

**THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA**

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LUIS ALAIN NAVARRO PERERA, )  
 )  
Petitioner )  
 )  
vs. )  
 )  
PAMELA BONDI, in her official capacity as )  
Attorney General of the United States, KRISTI )  
NOEM, in her official capacity as Secretary of )  
the Department of Homeland Security, TODD )  
LYONS, in his official capacity as Acting Director )  
of Immigration and Customs Enforcement; )  
GARRETT RIPA, in his official capacity as Field )  
Office Director of Immigration and Customs )  
Enforcement's Enforcement and Removal )  
Operations Miami Field Office; MATTHEW )  
MORDANT, in his official capacity as Warden of )  
Florida Soft Side South, )  
 )  
Respondents. )  
\_\_\_\_\_ )

Case No.: 2:25-cv-1054

Agency File: 

**PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR  
ORDER TO SHOW CAUSE**

Luis Alain Navarro Perera, hereinafter “Mr. Navarro” or “Petitioner,” by and through undersigned counsel, files this Petition for Writ of Habeas Corpus, and in support thereof, alleges as follows:

### **INTRODUCTION**

1. Petitioner Luis Alain Navarro Perera is in the physical custody of Respondents at the Florida Soft Side South, aka “Alligator Alcatraz”. He now faces unlawful detention because new DHS policy and precedent from the Board of Immigration Appeals (BIA or Board) hold that any person who entered the United States without admission is subject to mandatory detention.
2. Petitioner is charged with, inter alia, having entered the United States without admission or parole. *See* 8 U.S.C. § 1182(a)(6)(A)(i).
3. Based on this allegation in Petitioner’s removal proceedings, it is DHS’ position that, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
4. Similarly, on May 15, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges,

holding 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 is detained under section 235(b) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1225(b) (2018), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a) (2018).” *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

5. On September 5, 2025, the Board issued another decision, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
6. Petitioner’s detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who were detained upon their entry, processed and released pursuant to 8 U.S.C. § 1226(a), and are re-arrested years later. Instead, such individuals are subject to § 1226(a), which allows for release on conditional parole or bond. That statute expressly applies to people who, like

Petitioner, are charged as inadmissible for having entered the United States without being admitted or paroled.

7. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.
8. More importantly, the Government itself has made an abrupt about-face on this issue. Respondents should be judicially estopped from asserting their current interpretation of 8 U.S.C. § 1225(b)(2)(A), because they previously prevailed in litigation after asserting the opposite interpretation. As explained in *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies when a party assumes a position in a legal proceeding, succeeds in maintaining that position, and then adopts a contrary position in a subsequent proceeding to gain an unfair advantage. Here, Respondents previously, and successfully, argued that individuals who entered the United States without inspection were subject to detention under § 1226(a), and not § 1225(b)(2)(A), and courts accepted that position. Respondents now reverse course and assert that such individuals are subject to mandatory detention under § 1225(b)(2)(A), thereby denying them bond hearings. This shift in legal position undermines the integrity of the judicial process and imposes an unfair

detriment on Petitioners who relied on the prior interpretation. Accordingly, Respondents should be estopped from asserting this inconsistent position.

9. Furthermore, The Government's own issuance of a Warrant for Arrest of Alien, placing Petitioner in custody under 8 U.S.C. § 1226(a), and Order of Release on Recognizance under § 1226, reflects a discretionary, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). This quasi-judicial decision was made by DHS at the outset of proceedings, based on the facts available to both parties and Petitioner's own admissions. This legal determination squarely contradicts the Government's current position—adopted wholesale by the Board of Immigration Appeals—that Petitioner is ineligible to apply for bond before EOIR. This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.
10. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

11. Petitioner further requests this Court to order Respondents to show cause demonstrating why he should not be released within three days given his unlawful detention. 28 U.S.C. § 2243.

### **JURISDICTION**

12. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Florida Soft Side South, aka “Alligator Alcatraz”.

13. Jurisdiction of the Court is predicated upon 28 U.S.C. §§ 1331 and 1346(a)(2) in that the matter in controversy arises under the Constitution and laws of the United States, and the United States is a Defendant.

14. This Court also has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

15. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651

16. Federal courts also have federal question jurisdiction, through the APA, to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by “any

applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Respondents’ continued detention of Petitioner despite him being in lawful status has adversely and severely affected Petitioner’s liberty and freedom.

### **VENUE**

17. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Middle District of Florida, the judicial district in which Petitioner currently is detained.

18. Venue is proper in this District under 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Florida.

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19. Administrative exhaustion of remedies in a § 2241 proceeding is not a jurisdictional requirement. *Santiago-Lugo v. Warden*, 785 F.3d 467, 474-75 (11th Cir. 2015) (abrogating *Boz v. United States*, 248 F.3d 1299, 1300 (11th Cir.2001)).

20. Further, there is no statutory exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. Cf. 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only where requesting review of a final order of removal).
21. “[W]here Congress has not clearly required exhaustion, sound judicial discretion governs.” *Jones v. Zenk*, 495 F. Supp. 2d 1289, 1297 (N.D. Ga. 2007) (citing *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)). As a matter of discretion, exhaustion of administrative remedies should therefore be waived “(1) where prejudice to the prisoner’s subsequent court action ‘may result, for example, from an unreasonable or indefinite timeframe for administrative action’; (2) where the administrative agency may not have the authority ‘to grant effective relief’; or (3) ‘where the administrative body is shown to be biased or has otherwise predetermined the issue before it.’” *Jones*, 495 F. Supp. 2d at 1297 (citing *McCarthy*, 503 U.S. at 146-48). See also *Woodford v. Ngo*, 548 U.S. 81, 103 (2006) (Breyer, J. concurring) (noting “well-established exceptions to exhaustion” that include constitutional claims, futility, hardship to the petitioner, and where administrative remedies are inadequate or unavailable) (citations omitted)).
22. In making its discretionary decision, the Court should consider the urgency of the need for immediate review. “Where a person is detained by executive

order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

23. Petitioner’s constitutional challenge to his detention is exempt from administrative exhaustion requirements. *See Woodford v. Ngo*, 548 U.S. 81, 103 (Breyer, J. concurring) (constitutional claims are exempt from administrative exhaustion); *see also Khan v. Atty. Gen. of U.S.*, 448 F.3d 226, 236 n.8 (3d Cir. 2006) (internal quotation omitted) (“[D]ue process claims generally are exempt from the exhaustion requirement because the BIA does not have jurisdiction to adjudicate constitutional issues.”); *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002) (“[T]he BIA does not have jurisdiction to adjudicate constitutional issues . . . .” (quoting *Vargas v. U.S. Dep’t of Immigration & Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987))).

24. Further, administrative exhaustion before the immigration judge and the BIA would be futile. Exhaustion is futile where the agency has “predetermined the issue before it.” *McCarthy*, 503 U.S. at 148. The BIA has predetermined the issue here. The BIA has held that immigration judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2026). This decision is binding on immigration courts across the country.

Therefore, exhaustion would be futile and the Court should waive its requirement as a matter of discretion.

25.A request for release on humanitarian parole under 8 U.S.C. 1182(d)(5)(A) would also be futile. Parole review is conducted informally by DHS officers—the jailing authority—by checking a box on a form that contains no factual findings, no specific explanation, and no evidence of deliberation. There is no hearing, no record, and no administrative appeal from a negative parole decision, even to correct manifest errors. *See Rodriguez v. Robbins*, 804 F.3d 1060, 1081 (9th Cir. 2015), *cert. granted sub nom. Jennings v. Rodriguez*, 136 S. Ct. 2489, 195 L. Ed. 2d 821 (2016) (identifying denials of parole “based on blatant errors: In two separate cases . . . officers apparently denied parole because they had confused Ethiopia with Somalia. And in a third case, an officer denied parole because he had mixed up two detainees’ files.”); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1082 (9th Cir. 2006) (finding that DHS abused its authority by denying parole). In the absence of administratively enforceable standards, and in light of recent guidance from the Department of Homeland Security, humanitarian parole is nearly nonexistent at this point. *See DHS Memorandum: Guidance Regarding How to Exercise Enforcement Discretion* (Jan. 23, 2025).

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

26. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the Respondents “forthwith,” unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
27. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

### **PARTIES**

28. Petitioner, Mr. Luis Alain Navarro Perera, is a 30-year-old native and citizen of Cuba, with no criminal record. On Thursday, November 13, 2025, Mr. Navarro was detained by ICE. He was working in the Florida Keys, was a passenger in a car, and was simply detained by ICE because of his immigration status. Immigration officers took him into custody and later transferred him to Alligator Alcatraz.
29. Respondent, Ms. Pamela Bondi, is the United States Attorney General. She oversees the immigration court system, which is housed within the Executive

Office for Immigration Review (“EOIR”) and includes all Immigration Judges and the Board of Immigration Appeals (“BIA”). She is sued in her official capacity.

30. Respondent, Ms. Kristi Noem, is the United States Secretary of Homeland Security. DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity.

31. Respondent, Mr. Todd Lyons, is the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”). As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States and is legally responsible for pursuing any effort to remove Mr. Navarro and confine him pending removal. As such, he is a custodian of Mr. Navarro. He is sued in his official capacity.

32. Respondent, Garrett Ripa, is the Field Office Director of Immigration and Customs Enforcement’s Enforcement and Removal Operations for the Miami Field Office. He is the federal agent responsible for the administration of immigration laws and the execution of immigration confinement and the institution of removal proceedings within Florida, which is the jurisdiction

where Mr. Navarro is confined. As such, he is a custodian of Mr. Navarro. He is sued in his official capacity.

33. Respondent, Matthew Mordant, is the Warden of Alligator Alcatraz. He is responsible for the immediate execution of detention over Petitioner. As such, he is a custodian of Mr. Navarro. He is sued in his official capacity.

### **LEGAL FRAMEWORK**

34. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings.

35. First, 8 U.S.C. § 1226 authorizes that “on a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

36. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

37. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).
38. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
39. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).
40. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
41. Thus, in the decades that followed, most people who were apprehended within the borders of the United States received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens

who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

42. In *Jennings v. Rodriguez*, the Department of Homeland Security (“DHS”) explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b). *Jennings v. Rodriguez*, 583 U.S. 281 (2018). During oral argument on November 30, 2016, then-Solicitor General Ian Gershengorn stated: “If they are not detained within 100 miles of the border or within 14 days... then they are under 1226(a) and not 1226(c).” In response to a question regarding “an alien who has come into the United States illegally without being admitted [and] who takes up residence 50 miles from the border,” the Government confirmed, “The answer is they are held under 1226(a) and that they get a bond hearing...” Transcript of Oral Argument at 7–8. DHS further reiterated that such individuals “would be held under 1226(a)” and cited the administrative record to support that position. *Id.* These statements reflect DHS’s prior litigation position that § 1226(a) governs detention for noncitizens who have entered and are residing in the United

States—a position directly contrary to the agency’s current interpretation extending § 1225(b)(2)(A) to those same individuals. Having prevailed in *Jennings* after taking this position, they should be now estopped from reversing course simply due to a shift in political or litigation strategy. Estoppel in this case is necessary to preserve the predictability inherent in the rule of law and due process under the Fifth Amendment, as well as to uphold the integrity of the judicial system.

43. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of normative agency practice.

44. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

45. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens

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<sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

46. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same interpretation of the statute as ICE.

47. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

48. Subsequently, several courts have adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV

25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No.

1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also*, *e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same); *Santana-Rivas v. Warden of Clinton County Correctional Facility*, No. 3:25-cv-01896-JPW, 2025 (M.D. Pa. Nov. 13, 2025) (same).

49. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it contradicts the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

50. “Courts have noted that Respondents’ interpretation of the phrase ‘seeking admission’ ‘violates the rule against surplusage and negates the plain meaning of the text.’” *Santana-Rivas*, No. 3:25-cv-01896-JPW, at \*27-28 (citing *Soto v. Soto, et. al.*, No. 25-16200, 2025 U.S. Dist. LEXIS 207818, at \*9 (D.N.J. Oct. 22; *Martinez v. Hyde*, No. 25-11613, 2025 U.S. Dist. LEXIS 141724, at \*6 (D. Mass. July 24, 2025); *Zumba v. Bondi*, No. 25-14626, 2025 U.S. Dist. LEXIS 190052, at \*8; *Benitez v. Francis*, No. 25-5937, 2025 U.S. Dist. LEXIS 157214, at \*16 (S.D.N.Y. Aug. 8, 2025). “The phrase ‘seeking admission’ in

§ 1225(b)(2)(A) necessarily connotes some affirmative, present-tense action.” *Santana-Rivas*, No. 3:25-cv-01896-JPW, at \*28. “The verb ‘seeking’ is a present participle, and the ‘present participle is used to signal present and continuing action.’” *Id.* (quoting *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022); *D.L. Markham DDS, MSD, Inc. 401(K) Plan v. Variable Annuity Life Ins. Co.*, 88 F.4th 602, 610 (5th Cir. 2023) (“The word ‘providing,’ used here as a present participle, most commonly describes a person who is currently providing services.”) (*emphasis in original*); *United States v. Hull*, 456 F.3d 133, 145 (3d Cir. 2006) (Ackerman, Sr. Dist. J., sitting by designation, concurring) (“Congress’s use of the present participle ‘committing’ connotes present, continuing action.”)).

51. “The INA defines the term ‘admission’ as, ‘with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.’” *Santana-Rivas*, No. 3:25-cv-01896-JPW, at \*28-29 (quoting 8 U.S.C. § 1101(a)(13)(A)). “Thus, the INA’s own definition of the term ‘admission’ supports the limited application of § 1225 to encounters with aliens along the borders and at ports of entry.” *Id.* at \*29.

52. Here, Petitioner cannot be said to be “seeking admission” as defined in § 1101(a)(13)(A). Petitioner “‘has already ‘entered’ the country’— [he] is no longer seeking to enter the United States (lawfully or otherwise).” *Santana-*

*Rivas*, No. 3:25-cv-01896-JPW, at \*29 (quoting *Jimenez*, 2025 U.S. Dist. LEXIS 176165, at \*22, citing *Benitez*, 2025 U.S. Dist. LEXIS 157214, at \*19). Like the Middle District of Pennsylvania found in *Santana-Rivas*, “while Petitioner “has applied for asylum, that application does not seek “lawful entry” to the United States, but [rather] a lawful means to remain here.” *Id.*

53. Indeed, according to the Warrant for Arrest of Alien and document I-220A, Order of Release on Recognizance, issued to Petitioner on October 27, 2023, upon his initial encounter with ICE, as well as the DHS’s own factual allegations contained in the Notice to Appear, the DHS itself determined that Petitioner is an alien present in the United States without being admitted or paroled, and thus falls under § 1226(a), not § 1225(b).

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

55. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection or admission. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress

creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at \*7.

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

57. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (reversing the lower court’s judgement because it adopted an implausible construction of §§1225(b)(1), (b)(2) and 1226(c).

58. In *Jennings*, the Supreme Court describes section 1226 as governing “the process of arresting and detaining” noncitizens who are living “inside the United States” but “may still be removed,” including noncitizens “who were inadmissible at the time of entry.” *Jennings*, 583 U.S. at 288. In harmonizing

sections 1225 and 1226, the Supreme Court explains “in sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] *seeking* admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Id.* at 289 (emphasis added).

59. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered, were processed and released previously under 8 U.S.C. § 1226, and were already residing in the United States at the time they were re-apprehended. Petitioner was previously released after a quasi-judicial determination by an immigration official on a form I-220A that he falls under the discretionary arrest provision of § 1226(a). The Government’s own issuance of a Warrant for Arrest of Alien placing Petitioner in custody under 8 U.S.C. § 1226(a), and an I-220A, releasing him pursuant to § 1226, reflects a discretionary, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). This is significant because mere days after his entry to the U.S., the Government had already recognized that Petitioner was no longer “seeking admission” as described in § 1225, and itself applied the provisions of § 1226 and released Petitioner. This quasi-judicial decision was made by DHS at the outset of

proceedings, based on the facts available to both parties and Petitioner's own admissions. This legal determination squarely contradicts the Government's current position—adopted wholesale by the Board of Immigration Appeals—that Petitioner is ineligible to apply for bond before EOIR. This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

60. It has been the settled practice for decades for immigration officials to issue an I-220A, or an Order of Release on Recognizance, to those who encounter immigration officials at or near the border. The issuance of an I-220A under § 1226 is not a ministerial act but a formal adjudication of custody status, reflecting DHS's determination that the individual falls under the discretionary detention framework of § 1226 rather than the mandatory detention provisions of § 1225(b). The Supreme Court has “long favored application of the common law doctrines of collateral estoppel (as to issues) and res judicata (as to claims) to those determinations of administrative bodies that have attained finality.” *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991) (citing *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966)). As the Court explained in *Utah Construction*, “[w]hen an administrative agency

is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce repose.” 384 U.S. at 422. This presumption applies because “Congress is understood to legislate against a background of common-law adjudicatory principles.” *Astoria*, 501 U.S. at 108 (citing *Briscoe v. LaHue*, 460 U.S. 325 (1983); *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952)). Accordingly, DHS’s prior § 236 determination—memorialized in the Warrant for Arrest of Alien and the I-220A—constitutes a binding judgment for purposes of collateral estoppel and cannot be disturbed absent materially changed circumstances or new facts.

61. Therefore, 8 U.S.C. § 1226 is the appropriate governing framework in this case.

#### **UNDERLYING FACTS AND PROCEDURAL HISTORY OF THE CASE**

62. Petitioner entered the United States on October 26, 2023.

63. On October 27, 2023, Petitioner was issued a Warrant for Arrest of Alien and detained under section 236 of the INA, 8 U.S.C. § 1226.

64. On October 27, 2023, Petitioner was also issued a Notice to Appear (“NTA”), charging him as an alien present in the United States who has not been admitted or paroled. The NTA was filed with the immigration court on January 2, 2024,

thereby commencing removal proceedings. He is currently scheduled for a Master hearing on June 8, 2027, at the Orlando Immigration Court.

65. On October 27, 2023, Petitioner was issued an Order of Release on Recognizance, indicating that “in accordance with section 236 of the Immigration and Nationality Act . . . you are being released on your own recognizance.” He was instructed to report to ICE on December 27, 2023, with which he fully complied.

66. Despite Petitioner’s consistent compliance, absence of any new violations, and demonstrated stability, on November 13, 2025, he was unexpectedly detained. While working in the Florida Keys, the car in which Petitioner was a passenger was stopped by local law enforcement for no apparent reason. Law enforcement then contacted ICE, and Petitioner was subsequently taken into custody.

67. From the time of his initial release on recognizance in 2023 to his re-detention in 2025, Petitioner committed no criminal offenses, incurred no new immigration violations, and remained in compliance with all reporting requirements.

68. Petitioner has significant ties to the United States, including his Lawful Permanent Resident mother and his United States citizen girlfriend. He possesses valid employment authorization and has maintained stable, lawful

employment. He also holds a valid driver's license and has never been arrested or convicted of any crime. His only prior contact with law enforcement is for a moving infraction. Furthermore, he has a pending asylum application because he fears returning to his native country. Petitioner's record and history demonstrate that he is neither a flight risk nor a danger to the community.

69. Petitioner is currently detained at Alligator Alcatraz, a facility that is subject to ongoing lawsuits and litigation for alleged inhumane conditions. Without intervention from this Court, he faces the prospect of prolonged detention lasting months or even years, separated from his family and community, despite his full compliance with prior release conditions and absence of any new basis for custody.

## **CAUSES OF ACTION**

### **COUNT ONE**

#### **Violation of the INA**

70. The allegations in the above paragraphs are realleged and incorporated herein.

71. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who were previously apprehended by ICE, released under § 1226, and have been residing in the United States prior to being re-detained by Respondents. Once ICE exercised its discretion to release Petitioner under § 1226(a), his legal posture

was fixed within § 1229a removal proceedings and governed by § 1226(a)'s custody framework. Therefore, such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

72. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

### **COUNT TWO**

#### **Violation of Fifth Amendment Right to Procedural Due Process – Unlawful Detention Without a Pre-Deprivation Hearing**

73. The allegations in the above paragraphs are realleged and incorporated herein.

74. It has long been established that aliens, even if in the United States unlawfully, are entitled to due process of law under the Fifth Amendment. *See Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (“Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to th[e] constitutional protection [of the Due Process Clause]”); *see also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent”).

75. The Due Process Clause of the Fifth Amendment prohibits the government from depriving individuals of liberty without notice and a meaningful opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

76. When the Government interferes with a liberty interest, it must provide constitutionally sufficient procedures. *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). The adequacy of these procedures is determined by weighing three factors: (1) the private interest that will be affected by the official action, (2) the risk of erroneous deprivation of that interest through the available procedures, and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substantive procedures would entail. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

77. Applying these factors here demonstrates that the procedures attendant upon Petitioner's detention are constitutionally insufficient.

78. First, Petitioner has a significant interest at stake. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner is being held at Alligator Alcatraz and is far from his family and community.

79. Second, the risk of erroneous deprivation is extraordinarily high. Petitioner has already been found not to be a danger to the community or a flight risk upon his initial entry, when ICE reviewed his custody and issued paperwork

releasing him on his own recognizance. Nevertheless, despite not incurring any new criminal or immigration violations, he was summarily re-detained without a bond hearing and without the government identifying any new facts or changed circumstances. Absent a pre-deprivation hearing, there was no safeguard to prevent ICE from arbitrarily re-arresting Petitioner in direct contradiction of the prior determination that release was warranted.

80. Third, the government's interest in detaining Petitioner without a hearing is minimal, if it exists at all. The government has already determined that Petitioner does not pose a risk to the community or a risk of flight. Providing a bond hearing before re-arrest would impose little to no fiscal or administrative burden, while simultaneously protecting core constitutional rights. Respondents' decision to re-detain Petitioner without such a hearing contravenes federal law and violates his procedural due process rights.

81. This arbitrary deprivation of liberty without a pre-deprivation hearing violates the constitutional requirement that detention be accompanied by due process safeguards. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (holding that immigration detention is subject to constitutional limits); *Demore v. Kim*, 538 U.S. 510, 532 (2003) (emphasizing limited scope and justification for immigration detention).

82. By taking Petitioner back into custody without notice, new facts, or opportunity to be heard, Respondents deprived him of liberty in a manner inconsistent with due process and the fundamental fairness required by the Fifth Amendment.

### **COUNT THREE**

#### **Violation of Fifth Amendment Right to Substantive Due Process**

83. The allegations in the above paragraphs are realleged and incorporated herein.

84. The Fifth Amendment's Due Process Clause not only guarantees procedural safeguards, but also protects individuals against governmental conduct that "shocks the conscience" or interferes with rights implicit in the concept of ordered liberty. *County of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998).

85. Here, Petitioner had been affirmatively determined not to be a danger to the community or a flight risk upon his initial entry, when ICE conducted a custody review and issued paperwork releasing him on his own recognizance.

86. Despite these findings, Petitioner was re-detained without cause. This re-detention occurred without any new facts or changed circumstances that could justify depriving him of liberty.

87. The government's conduct is arbitrary and capricious, amounting to punishment rather than regulation. It transforms ICE's discretionary authority into an unchecked power to re-incarcerate noncitizens at will, untethered to legitimate governmental objectives.

88. By subjecting Petitioner to renewed detention without justification, Respondents violated Petitioner's substantive due process rights under the Fifth Amendment. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (immigration detention is constitutionally limited and must bear a reasonable relation to its purposes); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (continued confinement is impermissible absent a legitimate basis such as dangerousness or flight risk).

89. Respondents' actions shock the conscience because they reflect arbitrary government conduct that disregards both prior determinations and Petitioner's fundamental right to be free from unjustified physical confinement.

**COUNT FOUR**  
**Violation of the Bond Regulations**

90. The allegations in the above paragraphs are realleged and incorporated herein.

91. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg.

at 10323 (emphasis added). The agencies thus made clear that individuals who were present without having been admitted or paroled were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

92. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

93. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

#### **COUNT FIVE**

#### **Violation of the Administrative Procedure Act (“APA”)**

94. The allegations in the above paragraphs are realleged and incorporated herein.

95. The Administrative Procedure Act (“APA”) provides the framework for judicial review of agency action. While § 701(a)(2) precludes review where “agency action is committed to agency discretion by law,” this limitation is narrowly construed considering the language of § 702. *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 64–65 (2004); 5 U.S.C. § 551(13). Namely, § 702 expressly authorizes review by any person “suffering legal wrong because of agency action” or “adversely affected or aggrieved by agency action within the meaning of a relevant statute.” 5 U.S.C. § 702; 5 U.S.C. § 551(13).

96. Moreover, in *Southern Utah Wilderness Alliance*, the Supreme Court clarified that “agency action” encompasses discrete action, or failure to act when mandated by statute, rather than broad challenges to an agency’s overall program management. *Southern Utah Wilderness Alliance*, 542 U.S. at 64–65; 5 U.S.C. § 551(13) (agency action includes the whole or part of an agency’s order, relief, or denial of relief).

97. When reviewing the erroneous agency action, section 706 directs courts to resolve all relevant questions of law, interpret statutory provisions, and “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1)–(2). Courts must also “hold unlawful and set aside” agency actions that are arbitrary, capricious, contrary to law, in excess of statutory authority, procedurally defective, unsupported by substantial evidence, or unwarranted by the facts. *Id.*

98. To invoke judicial review of an agency action, and hold unlawful or set aside arbitrary or capricious actions under § 706, a plaintiff must demonstrate Article III standing—an injury in fact, traceable to the challenged action, and redressable by a favorable decision—and must show that the interest asserted is “arguably within the zone of interests” protected by the statute invoked. *Ass’n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970); *Clarke v. Sec. Indus. Ass’n*, 479 U.S. 388, 399 (1987); *Nat’l Credit*

*Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 492 (1998). This zone-of-interests requirement is not demanding, and any doubt is resolved in the plaintiff's favor. *Nat'l Credit Union Admin.*, 522 U.S. at 492 (reaffirming the standard established by *Sec. Indus. Ass'n*, 479 U.S. 388 (1987)).

99. Finally, to overcome the allegation of an agency's erroneous actions under § 702, the agency must prove to the satisfaction of the reviewing court, that its actions were not arbitrary and capricious under § 706. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983); 5 U.S.C. § 702; 5 U.S.C. § 706(1)–(2). In *State Farm Mut. Auto. Ins. Co.*, the Court defined the arbitrary and capricious standard of § 706 as requiring the agency to show it engaged in reasoned decision-making when deciding the matter at issue. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 52; 5 U.S.C. § 706(1)–(2).

100. The APA framework squarely applies to Petitioner's case. ICE's July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission," adopted "in coordination with" DOJ, and EOIR's implementation of that guidance—together with the Board's published decision in *Matter of Yajure Hurtado* (Sept. 5, 2025)—constitute "final agency action" because they mark a consummation of the agencies' decision-making process and determine legal rights and obligations by categorically

placing noncitizens like Petitioner under 8 U.S.C. § 1225(b)(2)(A) and denying access to IJ bond hearings. *See* 5 U.S.C. § 704.

101. These agency actions are contrary to law and in excess of statutory authority because they disregard the statutory text, structure, and history establishing that detention of noncitizens already within the United States and placed in § 1229a proceedings is governed by § 1226(a), not § 1225(b)(2). *See* 8 U.S.C. §§ 1226(a), 1229a. Following *Loper Bright Enterprises v. Raimondo*, courts do not defer to an agency's interpretation merely because the statute is ambiguous; rather, courts must exercise independent judgment in interpreting the INA. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). The agencies' interpretation fails on that independent review.

102. The agencies' actions are also arbitrary and capricious under § 706(2)(A) because they (a) represent an unexplained reversal of decades of settled practice and regulatory interpretation without reasoned analysis; (b) fail to consider important aspects of the problem, including Congress's UAC framework in 8 U.S.C. § 1232 and 6 U.S.C. § 279; (c) ignore serious reliance interests of noncitizens and the adjudicatory system, which had long afforded IJ bond review under § 1226(a); and (d) apply a border-inspection scheme designed for "arriving" individuals to persons apprehended well after entry, which lacks a rational connection to the statute's purposes. *See State Farm*,

463 U.S. at 43; *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009) (agency changing policy must provide a reasoned explanation and address reliance interests); *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24–26 (2020) (failure to consider reliance interests renders rescission arbitrary and capricious).

103. The July 8, 2025 guidance operates as a substantive rule with legal consequences but was issued without notice-and-comment rulemaking as required by 5 U.S.C. § 553. It therefore is unlawful and must be set aside for “failure to observe procedure required by law.” 5 U.S.C. § 706(2)(D). *See also Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 96–97 (2015) (distinguishing interpretive from legislative rules and reaffirming § 553 requirements for the latter).

104. Independently, the agencies failed to follow their own binding regulations by denying Petitioner access to custody review and IJ bond procedures that apply under § 1226(a), violating the *Accardi* doctrine. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954); 8 C.F.R. §§ 236.1, 1236.1, 1003.19. Agency action taken in derogation of binding regulations is unlawful under § 706(2)(A), (C), and (D).

105. As applied to Petitioner, the agencies’ actions (a) deprived him of an IJ bond hearing under § 1226(a); (b) subjected him to mandatory detention under

§ 1225(b)(2)(A) without statutory basis; and (c) foreclosed individualized custody determinations despite a prior government finding that he is neither a danger nor a flight risk. This discrete deprivation is reviewable and unlawful under 5 U.S.C. § 706(2)(A)–(C), and the failure to provide the required bond process is “agency action unlawfully withheld” under § 706(1).

106. Petitioner has standing to challenge these actions: he suffers concrete and ongoing injury (continued detention without access to an IJ bond hearing), traceable to Respondents’ policies and decisions, and redressable by vacatur and injunctive relief requiring custody to be governed by § 1226(a) and the implementing regulations. His interests are plainly within the INA’s zone of interests, which protects access to § 1226(a) custody determinations for noncitizens in § 1229a proceedings.

107. For all of these reasons, Respondents’ actions are arbitrary, capricious, an abuse of discretion, contrary to law, and in excess of statutory authority, and must be set aside under 5 U.S.C. § 706(2).

### **Judicial Estoppel**

108. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

109. Respondents are judicially estopped from asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior

litigation, including *Jennings v. Rodriguez*, the Government successfully argued that individuals who entered without inspection and were not apprehended near the border or within 14 days were subject to discretionary detention under § 1226(a), not mandatory detention under § 1225(b)(2)(A). *See Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg. at 7–8 (Nov. 30, 2016). Courts accepted that position. Now, the Government reverses course and asserts the opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then adopts a contrary position to gain an unfair advantage. The Government’s reversal undermines the integrity of the judicial process and prejudices Petitioners who relied on the prior interpretation.

### **REQUEST FOR RELIEF**

WHEREFORE, Mr. Navarro respectfully requests the Court to grant the following relief:

1. Accept jurisdiction over this matter;
2. Order that Mr. Navarro shall not be transferred outside the United States District Court for the Middle District of Florida while this habeas petition is pending;

3. Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243, directing Respondents to show cause why the petition for a writ of habeas corpus filed by Mr. Navarro should not be granted within three days;
4. Issue a Writ of Habeas Corpus requiring that Respondents release Mr. Navarro or, in the alternative, provide Mr. Navarro with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
5. Order Respondents not to re-arrest or detain Mr. Navarro under 28 U.S.C. § 1225(b)(2)(A);
6. Declare that Mr. Navarro's detention is unlawful;
7. Award Mr. Navarro attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
8. Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Liliana Gomez

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*Counsel for Petitioner*

Dated: November 18, 2025

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Luis Alain Navarro Perera, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 18th day of November 2025.

*s/Liliana Gomez*  
Liliana Y. Gomez  
Florida Bar No. 123559