IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

ELMER CARTAGENA BONILLA,

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.

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW Petitioner, Elmer Cartagena Bonilla, by and through undersigned counsel, petitions this Honorable Court on an Emergency basis for a Writ of Habeas Corpus under 28 U.S.C. § 2241. Petitioner is a native and citizen of Guatemala who has been unlawfully detained by the Department of Homeland Security (DHS) for a prolonged period in violation of statutory and constitutional law. This Court's intervention is necessary to end this unlawful detention and protect the rights

guaranteed to Petitioner under the Due Process Clause of the Fifth Amendment and federal immigration law.

INTRODUCTION

1. This is a habeas corpus petition brought by Elmer Ramiro Cartagena, a native and citizen of Guatemala, who has been unlawfully detained by U.S. Immigration and Customs Enforcement (ICE) in Florida since September 15, 2025, following an interior arrest by joint ICE and local law enforcement officers in Miami.

2. Mr. Cartagena has resided continuously and peacefully in the United States since May 29, 2019, and he has no criminal history and no prior immigration encounters.

3. The government is detaining him under 8 U.S.C. § 1225(b), claiming he is subject to mandatory detention without the possibility of a bond hearing. This is incorrect. Since he was arrested well over two years after entering the United States, and inside the country, he is not subject to expedited removal or mandatory detention under § 1225. Rather, he is properly classified under 8 U.S.C. § 1226(a), which entitles him to an individualized custody determination and the opportunity to request release on bond. This misclassification is contrary to almost 30 years of settled law and practice, and it is unlawfully premised solely upon the manner in which the person initially entered the country—in some cases, decades ago.

4. By denying Mr. Cartagena a bond hearing, the government is violating his statutory rights under § 1226(a), his procedural and substantive due process rights under the

Fifth Amendment, and is acting contrary to law under the Administrative Procedure Act.

5. This Petition seeks an immediate bond hearing or release from detention, as required by law.

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, Elmer Ramiro Cartagena Bonilla, is a native and citizen of Guatemala, born on [redacted].

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.

BACKGROUND

A. Racial Profiling

19. It is not a secret that federal law enforcement agents have been conducting nationwide operations to detain the "worst of the worst" - a phrase that, per DHS's own website search, has been used at least 73 times in press releases from the DHS since July 17, 2025. [1] In Florida, the leading state with 8 U.S.C. §1357(g) partnerships, DHS has broken records in detaining so called "criminal aliens" from countries like Guatemala, Mexico, Honduras, Venezuela, and El Salvador.[2] These individuals have one thing in common: they are all have similar apparent race or ethnicity, and they all speak Spanish or English with an accent.

20. What this press releases fail to mention is that DHS is also detaining individuals with no criminal records, individuals who have family ties to American citizens, individuals who have established themselves in the United States for years without

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[1] U.S. Department of Homeland Security, *"Worst of the Worst"*, (last updated Nov. 13, 2025), https://www.dhs.gov/keywords/worst-worst.

[2] U.S. Immigration and Customs Enforcement, *Largest Joint Immigration Operation in Florida History Leads to 1,120 Criminal Alien Arrests during Weeklong Operation*, (May 1, 2025), https://www.ice.gov/news/releases/largest-joint-immigration-operation-florida-history-leads-1120-criminal-alien-arrests; U.S. Department of Homeland Security, *OPERATION DIRTBAG: ICE Arrests Over 150 Criminal Illegal Alien Sex Predators in Florida Crackdown* (Nov. 13, 2025), https://www.dhs.gov/news/2025/11/13/operation-dirtbag-ice-arrests-over-150-criminal-illegal-alien-sex-predators-florida.

any danger to the community, but rather, forming themselves as an essential part of communities around the country.[3] Most of these individuals are physically present in the United States because they are seeking what they cannot find in their countries: safety and security, and an opportunity to earn a living with dignity and hard work.[4] This prompts a critical inquiry: Is DHS in fact pursuing those who genuinely represent the most serious threats, or is its enforcement disproportionately directed at individuals fitting a particular racial profile? If so, does DHS equate that racial profile with being the "worst of the worst"? Naturally, DHS would insist that none of these practices constitute racial profiling[5] – an assertion that becomes increasingly difficult to reconcile with the lived reality of those affected.

21. Secretary Noem and President Trump, and some of his staff, expressed discriminatory animus towards non-white, non-European noncitizens evidence that their decisions in detaining individuals are not based on reasonable suspicion, but rather on their perceived race, ethnicity, and national origin. This animus is evidenced by numerous statements made by Secretary Noem, President Trump and

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[3] U.S. Immigration and Customs Enforcement, *Enforcement & Removal Operations Statistics* (last updated Dec. 31, 2024), https://www.ice.gov/statistics.

[4] Pew Research Center, *How Americans View the Situation at the U.S.-Mexico Border, Its Causes and Consequences*, Report (Feb. 15 2024), https://www.pewresearch.org/politics/wp-content/uploads/sites/4/2024/02/PP_2024.2.15_US-Mexico-border_REPORT.pdf.

[5] Rather, DHS considers that the "baseless accusations" on racial profiling are increasing assaults against federal law enforcement agents. U.S. Department of Homeland Security, *DHS Blasts National Public Radio's Disgusting Race Baiting Smears Against America's Brave ICE Agents* (Sept. 8, 2025), https://www.dhs.gov/news/2025/09/08/dhs-blasts-national-public-radios-disgusting-race-baiting-smears-against-americas.

other Trump administration officials. A limited number of those statements are described herein.

a. Secretary Noem has described irregular immigration across the U.S.-Mexico border as "an invasion happening on purpose . . . to remake the foundation of this country,"[6] echoing the racist "replacement theory." The "replacement theory" is the idea that non-white immigrants will replace the white race, and in doing so undermine the country's perceived white foundation, history and culture.[7]

b. Secretary Noem's termination of several TPS designations for non-white and non-European countries explicitly rely on President Trump's Executive Order, "Protecting the American People Against Invasion." That Order describes immigrants, including those lawfully present under humanitarian relief, as invaders committing "vile and heinous acts against innocent Americans."[8]

c. "Invasion" is a "code word" often used to "express[] that Racial/Ethnic Minorities spread something harmful within communities, institutions, or other societal domains."[9]

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[6] South Dakota Gov. Kristi Noem Calls on Nikki Haley to Exit 2024 Race, CBS NEWS (Mar. 5, 2024) at approx. 3:58, https://www.cbsnews.com/video/kristi-noem-calls-on-nikki-haley-to-exit-2024-race/ .

[7] *See The 'Great Replacement' Theory, Explained*, NATIONAL IMMIGRATION FORUM, https://immigrationforum.org/wp-content/uploads/2021/12/Replacement-Theory-Explainer-1122.pdf.

[8] United States, Executive Order No. 14159, *Protecting the American People Against Invasion* (Jan. 20 2025), https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/.

[9] Pfeiffer, Deirdre and Hu, Xiaoqian, Deconstructing Racial Code Words (April 19, 2024). Forthcoming in 58(2) Law & Society Review (2024)., Arizona Legal Studies Discussion Paper No. 24-14, Available at SSRN: https://ssrn.com/abstract=4801114 or http://dx.doi.org/10.2139/ssrn.4801114.

d. Secretary Noem has repeatedly described non-white, non-European immigrants as "dirt bags." [10]

e. President Trump has repeatedly described immigrants in the United States as an "invasion," repeatedly conflating migrants with "criminals, gang members and terrorist."[11]

f. President Trump, while campaigning in 2023, repeatedly accused non-white, no-European immigrants of "poisoning the blood of our country."[12]

g. In October 2024, during a radio interview, President Trump emphasized the genetic inferiority of non-white, non-European immigrants. He said, "How about allowing people to come to an open border . . . many of them murdered far more than one person, and they're now happily living in the United States. You know a murderer, I believe this, it's in their genes. And we got a lot of bad genes in our country right now." In contrast, when addressing a

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[10] @Sec_Noem, X (Jan. 28, 2025, 7:35 AM), *available at* https://x.com/Sec_Noem/status/1884264039158800547 ("Getting the dirt bags off the streets."); *DHS Secretary Kristi Noem Joins Federal Agents on Immigration Raids in New York*, CBS MORNINGS (Jan. 29, 2025) at approx. 1:10, *available at* https://www.youtube.com/watch?v=tODarHnNiNs ("These guys are dirtbags. They have come in and perpetuated violence in this country."). The CBS reporter who accompanied Secretary Noem on New York City raids she references reported that nearly half of those arrested had no criminal history.

[11] *See, e.g.*, Donald Trump, *Donald Trump: This Is How I Will End Joe Biden's Border Disaster on Day One*, DES MOINES REGISTER (Jan. 3, 2024), *available at* https://www.desmoinesregister.com/story/opinion/columnists/caucus/2024/01/03/donald-trump-joe-biden-border-disaster/72093156007/; TIME, *Read the Full Transcripts of Donald Trump's Interviews with TIME*, Apr. 2024, *available at* https://time.com/6972022/donald-trump-transcript-2024-election/ ("This is an invasion of our country. An invasion like probably no country has ever seen before. They're coming in by the millions.").

[12] *Donald Trump on Illegal Immigrants 'Poisoning the Blood of Our Country"*, C-SPAN (Dec. 16, 2023), *available at* https://www.c-span.org/clip/campaign-2024/donald-trump-on-illegal-immigrants-poisoning-the-blood-of-our-country/5098439; Raheem Kassam, Raheem Kassam Interviews Donald Trump, YouTube (Sep. 2023) at approx. 1:34 to 1:45, *available at* https://www.youtube.com/watch?v=v283kLQbe1M&t=89s.

predominantly white crowd at a campaign rally, he told them that they have "good genes."[13]

h. President trump has expressed his own reasonable suspicion standard stating that "you can look at" "some" migrants "and you can say 'could be trouble, could be trouble.'"[14]

i. In late May, White House Deputy Chief of Staff Stephen Miller reportedly told officers to "'just go out there and arrest illegal aliens,'" and directed them to target "Home Depot" and "7 Eleven" stores.[15]

j. Senior Immigration Officers also instructed agents to "push the envelope," and that "'[i]f it involves handcuffs on wrists, it's probably worth pursuing.'"[16]

22. "[T]he Fourth Amendment forbids stopping vehicles at random to inquire if they are carrying aliens who are illegally in the country, it also forbids stopping or detaining persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens." *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975).

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[13] Jack Traylor et al., *Trump Suggests Immigrants Have 'Bad Genes' in Latest Disparagement of Migrants*, NBC NEWS (Oct. 7, 2024), https://www.nbcnews.com/politics/donald-trump/trumpsuggests-immigrants-bad-genes-latest-disparagement-migrants-rcna174271.

[14] FOX NEWS, *President Donald Trump: We Will Bring Our Country Back*, YOUTUBE (Jan. 22, 2025) at approx. 18:26, *available at* https://www.youtube.com/watch?v=mQUmy6gkwWg.

[15] E. Findell, R. Simon, M. Hackman, & T. Parti, The White House Marching Orders That Sparked the L. A. Migrant Crackdown, The Wall Street Journal, June 9, 2025, https://www.wsj.com/us-news/protests-los-angeles-immigrants-trump-f5089877.

[16] J. Olivares, US Immigration Officers Ordered to Arrest More People Even Without Warrants, The Guardian, June 4, 2025, https://www.theguardian.com/us-news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests.

23. The INA authorizes immigration officers to "interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States." 8 U.S.C. § 1357(a)(1). However, the Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest. *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16-19 (1968). "[W]henever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person," *Id.* at 16, and the Fourth Amendment requires that the seizure be "reasonable." And as a result, regulations have been implemented limiting officers authority to stop individuals unless they have "reasonable suspicion, based on specific articulable facts, that the person being questioned. . . is an alien illegally in the United States." 8 CFR §287.8(b)(2); *see, 884 (1975);*

24. The reasonable suspicion inquiry turns on the "totality of the particular circumstances." *Brignoni-Ponce, 422 U. S. at* 885, n. 10; *United States v. Arvizu, 534 U. S. 266, 273 (2002).* The Supreme Court has explained that apparent ethnicity alone cannot furnish reasonable suspicion because of the large number of native-born and naturalized citizens that have a Hispanic or Latino appearance. *Brignoni-Ponce*, 422 U. S. at 887.

25. Some of the circumstances that may be considered by a federal agent to have reasonable suspicion to inquire about immigration status include: (1) characteristics of the area; (2) proximity to the border; (3) visual patterns of traffic on the road and previous experience with noncitizens in the location; (4) information of illegal crossing or arrival in the area; (5) the individual's mode of dressing and haircut

common to individuals arriving from another country; (6) vehicle load, perceived excess of passengers in vehicle, and type of vehicle driven; (7) the officer's experience in detecting illegal entry, and smuggling; (8) overwhelming presence of illegal immigrants in the area; (9) locations were undocumented individuals gather seeking for work, or types of jobs in which undocumented individuals engage in the United States; and (10) language spoken, or inability to communicate in English. *See e.g., Brignoni-Ponce*, 422 U. S. at 884-885; *Noem v. Perdomo*, 222 L.Ed.2d 1213, 1216 (U.S. 2025).

26. Moreover, the Fifth Amendment contains an implicit guarantee of equal protection that prohibits any official action that motivated in part by a racially discriminatory intent or purpose. Classifications based on race, ethnicity, or national origin receive exacting scrutiny, and even facially neutral policies and practices will be held unconstitutional when they reflect a pattern unexplainable on grounds other than race. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977).

B. Asylum Jurisdiction

27. Congress has expressly conferred on all noncitizens physically present in the United States the statutory right to apply for asylum. *See* 8 U.S.C. § 1158(a)(1). This right is unconditional and applies whether or not the noncitizen arrived at a designated port of arrival. *Id.* Nothing in section 1158 conditions the right to apply for asylum on immigration status, custody status, or the initiation of removal proceedings.

28. Federal regulations distinguish clearly between (1) the right to apply for asylum, and (2) the government's internal allocation of adjudicatory responsibility. Under governing regulations, USCIS possesses original jurisdiction over all affirmative asylum applications. *See* 8 C.F.R. § 208.2(a). This original jurisdiction attaches at the moment an asylum application is properly filed with USCIS, and it remains with USCIS unless and until the agency formally refers the case to the EOIR.

29. Because Petitioner filed his Form I-589 affirmatively with USCIS, jurisdiction initially and properly vested in USCIS pursuant to 8 C.F.R. § 208.2(a). USCIS retained this jurisdiction—and was obligated to adjudicate the application on the merits—until such time as the agency elected to refer the case for defensive consideration before an Immigration Judge. A referral is not a rejection; it is a jurisdictional transfer mechanism. Accordingly, Petitioner's asylum claim has always been part of a statutory adjudicatory process expressly contemplated by Congress.

30. The INA further anticipates that many asylum applicants will pursue their claims while living and working in the community, not from detention. Congress authorized employment authorization for asylum applicants under 8 C.F.R. § 208.7, demonstrating that the statutory framework presumes applicants remain at liberty during adjudication. Were asylum meant to be pursued only from detention, employment authorization provisions would be rendered meaningless—an interpretation the Supreme Court forbids. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31

(2001) (statutory provisions must be interpreted so that none are rendered superfluous).

31. Thus, the statutory and regulatory scheme confirms that asylum jurisdiction properly began with USCIS and that neither the INA nor the implementing regulations require or presume detention to transfer the case to EOIR and it does not alter Petitioner's statutory entitlement to have his application adjudicated on the merits, nor does it justify or mandate his continued custody.

32. Moreover, the INA expressly provides that asylum applicants are not deemed unlawfully present during the pendency of a bona fide asylum application. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(I)–(II). Because Petitioner has maintained a pending asylum application since filing with USCIS, he has not accrued unlawful presence, and he remains in the United States with the authorization provided by Congress on section 1158. Therefore, an individual who is an affirmative applicant for asylum, like the Petitioner, cannot be detained on that basis.

FACTUAL ALLEGATIONS

33. Petitioner Elmer A. Cartagena is a 21-year-old citizen and native of Guatemala, born on [redacted]. *See* Exhibit A.

34. He entered the United States at or near El Paso, Texas without inspection on or around May 29, 2019. Petitioner was detained upon entry and eventually released on June 2, 2019.

35. Petitioner has made Marathon, Florida, his home alongside his mother. There, Petitioner attended Marathon Middle High School. Upon graduation, he enrolled in the College of the Florida Keys to obtain a certificate in Culinary Arts.

36. Petitioner's mother, Breni Sucely Bonilla (hereinafter "Mrs. Bonilla"), filed an Affirmative Asylum Application through Form I-589, Application for Asylum and for Withholding of Removal with USCIS on March 11, 2022, including Petitioner as a minor derivative beneficiary. *See* Exhibit B. Up to this date, Petitioner and Mrs. Bonilla have not been summoned by USCIS for their Affirmative Asylum Interview. Petitioner's asylum Application remains pending as he is protected by the Child Status Protection Act (CSPA) as codified in the INA.[17]

37. Mrs. Bonilla married a Legal Permanent, Alberto Diaz Alberteris (hereinafter "Mr. Diaz"), on February 22, 2021. *See* Exhibit C.

38. Mr. Diaz filed a Form I-130, Petition for Alien Relative naming Petitioner as the beneficiary. *See* Exhibit C. Upon approval, Petitioner will have a visa available to him. Petitioner is not subject to an unlawful presence bar and will not require an unlawful presence waiver as he entered when he was a minor and is currently a derivative applicant of a pending asylum application. *See* 8 U.S.C. § 1182(a)(9)(B)(ii)-(iii).

[17] "An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 1159(b)(3) of this title, if the alien attained 21 years of age after such application was filed but while it was pending." 8 U.S.C. § 1158(b)(3)(B).

39. Petitioner resides at a five-building apartment complex located on [redacted] Marathon, FL 33050 (hereinafter "Respondent's Apartment"), with Mrs. Bonilla and Mr. Diaz.

40. On September 15, 2025, twelve (12) days before turning twenty-one (21) years old, Petitioner was arrested in Marathon, FL by federal agents at the parking lot in front of Respondent's Apartment.

41. On that day, at around 1:30 p.m., Petitioner was in his car, a 2022 dark-red Ford F-15, on his way to Publix located on 5407 Overseas Hwy, Marathon, FL 33050. From the moment he left his house, Petitioner noticed a black car following him to Publix. When he entered the store, the black car parked at the store. When he exited the store, he noticed the car was still there. Petitioner boarded his car and started driving back home. Petitioner noticed that he was being followed by the same black car.

42. As Respondent pulled up to the parking lot in front of Respondent's Apartment, the black car that was following him turned on the police lights. Respondent pulled over to the parking spot and was approached by four (4) federal agents in DHS uniform. Being inside the car, the federal agents asked Petitioner for his identification. Petitioner provided his valid Florida Driver's License and his valid Employment Authorization Document (EAD) issued by DHS under category (c)(08) due to his pending asylum application. *See* Exhibit D.

43. After inspecting Petitioner's documents, the federal agents told Petitioner that he was being detained for not having valid identification and status in this country.

44. The federal agents blatantly ignored Petitioner's valid EAD issued by DHS as evidence of his pending asylum application with USCIS.

45. Petitioner has no criminal record in the United States or in Guatemala. *See* Exhibit E. 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 complied with all the procedures established by law: (1) he attended his biometrics appointment with DHS, and (2) he applied and was granted an Employment Authorization Document since 2022, *see* Exhibit B and E.

47. On October 10, 2025, Petitioner was served with a Notice to Appear by DHS, placing him in 8 U.S.C. § 1229a removal proceedings.

48. On October 29, 2025, Petitioner attended his initial Master Hearing with EOIR Judge Stuart A. Siegel.

49. On November 10, 2025, despite having a valid application for Asylum pending with USCIS as a derivative under her mother's claim, the Judge Seigel left Petitioner with no other option but to abandon his derivative status under his mother's claim and choose to voluntarily depart from the United States.

50. Moreover, Petitioner was denied from the ability of seeking a bond hearing based on the illegal framework established by *Matter of Hurtado*, impacting his ability to seek release on bond and continue his case under *Matter of Hashmi*, 24 I&N Dec. 785 (BIA

2009) pending adjudication of the collateral relief he had available in the Form I-130.[18]

51. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a bond hearing with strong procedural protections. *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 (1st Cir. 2022) (affirming class-wide declaratory judgment); 8 C.F.R. §§ 236.1(d), 1003.19(a)-(f).

52. Under *Matter of Hurtado*, however, the responsible administrative agency has predetermined that Petitioner will be denied a bond hearing, and the government is holding Petitioner under the purported authority of 8 U.S.C. § 1225(b)(2), under which Petitioner will not receive a bond hearing.

53. Since his arrest, Petitioner has been under the custody of DHS and is currently detained at the Broward Transitional Center in Pompano Beach, Florida, a civil immigration detention center. He has been held continuously since September 15, 2025, without any opportunity to seek release or appear before an immigration judge to challenge his detention.

COUNT I

Violation of the Fourth Amendment (Unlawful Seizure and Arrest)

[18] Immigration Courts have traditionally allowed cases to be continued pending adjudication of family based petitions if the Immigration Judge finds good cause, which is established by factors like (1) whether the underlying visa petition is prima facie approvable; (3) the respondent's statutory eligibility for adjustment of status; (4) whether the respondent's application for adjustment merits a favorable exercise of discretion; and (5) the reason for the continuance and any other relevant procedural factors. *See Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009).

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

55. The Fourth Amendment prohibits all unreasonable searches and seizures, including brief detentions for questioning. A person is "seized" when an officer restrains his freedom to walk away, whether or not a formal arrest occurs. *Terry v. Ohio*, 392 U.S. 1, 16 (1968). Any such seizure must be supported by reasonable suspicion grounded in specific, articulable facts. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975).

56. As detailed above, DHS officials—including Secretary Noem, President Trump, senior White House staff, and high-ranking immigration officers—publicly and repeatedly directed enforcement agents to target non-white, non-European immigrants based on racialized and xenophobic stereotypes, characterizing them as "invaders," "dirt bags," carriers of "bad genes," and individuals who could be identified as "trouble" merely by their appearance. These statements, directives, and policies constitute compelling evidence of discriminatory animus and an intentional disregard for the constitutional requirement of individualized reasonable suspicion.

57. DHS's so-called "worst of the worst" operations in Florida and elsewhere were carried out through mass arrests and investigatory stops overwhelmingly directed at individuals who share certain racial, ethnic, and linguistic characteristics—precisely the type of profiling the Supreme Court forbids. *Brignoni-Ponce*, 422 U.S. at 887 ("Mexican appearance" alone cannot create reasonable suspicion). DHS's enforcement trend demonstrates a systemic practice of seizing individuals based

solely on their appearance, accent, or perceived foreignness, without any individualized basis to believe they violated immigration law.

58. Petitioner's seizure occurred within this unconstitutional enforcement framework and was executed without any reasonable suspicion under controlling Supreme Court precedent, the Immigration and Nationality Act, or applicable DHS regulations. *See* 8 C.F.R. § 287.8(b)(2) (requiring reasonable suspicion based on articulable facts). The officer who stopped and detained Petitioner relied entirely on perceived race and or ethnicity, that, standing alone, may never justify a stop under the Fourth Amendment.

59. This stop and subsequent arrest were not isolated errors but flowed directly from official policies and explicit directives encouraging officers to "just go out there and arrest illegal aliens," to "push the envelope," and to pursue individuals if "it involves handcuffs on wrists." These directives affirmatively encouraged unconstitutional seizures and eliminated any requirement for individualized suspicion.

60. Because the seizure was unsupported by reasonable suspicion, the arrest was unlawful ab initio. The physical detention of Petitioner's body is the primary fruit of this unconstitutional seizure. When the body of a person is itself seized in violation of the Fourth Amendment, the constitutional injury is ongoing, and habeas relief is the only adequate remedy.

61. The fruit-of-the-poisonous-tree doctrine applies because the Government's entire custody of Petitioner is the direct product of the unlawful stop. The Government

cannot benefit from unconstitutional conduct by relying on information or records obtained solely by exploiting the unlawful seizure. To hold otherwise would remove all institutional incentive to comply with the Fourth Amendment. See *Elkins v. United States*, 364 U.S. 206, 217 (1960) ("The purpose [of the exclusionary rule] is to compel respect for the constitutional guaranty...by removing the incentive to disregard it."); *United States v. Olivares-Rangel*, 458 F.3d 1104, 1120 (10th Cir. 2006) (deterrence is served "only by excluding the very evidence sought to be obtained by the primary illegal behavior").

62. Here, the "very evidence sought" was Petitioner himself—his physical presence and identity, which were discovered only because officers unlawfully seized his body based on perceived race, ethnicity, and language. Because the body was the direct fruit of the unconstitutional stop, the arrest and all subsequent immigration custody are invalid.

63. Petitioner's continued detention is therefore unlawful within the meaning of 28 U.S.C. § 2241, as it is based entirely on a seizure that violated the Fourth Amendment and fundamental constitutional principles governing the limits of federal enforcement authority.

64. Accordingly, Petitioner is entitled to immediate release from custody and to all other relief this Court deems just and proper.

COUNT II

Administrative Procedure Act (APA) Violation - Without Observance of Procedure Required by Law

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

66. Under the Administrative Procedure Act, a reviewing court must "hold unlawful and set aside agency action ... found to be ... without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

67. The INA and its implementing regulations establish a clear and mandatory procedural framework for asylum adjudication. Congress expressly grants every noncitizen physically present in the United States the right to apply for asylum. 8 U.S.C. § 1158(a)(1). Pursuant to 8 C.F.R. § 208.2(a), USCIS has original jurisdiction over affirmative asylum applications unless and until an applicant is placed in removal proceedings and the case is properly referred to the EOIR.

68. Petitioner lawfully filed his Form I-589 asylum application affirmatively with USCIS, thereby vesting original jurisdiction with USCIS as required by regulation. USCIS retained that jurisdiction unless and until it referred the application to EOIR through the procedures prescribed by law.

69. Respondents failed to follow the procedural requirements governing the treatment of affirmative asylum applications and the transfer of jurisdiction between USCIS and EOIR. Respondents' actions, including detaining Petitioner despite a properly filed and pending asylum application, treating Petitioner as unlawfully present in contravention of 8 U.S.C. § 1182(a)(9)(B), and disregarding the regulatory scheme governing asylum adjudication jurisdiction constitute agency action taken without observance of procedures required by law.

70. Respondents' failure to adhere to the statutory and regulatory procedures governing asylum jurisdiction deprived Petitioner of the process Congress mandated, caused him unlawful detention, and prevented the agency from lawfully and properly adjudicating his asylum claim.

71. Because Respondents acted without observance of procedures required by law, their actions must be declared unlawful and set aside pursuant to 5 U.S.C. § 706(2)(D).

72. Petitioner therefore requests that this Court set aside Respondents' unlawful actions, order compliance with the procedures required by law, and grant any further relief necessary to remedy the ongoing harm resulting from Respondents' APA violations.

COUNT III

Administrative Procedure Act (APA) Violation - Arbitrary and Capricious Agency Action

73. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through eighty-seven (87) as though fully set forth herein.

74. Respondents' conduct in detaining Petitioner, initiating removal proceedings, and denying him a bond hearing constitutes agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

75. Respondents failed to consider material and readily available evidence, including Petitioner's valid Employment Authorization Document (EAD) issued under 8

C.F.R. § 274a.12(c)(8), which evidences lawful presence based on his pending asylum application.

76. Respondents ignored the application of the Child Status Protection Act (CSPA), 8 U.S.C. § 1153(h), which preserved Petitioner's eligibility as a derivative asylum applicant despite his age-out status, and failed to provide any reasoned explanation for treating him otherwise.

77. Respondents improperly treated Petitioner as unlawfully present and subject to removal without accounting for the regulatory jurisdiction of USCIS over his affirmative asylum application, as required by 8 C.F.R. § 208.2(a), and without evidence of proper jurisdictional transfer to EOIR.

78. Respondents' actions were inconsistent with their own immigration procedures and policies, and no adequate explanation was provided for this departure, in violation of the requirements set forth by the Supreme Court in *Motor Vehicle Manufacturers Association v. State Farm*, 463 U.S. 29 (1983).

79. Respondents relied on pretextual justifications for detaining Petitioner, ignoring lawful documentation and seizing him under the guise of lacking status, while acting based on perceived ethnicity and foreignness, a rationale unsupported by the administrative record or law.

80. Respondents failed to account for Petitioner's pending Form I-130 petition, which provides a pathway to legal permanent residency and constitutes a significant

reliance interest under *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009), thereby rendering the agency's action unreasonable.

81. Petitioner was improperly denied access to a bond hearing despite qualifying for one under 8 U.S.C. § 1226(a), and Respondents erroneously applied the legal framework of *Matter of Hurtado*, which does not govern Petitioner's custody status, thereby depriving him of procedural due process.

82. Respondents failed to follow binding federal precedent requiring procedural protections for detained noncitizens, including those set forth in *Hernandez-Lara*, 10 F.4th at 41, *Tompkins*, 11 F.4th at 1, and *Brito*, 22 F.4th at 256-57

83. Petitioner remains in DHS custody without legal justification, without access to an individualized bond hearing, and without proper consideration of statutory and regulatory protections, causing ongoing legal and constitutional harm.

84. Respondents' actions lack any reasoned justification, fail to articulate a rational connection between the facts found and the choices made, and therefore must be set aside under 5 U.S.C. § 706(2)(A).

85. Petitioner respectfully requests that this Court declare Respondents' actions unlawful, vacate the removal and detention actions taken against him, restore jurisdiction over his asylum application to USCIS, and grant any further relief this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that that this Honorable Court will:

86. Assume jurisdiction over this matter pursuant to 28 U.S.C. § 2241 and Article I, Section 9, Clause 2 of the U.S. Constitution (the Suspension Clause);

87. Order Respondents to Show Cause within three days unless for good cause additional time, not exceeding twenty days, is allowed pursuant to 28 U.S.C. § 2243.

88. Order that Petitioner shall not be transferred outside the Southern District of Florida.

89. Declare that Petitioner is not subject to detention because he is a lawful applicant for affirmative asylum with USCIS;

90. Declare that Petitioner's arrest and continued detention as unlawful because the federal agents did not have the required reasonable suspicion to stop Petitioner and as such the continued detention is an unlawful seizure in violation of the Fourth Amendment and the fruit of the poisonous tree doctrine;

91. Declare that Petitioner's continued detention of Petitioner without an individualized bond hearing violates: (a) the Immigration and Nationality Act; (b) the Administrative Procedure Act, 5 U.S.C. § 706; and (c) the Fourth Amendment protection against unreasonable searches and seizures.

92. Issue a preliminary injunction and Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, order Respondents to release Petitioner if he is not provided a bond hearing within seven (7) days after the Court's order;

93. Under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) & 5 U.S.C. § 504 et seq., individuals can recover attorneys' fees and costs for successful federal court

litigation against the U.S. government. The EAJA statute applies to "any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action." 28 U.S.C. § 2412(d)(1)(A); and

94. Grant such other and further relief as the Court deems just, proper, and equitable.

Respectfully submitted,

/s/Eduardo R. Soto
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 24, 2025, I electronically filed the forgoing 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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November 24, 2025
Date

EXHIBIT LIST

Exhibit A	Copy of Petitioner's Passport
Exhibit B	Copy of Petitioner's Receipt Notice of Form I-589, Application for Asylum and for Withholding of Removal
Exhibit C	Copy of Petitioner's Receipt Notice of Form I-130, Petition for Alien Relative and Copy of Mrs. Bonilla and Mr. Diaz's Marriage Certificate alongside a copy of Mr. Diaz's Lawful Permanent Resident Card
Exhibit D	Copy of Petitioner's Valid Florida Driver's License
Exhibit E	Copy of Petitioner's Criminal Background Check