fear interview prior to issuance of the removal order, it forfeited the ability to proceed under this expedited process.
66. DHS cannot now rely on a procedurally defective and jurisdictionally flawed expedited removal order to justify Petitioner’s continued detention or removal. The government’s failure to follow § 1225(b)(1)’s express requirements invalidates the order and precludes its enforcement.

COUNT II

Violation of Fifth Amendment Right to Due Process

(Failure to Provide Credible Fear Interview Under 8 U.S.C. § 1225)

67. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through fifty-two (52) as though fully set forth herein.
68. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that “[n]o person shall be...deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. This protection applies to all persons within the territory of the United States, including noncitizens who are physically present, regardless of immigration status. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

69. Immigration detention and removal implicate significant liberty interests. Accordingly, noncitizens must be afforded the minimum constitutional guarantees of notice and a meaningful opportunity to be heard before the government deprives them of liberty or expels them from the country. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
70. The Fifth Amendment's due process protections include not only procedural fairness, but also protection from arbitrary executive action that deprives individuals of their statutory rights without lawful justification.
71. Under the Immigration and Nationality Act, individuals who are subject to expedited removal but who express a fear of persecution or torture are statutorily entitled to a credible fear interview before the government may execute a removal order. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. §§ 208.30 and 235.3(b)(4). The credible fear interview serves as the sole procedural safeguard to prevent the summary removal of refugees without an opportunity to present their protection claims.
72. On or about June 17, 2021, Petitioner was apprehended by DHS nearly four years after entering the United States. Upon entering, he immediately expressed a well-founded fear of persecution if returned to Nicaragua. Despite this, DHS failed to refer him to an asylum officer for a credible fear interview as required by statute and regulation.
73. Instead, DHS issued Petitioner a Form I-860, Notice and Order of Expedited Removal, without complying with the required screening procedure. He was deprived of any opportunity to be heard, to explain his fear, or to seek protection

under U.S. asylum law. This denial of process occurred despite Petitioner's clear eligibility for protection under 8 U.S.C. § 1158(a)(1).

74. DHS removed Petitioner on paper without following the only statutory mechanism designed to ensure that individuals with a fear of persecution are not returned to harm.

75. The fact that DHS conducted a credible fear interview nearly four years later, in 2025, does not cure the constitutional violation. The harm occurred when Petitioner was initially denied access to the asylum system and subjected to a legally defective removal order.

76. As a result of DHS's failure to provide the required process, Petitioner has suffered prolonged detention and has been denied meaningful access to the asylum system for which he was eligible. The constitutional violation continues so long as DHS seeks to enforce a removal order that was procured without due process.

COUNT III

Violation of Fifth Amendment Right to Due Process

(Failure to Provide a Bond Hearing in Violation of 8 U.S.C. § 1226(a))

77. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through fifty-two (52) as though fully set forth herein.

78. The Fifth Amendment to the United States Constitution provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

79. These due process protections extend to all persons within the United States, including noncitizens who entered the country without inspection and are subject to removal proceedings. *See Zadvydas*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Plyler v. Doe*, 457 U.S. 202, 210 (1982).
80. Petitioner has been detained since June 17, 2025, by U.S. Immigration and Customs Enforcement (ICE), following his arrest in Miami, Florida, an interior location far from any border or port of entry, and more than four years after his entry into the United States.
81. Following his arrest, Petitioner was placed in removal proceedings under 8 U.S.C. § 1229a, but was denied any opportunity to appear before an Immigration Judge to request release on bond, based on ICE's assertion that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).
82. Detention under § 1226(a) is discretionary, and due process requires that an individual detained under this provision be provided with an individualized bond hearing before an Immigration Judge, in which the government must demonstrate, at a minimum, that continued detention is necessary to prevent flight or danger to the community. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256–57 (1st Cir. 2021).
83. Prolonged civil detention without an individualized custody hearing constitutes a serious deprivation of liberty that must be accompanied by robust procedural

protections under the Constitution. *Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418, 425 (1979).

84. Petitioner has now been detained without any opportunity to contest his custody or present evidence of his community ties, lack of criminal history, and stable residence in the United States.

85. The government's refusal to provide Petitioner a bond hearing, despite the applicability of § 1226(a), violates his procedural and substantive due process rights under the Fifth Amendment.

86. To the extent a harmless-error determination rests on legal or evidentiary matters not considered by DHS, it risks violating the general rule against post hoc justification of administrative action recognized in *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943).

87. When the government exercises its discretion to subject a person to detention without access to a bond hearing after the condition justifying detention has been in existence for a considerable period of time, it disregards what is by then self-evident, that said subject is neither a flight risk nor a danger to society, the primary reasons for denying bail. *See* 18 U.S.C. § 3142(e)(1); *cf. Carlson v. Landon*, 342 U.S. 524, 542 (1952). Affirming the government's prerogative to incarcerate persons in petitioners' situation without bail or bond hearing is not only to allow arbitrary and abusive government action but to condone acts that run contrary to the Constitution. *See Herzog v. United States*, 75 S. Ct. 349, 351 (1955); *see also Wong Wing v. United States*, 163 U.S. 228, 237 (1896).

88. The continued detention of Petitioner without any bond hearing, based solely on the misapplication of a statute that does not govern his case, is arbitrary, capricious, and unconstitutional.

89. Accordingly, Petitioner respectfully requests that this Court declare that Respondents' refusal to provide a bond hearing violates the Due Process Clause of the Fifth Amendment, and order that Petitioner be immediately provided with an individualized bond hearing before an Immigration Judge with appropriate procedural protections.

COUNT IV

Violation of Administrative Procedure Act (5 U.S.C. § 706)

90. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through fifty-two (52) as though fully set forth herein.

91. The Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq., provides for judicial review of federal agency action.

92. Under the APA, a reviewing court must "hold unlawful and set aside agency action, findings, and conclusions found to be" (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; b) contrary to constitutional right, power, privilege, or immunity; (c) in excess of statutory jurisdiction or authority; or (d) without observance of procedure required by law. 5 U.S.C. § 706(2)(A)-(D).

93. The Department of Homeland Security (DHS), through U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE), is an agency subject to the APA. Its decisions related to removal, detention, and credible fear interviews are reviewable final agency actions, particularly where they result in deprivation of liberty or statutory protection.
94. DHS violated the APA by issuing Petitioner a Form I-860 expedited removal order without first referring him to an asylum officer for a credible fear interview, despite his express fear of return to Nicaragua. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. §§ 208.30, 235.3(b)(4).
95. This failure to conduct a credible fear interview violated DHS's statutory and regulatory duties, and the expedited removal order issued under those circumstances was issued in excess of statutory authority and without observance of required legal procedure.
96. DHS's later decision to conduct a credible fear interview nearly four years after issuing the removal order does not cure the agency's original legal error. An agency may not retroactively fix unlawful conduct by taking corrective action years later while continuing to enforce the consequences of the original invalid decision. *See Chenery Corp.*, 318 U.S. at 87.
97. Agency action that contradicts clear statutory mandates is per se arbitrary and capricious. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 448 (1987).

98. DHS further acted arbitrarily by: (1) failing to follow its own binding regulations; (2) treating Petitioner as though he was properly removed, while in fact allowing him to remain in the country and obtain employment authorization; and (3) reinstating or relying on a defective order after years of acquiescence.

99. Petitioner is therefore entitled to relief under the APA. The Court should declare that DHS's expedited removal order is invalid and that the agency's actions were arbitrary, capricious, and not in accordance with law. The APA mandates judicial intervention in precisely these circumstances.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Luis A. Martinez Moncada respectfully prays that this Honorable Court:

100. Assume jurisdiction over this matter pursuant to 28 U.S.C. § 2241, Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the inherent equitable powers of the federal courts;

101. Declare that Respondents' issuance and attempted enforcement of an expedited removal order against Petitioner violated 8 U.S.C. § 1225(b)(1), 8 C.F.R. §§ 208.30 and 235.3(b)(4), and the Fifth Amendment to the United States Constitution;

102. Declare that Respondents acted arbitrarily, capriciously, and contrary to law in violation of the Administrative Procedure Act, 5 U.S.C. § 706;

103. Hold unlawful and set aside the expedited removal order issued against Petitioner on or about November 7, 2021, as void *ab initio*;

104. Order Respondents to place Petitioner into removal proceedings under INA § 240, before an immigration judge, where he may pursue his claims for asylum, withholding of removal, and relief under the Convention Against Torture;
105. Order Petitioner's immediate release from civil immigration detention, or in the alternative, order that he be granted a constitutionally adequate individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) and the Fifth Amendment;
106. Enjoin Respondents from executing or attempting to enforce the expedited removal order against Petitioner;
107. Award attorneys' fees and costs as appropriate under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
108. Grant such other and further relief as the Court deems just and proper in the interest of justice and consistent with law.

Respectfully submitted,

s/Eduardo R. Soto

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 12, 2025, I electronically filed the foregoing document with the Clerk of Court using PACER. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties, either via transmission of Notices of Electronic Filing generated by PACER or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

s/ Eduardo R. Soto

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EXHIBIT LIST

- Exhibit A** Copy of Petitioner's Passport
- Exhibit B** Copy of Petitioner's USC Son's Birth Certificate
- Exhibit C** Form I-860, Notice and Order of Expedited Removal, Dated
November 7, 2021
- Exhibit D** Form I-797C, Notice of Action, Dated May 13, 2022
- Exhibit E** Copy of Petitioner's Stamped Biometrics Appointment as
confirmation that biometrics were taken by DHS
- Exhibit F** Copy of Respondent's Initial EAD Approval Notice from 2022
- Exhibit G** Picture of Petitioner's Valid Florida Driver's License
- Exhibit H** Form I-862, Notice to Appear, Dated August 10, 2025